



**MOODY** | Direct

# TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES AND GOODS

# MOODY DIRECT LIMITED

## TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES AND GOODS

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions (**conditions**).

**Buyer:** the person, firm or company who purchases the Services from the Company.

**Buyer's Equipment:** any equipment, systems, cabling or facilities provided by the Buyer and used, directly or indirectly, in connection with the supply of the Services.

**Charges:** the charges for the Services and any Goods as set out in the Specification Sheet.

**Company:** Moody Direct Limited (CRN: 3999464) whose registered office is at West Carr Road Industrial Estate, Retford, Nottinghamshire DN22 7SN.

**Contract:** any contract between the Company and the Buyer for the provision of the Services, incorporating the Specification Sheet and these conditions.

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Goods:** includes, without limitation, any goods, equipment and parts to be supplied by the Company as set out in the Specification Sheet together with any other goods, equipment and parts which the Company provides, or agrees to provide, to the Buyer.

**In-put Material:** all Documents, information and materials provided by the Buyer relating to the Services.

**Intellectual Property Rights:** 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.

**Output Materials:** all Documents, information and materials provided or produced by the Company relating to the Services which existed prior to the commencement of the Contract or which are produced during the term of the Contract.

**Services:** the services to be provided by the Company under the Contract as set out in the Specification Sheet together with any other services which the Company provides, or agrees to provide, to the Buyer.

**Specification Sheet:** the quotation, sales order conformation or specification sheet to which these conditions are attached.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension or re-enactment.

- 1.3 Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender.

- 1.4 Condition headings do not affect the interpretation of these conditions.
- 1.5 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **2. APPLICATION OF CONDITIONS**

- 2.1 Subject to any variation under condition 2.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.2 These conditions apply to all the Company's provision of Services and Goods and any variation to these conditions and any representations about the Services and Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.3 Each order or acceptance of a quotation for Services and Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Services and Goods subject to these conditions.
- 2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Services and Goods to the Buyer.
- 2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

## **3. SERVICES, GOODS AND THE COMPANY'S OBLIGATIONS**

- 3.1 The Company shall use reasonable endeavours to provide the Services and the Goods to the Buyer in accordance with the Contract and subject to these conditions. The Company shall provide the Services using reasonable care and skill.
- 3.2 The Company reserves the right to make any changes in the specification of the Services and Goods which are required to conform with any applicable statutory requirements or, where the Services and Goods are to be supplied to the Buyer's specification, which do not materially affect the nature of the Services and Goods.
- 3.3 The Company shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services and/or delivery of the Goods.

- 3.4 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business. The Buyer shall take delivery of the Goods within 5 days of the Company giving it notice that the Goods are ready for delivery. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 3.5 Any Goods provided are at the risk of the Buyer from the time of delivery. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Services and Goods; and
  - (b) all other sums which are or which become due to the Company from the Buyer on any account
- and until ownership of the Goods has passed to the Buyer, the Buyer:
- (c) shall hold the Goods on a fiduciary basis as the Company's bailee;
  - (d) shall store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (e) shall not destroy, deface or obscure any identifying mark on or relating to the Goods;
  - (f) shall maintain the Goods in satisfactory condition;
  - (g) shall keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and on request the Buyer shall produce the policy of insurance to the Company; and
  - (h) grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to recover them.
- 3.6 Where the Company is not the manufacturer of the Goods or has not refurbished the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee (if any) given to the Company. Unless otherwise set out in the Specification Sheet, where the Company is the manufacturer of the Goods or has refurbished the Goods, the Company warrants that (subject to the other provisions of these conditions) on delivery and for a period of 6 months from the date of delivery, the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (b) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.
- 3.7 The Company shall not be liable for a breach of any of the warranties in conditions 3.1 and/or 3.6 unless:
- (a) the Buyer gives written notice of the defect to the Company within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 3.8 The Company shall not be liable for a breach of any of the warranties in condition 3.6 if:
- (a) the Buyer makes any further use of such Goods after giving such notice;

- (b) the defect arises because the Buyer failed to follow the Company'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;
- (c) the Buyer alters or repairs such Goods without the prior written consent of the Company; or
- (d) if the total price for the Service and Goods has not been paid or if any Charges due to the Seller from the Buyer have not been paid.

3.9 Subject to condition 3.7 and condition 3.8, if any of the Goods do not conform with any of the warranties in condition 3.6 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company. If the Company complies with condition 3.9 it shall have no further liability for a breach of any of the warranties in condition 3.6 in respect of such Goods.

3.10 Notwithstanding any other provision in these conditions, no warranty is given by the Company to the Buyer in connection with the Services and/or the Goods during the testing and commissioning phase and/or until a Certificate of Conformity is issued by the Company to the Buyer.

#### **4. THE BUYER'S OBLIGATIONS**

4.1 The Buyer shall:

- (a) co-operate with the Company in all matters relating to the Services;
- (b) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Buyer's premises, use of the Buyer's products, data and other facilities as reasonably required by the Company in connection with the Services and Goods;
- (c) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, such of the Buyer's products and facilities (including energy) to enable the testing and commissioning of the Services and Goods as reasonably required by the Company;
- (d) provide to the Company, in a timely manner, such In-put Material and other information as the Company may require and ensure that it is accurate in all material respects;
- (e) be responsible (at its own cost) for preparing and maintaining the relevant premises to enable the Company to supply the Services (and Goods) at those premises;
- (f) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Buyer's premises;
- (g) ensure that all Buyer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all standards or requirements;
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Goods, the use of In-put Material and the use of the Buyer's Equipment in all cases before the date on which the Services are to start; and
- (i) keep, maintain and use the Goods in accordance with the Company's instructions as notified in writing from time to time.

4.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.

