

MOSS TECHNICAL SERVICES LIMITED
Terms and Conditions for Sale of Goods and or Supply of Services

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions:-

- Client** the person, firm or company who purchases the Goods and or Services from the Company;
- Company** Moss Technical Services Limited Registered in England & Wales Number 04324381 Registered Office Unit 8 Green Court, Village Farm Road, Village Farm Industrial Estate, Pyle, Bridgend CF33 6BN;
- Contract** any contract between the Company and the Client for the sale of Goods and or supply of Services, incorporating these terms and conditions;
- Delivery Point** the place where delivery of the Goods is to take place under condition 4.1;
- Document** includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form;
- Goods** any goods agreed in the Contract to be supplied to the Client by the Company (including any part or parts of them);
- Goods Specification** means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Company;
- Intellectual Property** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Rights

Standard Charges means the charges shown in the Contract regarding the price for the sale of Goods or the supply of the Services;

Services any services agreed in the Contract to be supplied to the Client by the Company.

- 1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to the statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced and includes any subordinate legislations for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any booking, confirmation of booking, purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Client's booking, confirmation of booking, 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.
- 2.3 These conditions apply to all the Company's Goods and or Services and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Client 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.
- 2.4 Each offer for Services and order of Goods or acceptance of a quotation by the Client to the Company shall be deemed to be an offer by the Client to purchase the Goods and or Services subject to these conditions.
- 2.5 No order for Goods and or Services placed by the Client shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company and or the Company delivers the Goods to the Client and or the Services commence whichever is the sooner.
- 2.6 The Client shall ensure that the terms, dates and details of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of order to the Client. Any quotation for the supply of goods is valid for a period of 30 days only from its date and any quotation for the supply of services is valid for a period of 90 days only from its date, provided that the Company has not previously withdrawn the applicable quotation.
- 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. SUPPLY OF GOODS

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation and or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published 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 and this is not a sale by sample.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Company 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 professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall be completed on the Goods arriving at the Delivery Point.
- 4.2 The Client shall take delivery of any Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery is not of the essence. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Client fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Client (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Client shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The Client shall provide at the Delivery Point and at its expense adequate and appropriate equipment and labour for unloading the Goods.
- 4.7 If the Company delivers to the Client a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Client shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Client to repudiate or cancel any other Contract or instalment.
- 4.10 If 14 business days after the Company notified the Client that the Goods were ready for delivery and the Client has not taken or accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and after deducting reasonable storage and selling costs, account to the Client any excess over the price of the Goods charge the Client for any shortfall below the price of the Goods.

5. NON-DELIVERY OF GOODS

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Client on delivery unless the Client can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Client gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. QUALITY OF GOODS

- 6.1 The Company warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

and the warranty provided under this clause 6.1 shall continue for the period set out by the applicable Product (**warranty period**). For the avoidance of doubt the warranty period will vary depending on the applicable product.

- 6.2 Subject to clause 6.3, if:
- (a) 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 6.1;
- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Customer 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 defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Company;
- (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 6.2.

7. RISK/TITLE

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Ownership of the Goods shall not pass to the Client until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Client on any account.
- 7.3 Until ownership of the Goods has passed to the Client, the Client shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Client or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Client shall produce the policy of insurance to the Company;
- (e) notify the Company immediately if it becomes subject to any of the events listed in clauses 15.2(b) to clauses 15.2(m); and
- (f) give the Company such information relating to the Goods as the Company may require from time to time.
- 7.4 Subject to clause 7.5 the Client may resell or use the Goods in the ordinary course of business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) any sale shall be effected at full market value;
- (b) any such sale shall be a sale of the Company's property on the Client's own behalf and the Client shall deal as principal when making such a sale and not as the Company's agent.
- 7.5 The Client's right to possession of the Goods shall terminate immediately if:
- (a) the Client 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 (being a body corporate) 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 Client or notice of intention to appoint an administrator is given by the Client 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 Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client; or
- (b) the Client suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Client, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Client ceases to trade; or
- (c) the Client encumbers or in any way charges any of the Goods.
- 7.6 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.
- 7.7 The Client 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 Client's right to possession has terminated, to recover them.
- 7.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Client's right to possession has terminated, the Client shall be deemed to have sold all goods of the kind sold by the Company to the Client in the order in which they were invoiced to the Client.
- 7.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.

8. SUPPLY OF THE SERVICES

- 8.1 An approximate description of the Services shall be set out in the Contract. The Company shall perform the services to the Client in accordance with the contract subject to these terms. Any changes or additions to the Services or these terms must be agreed in writing by the Company and the Client in accordance with condition 2.3.
- 8.2 The Company warrants to the Client that the Services will be provided with reasonable skill and care.
- 8.3 The Client shall at its own expense supply the Company with all necessary Documents or other materials, and all necessary data or other information relating to the Services, within sufficient time to enable the Company to perform the Services in accordance with the Contract.
- 8.4 The replies by the Client for requests made to them by the Company for information, assistance or decisions shall be provided in a timely fashion.
- 8.5 Any dates specified by the Company for performance of the Services are intended to be an estimate and time for performance of the Services shall not be made of the essence by notice. If no dates for performance of the Services are specified performance will be within a reasonable time.
- 8.6 Further details about the Services, and advice or recommendations about its provision or utilisation which are not given in these terms or the Contract may be made available on written request.
- 8.7 The Company may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.
- 8.8 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by the Company's negligence), nor will any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 180 days.
- 8.9 The Client shall provide such access to sites as is necessary to complete the Services including any later visits necessary to complete the Services and shall do all things necessary to make such access effective, save that such access may be subject to such reasonable restrictions as are necessary to protect any property or rights of the Client.
- 8.10 The quality and completion of the Services shall be recorded and signed off by the Company by the Company issuing an invoice to the Client and shall be conclusive evidence of the same received by the Client unless the Client can provide conclusive evidence proving the contrary.
- 8.11 Any liability of the Company for non-performance of the Services shall be limited to performing the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Services.

9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 9.2 If the Supplier'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**):
- (a) the Supplier 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 the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and

- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 10. PRICE & PAYMENT**
- 10.1 Subject to any special terms agreed under Condition 2.3, the Client shall pay the Company's Standard Charges and any additional sums which are agreed between the Company and the Client for the provision of the Services or which, in the Company's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Documents or any other cause attributable to the Client;
- (a) unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery;
- (b) the price for the Goods shall be exclusive of any VAT and all costs or charges in relation to packaging, loading, unloading, carriage and insurance all of which amounts the client shall pay in addition when it is due to pay for the Goods.
- 10.2 The Company shall be entitled to vary the Company's Standard Charges from time to time by giving not less than one month's written notice to the Client.
- 10.3 All charges quoted to the Client for the provision of the Services are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.
- 10.4 Time for payment shall be of the essence.
- 10.5 Unless otherwise agreed
- (a) the invoice for the Goods will be shall be raised any time after the Company has accepted the Customer's order, however the Goods will not be delivered until the invoice has been paid.
- (b) the first invoice for the Services shall be rendered on completion of the Services or at the end of the calendar month in which the Services commenced whichever is sooner, any subsequent invoices shall be rendered as and when the Company deem necessary.
- 10.6 The Company's invoices to the Client shall be paid, in pounds sterling, by the Client within the time frame specified in the confirmation of order or confirmation of booking.
- 10.7 The Client shall make all payments due to the Company without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.
- 10.8 Where the Client has agreed that parts of the Services shall be sub-contracted by the Company to a third party, the Company may render separate interim invoices at calendar monthly intervals in respect of those parts of the Services.
- 10.9 No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.10 If the Client fails to pay the Company any sum due pursuant to the Contract, the Client shall be liable to pay interest to the Company on such sum for the due date for payment at the annual rate of 8% above the base lending rate from time to time of the HSBC Bank plc accruing on a daily basis until payment is made, whether before or after judgement. In addition the Company reserves the right to claim interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.11 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 10.12 Where time charge fees apply the amount due for each person at each payment interval shall be the sum calculated by multiplying the hourly or daily rates applicable to the person concerned by the number of hours or days spent by such person during the interval in question.
- 10.13 If any additional costs are incurred by the Company because of any variation to the Services by the Client or as a result of any lack of or error in any information concerning the site where the Services take place or access thereto or because of other reasons beyond the control of the Company, the Company shall be entitled to additional payment covering the additional costs.
- 11. RETURN OF GOODS**
- 11.1 The Client may return Goods to the Company in subject to the following conditions:
- (a) Goods must be returned within 30 days from purchase from being purchased;
- (b) Goods must be unused, not damaged and in a resalable condition; and
- (c) Goods must be returned via tracked mail at the Client's cost.
- 11.2 If the Goods are returned in accordance with clause 11.1 then the Company may offer a full refund.
- 11.3 If the Goods are returned in accordance within 60 days but the Goods comply with clauses 11.1 (b) and 11.1(c) the Company may offer credit for the return.
- 11.4 All returns are subject to a restocking fee which the Company will advise and invoice for at the time of the return.
- 11.5 Notwithstanding any of this clause 0, all returns under this clause are at the Company's full discretion and the Company reserves the right to refuse to accept a return of Goods.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 12.2 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 the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 12.3 All Supplier Materials are the exclusive property of the Supplier.
- 13. 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 0 shall survive termination of the Contract.
- 14. LIMITATION OF LIABILITY**
- 14.1 Subject to clause 9 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 Client in respect of: -
- (a) any breach of these conditions;
- (b) any use made by the Client of any of the Goods and or Services or anything arising out of the Services or any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied, as applicable, by section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 or section 8 of the Supply of Goods (Implied Terms Act) 1973) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these conditions excludes or limits the liability of the Company: -
- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (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.
- 14.4 Subject to Condition 10.2 and Condition 10.3: -
- (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 lesser of: -
- (i) the Contract price; or
- (ii) the direct costs reasonably incurred by the Client in cleaning up the site where the Services took place or any part thereof; or
- (iii) the amount (up to £1,000,000) that is recoverable under any professional indemnity insurance taken out by the Company.
- 14.5 the Company shall not be liable for the Client for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, 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.
- 14.6 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 14.7 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations under the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control.
- 14.8 The liability of the Company for any claim or claims arising out of or in respect of damage to utility services is excluded unless full information of their presence and/or location was made available to the Company in writing prior to commencement of the Services.
- 14.9 The Company is not responsible under the Contract or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling, preventing, suppressing or in any way relating to an act of terrorism and the liability if any of the Company's under or in connection with the Contract whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with terrorism matters is excluded.
- 14.10 The Company does not have any responsibility under the Contract to advise on asbestos related matters as set out in the Contract the following provisions of this clause shall apply;
- (a) the Company is not responsible under these terms or otherwise for advising on matters which wholly, partly, directly, or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos and the liability if any of the Company under or in connection with these terms whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with asbestos matters is excluded.
- (b) the Client shall indemnify the Company against liability for any claim for injury, death, loss or damage wholly, partly, directly or indirectly arising out of or resulting from or associated in any way with such asbestos matters.
- (c) the Client undertakes to ensure that a thorough asbestos check is carried out prior to the commencement of the contract. Failure to inform the Company of any problems or any delays or costs incurred by the Company as a result of asbestos shall be payable by the Client in accordance with clause 8.13 above.
- 14.11 If the Client is an individual, no exclusion or limitation of liability in these terms shall affect any liability for death or personal injury suffered by the Client.
- 14.12 This clause 14 shall survive termination of the Contract.
- 15. TERMINATION**
- 15.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 1 (one) month's written notice.
- 15.2 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:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) 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 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;
- (c) 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;
- (d) 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;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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;
- (g) 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);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) 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 15.2(b) to clause 15.2(m) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) 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.
- 15.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 15.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 15.5 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) 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
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 16. ASSIGNMENT**
- 16.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 16.2 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 17. FORCE MAJEURE**
- The Company reserves the right to defer the date of conducting the Services, or to defer the date of delivery, or to cancel the Contract (without liability to the Client) 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, inclement or inappropriate weather conditions, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, chemical spillages, road closures, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, consultants or sub-contractors 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 180 days, the Client shall be entitled to give notice in writing to the Company to terminate the Contract.
- 18. GENERAL**
- 18.1 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.
- 18.2 If any provision or part 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.
- 18.3 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.
- 18.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.5 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.
- 18.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England & Wales and the parties submit to the exclusive jurisdiction of the English & Welsh courts.
- 18.7 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.
- 19. COMMUNICATIONS**
- 19.1 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 email to info@mosstech.co.uk;
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Client by the Company; or
- (b) (in the case of the communications to the Client) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Client set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Client.
- 19.2 Communications shall be deemed to have been received:
- (a) 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); or
- (b) if delivered by hand, on the day of delivery;
- (c) or if sent by email, one Business Day after transmission.
- 19.3 Communications addressed to the Company shall be marked for the attention of A Director.