- 4.3 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.
- 4.4 The Buyer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services or termination of the Contract (as the case may be), solicit or entice away from the Company or employ (or attempt to employ) any person who is an employee of the Company and who has been involved in the provision of the Services.

## **5. CHARGES AND PAYMENT**

- 5.1 In consideration of the provision of the Services and/or Goods by the Company, the Buyer shall pay the Charges to the Company in accordance with this condition 5.
- 5.2 In the event that additional Services are provided other than those set out in the Specification Sheet, the charges for such additional Services shall be at a price to be agreed between the Company and the Buyer or in the absence of such agreement on a time and materials basis calculated by reference to the Company's standard daily fee rates as amended from time to time and for the purpose of this condition 5, such charges will fall within the definition of Charges.
- 5.3 In the event that additional Goods are provided other than those set out in the Specification Sheet, the charges for such additional Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery and for the purpose of this condition 5, such charges will fall within the definition of Charges.
- 5.4 All Charges quoted to the Buyer shall be exclusive of VAT, which the Company shall add to its invoices at the appropriate rate.
- 5.5 The Company shall invoice the Buyer for the Charges (together with any expenses including, without limitation, third party services, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Company in connection with the Services) on the dates set out in the Specification Sheet and in the absence of any such dates on a monthly in arrears basis for the Charges in relation to the Services and Goods for the month concerned.
- 5.6 Unless otherwise stated in the Specification Sheet, subject to condition 5.8, payment of Charges is due in pounds sterling on the last working day of the month following the month in which the invoice is delivered or deemed to be delivered.
- 5.7 Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.
- 5.8 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 5.9 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision. This condition 5.9 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

- 5.10 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 5.11 If the Buyer fails to pay the Company any sum due pursuant to the Contract, without prejudice to any other right or remedy that the Company may have,
- (a) the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment provided always that the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) the Company may suspend all Services until payment has been made in full.
- 5.12 The Company may, without prejudice to any other rights it may have, set off any liability of the Buyer to the Company against any liability of the Company to the Buyer.

## **6. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 6.1 As between the Buyer and the Company, all Intellectual Property Rights and all other rights in the Output Materials shall be owned by the Company. Subject to condition 6.2, the Company licenses all such rights to the Buyer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Buyer to make use of the Services. The Buyer acknowledges that Output Materials is the property of the Company. If the Company terminates the Contract under condition 8.1, this licence shall automatically terminate.
- 6.2 The Buyer acknowledges that, where the Company does not own any Output Materials, the Buyer's use of rights in Output Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Buyer.
- 6.3 As between the Buyer and the Company, all Intellectual Property Rights and all other rights in the In-put Materials shall be owned by the Buyer. The Buyer licenses all such rights to the Company free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Company to provide the Services.
- 6.4 The Buyer shall keep in strict confidence the Output Material together with all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature (whether or not designated as being confidential) and have been disclosed to the Buyer by the Company, its employees, agents, consultants or subcontractors and any other confidential information (whether or not designated as being confidential) concerning the Company's business or its products which the Buyer may obtain.
- 6.5 The Buyer may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Buyer's obligations under the Contract; and
  - (b) as may be required by law, court order or any governmental or regulatory authority
- provided that the Buyer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 6.5. The Buyer shall not use any such information for any purpose other than to perform its obligations under the Contract.

## **7. LIMITATION OF LIABILITY - THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

- 7.1 Subject to condition 3, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of the Contract;
  - (b) any use made by the Buyer of the Services (and/or Goods); and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 7.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 7.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence;
  - (b) under section 2(3) of the Consumer Protection Act 1987;
  - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation by the Company.
- 7.4 The Company shall accept liability to the Buyer in respect of damage to the tangible property of the Buyer resulting from the negligence of the Company or its employees, agents or sub-contractors up to a maximum amount of £10 million for each event or series of connected events.

### **The Buyer's attention is in particular drawn to the provisions of conditions 7.5 and 7.6.**

- 7.5 Subject to conditions 7.2 - 7.4 (inclusive):
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the aggregate amount of the Charges; and
  - (b) the Company shall not be liable to the Buyer for any (i) pure economic loss, (ii) loss of profit, (iii) anticipated savings, (iv) loss of business (v) depletion of goodwill or (vi) similar loss in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 7.6 Subject to conditions 7.2 and 7.3, the Company shall not be liable to the Buyer for any use, damages and losses which arise out of or in connection with the provisions of any of the Buyers' products and facilities pursuant to conditions 4.1(b) and/or 4.1(c) during the testing and commissioning phase and/or until a Certificate of Conformity is issued by the Company to the Buyer.



## **8. TERMINATION**

8.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other party immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (d) the other party has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party;
- (e) the other party suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or 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 a natural person) 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;
- (f) 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 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;
- (g) 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 this condition 8.1; or
- (h) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

8.2 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

- (b) the Buyer shall immediately return all of the Output Materials. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

8.3 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

8.4 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) condition 6;
- (b) condition 7; and
- (c) condition 8.

## **9. FORCE MAJEURE**

9.1 The Company reserves the right to defer the date of delivery of the Services and Goods or to cancel the Contract or vary the Services and/or Goods (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **10. GENERAL**

10.1 The Contract constitutes the whole agreement between the parties in relation to the Services and Goods and supersedes all previous agreements between the parties relating to its subject matter.

10.2 Subject to conditions 3.2 and 9.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

10.3 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

10.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 10.5 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 10.6 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 10.7 The Company may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 10.8 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 10.9 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
  - (b) (in the case of the communications to the Buyer) to the address of the Buyer set out in the Contract or such other address as shall be notified to the Company by the Buyer
- and communications shall be deemed to have been received:
- (c) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
  - (d) if delivered by hand, on the day of delivery; or
  - (e) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 10.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts.