

New Trade Account Application

Please return the completed form to accounts@dutypoint.com

Applicant's Full Company Name		Company Reg.No	
		VAT No	

Address		Invoice Address (if different)	
		Postcode	
		Postcode	
Tel		Fax	

Nature of Business				Established	
Accounts Contact		Tel		A/c email	
We are happy to receive by email	Statements	Yes	No	Invoices	Yes No

Person with ultimate authority for approving payments	
Name	
Tel	
Mobile	
Email	

If not registered, please enter name and address of each proprietor/partner (continue on a separate sheet if necessary)

1.	
2.	
3.	
4.	
5.	

Banker's name and address	
Account:	
Sort:	

Trade References					
1. Name		Tel No		Fax No	
2. Name		Tel No		Fax No	

Credit limit required	£
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We accept your terms and conditions of sale and agree to pay for all goods and services supplied by you on or by the 30th day of the month following that of despatch.

Name:

Signed:

Position:

Date:

Dutypoint Pumps and Dutypoint Systems are trading names of Dutypoint Ltd

Registered in England & Wales 9045694

Trading and Registered Office: Shepherd Road GLOUCESTER GL2 5EL

VAT Reg. No: 650 9265 30

FOR OFFICE USE ONLY

CUSTOMER TYPE

CHECKED

Ref:

Terms and conditions for the supply of goods and services by Dutypoint Limited

The Customer's attention is drawn in particular to the provisions of Clause 14.

1. Interpretation

1.1 The following definitions apply in the Agreement:

Agreement: the contract, consisting of the Agreement Terms, under which the Company will supply Goods and, where agreed by the Company, Ancillary Services, to the Customer.

Agreement Terms: the Clauses, the Order, any Order Confirmation, any other document referred to in the Agreement Terms, any document provided by the Company which sets out the particulars of the Order and any other terms or conditions of the Agreement relating to the specifics of an Order (such as quantity and type of Goods) as agreed by the Company.

Ancillary Services: has the meaning given in Clause 3.5.

Applicable Law: the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Goods or the Ancillary Services from time to time.

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

Clauses: these clauses 1 to 17.

Company: Dutypoint Limited (registration number 09045694) whose registered address is Unit 11 Shepherd Road, Cole Avenue, Gloucester, GL2 5EL. The Company may trade either as 'Elmbridge Pump Company' or 'Dutypoint' or 'Dutypoint Systems' as notified by the Company to the Customer from time to time and any reference to Elmbridge Pump Company, Dutypoint or to Dutypoint Systems, whether in the Agreement, or in anything provided by the Company in connection with the Agreement, shall be deemed to be a reference to the Company.

Confidential Information: all information of a confidential nature (however recorded or preserved) about the Company or disclosed or made available, directly or indirectly, by the Company or its Representatives to the Customer or its Representatives.

Customer: the person who has placed an Order for Goods, or, Ancillary Services.

Customer Default: has the meaning given in Clause 4.3.

Deliverables: all deliverables supplied with, or as part of, the Ancillary Services (whether tangible or not), including Documents and data (and drafts of either) and the media on which they are recorded. Deliverables do not include the Goods.

Delivery Location: has the meaning given in Clause 5.2.

Dutypoint Materials: has the meaning given in Clause 4.1.9.

Force Majeure Event: has the meaning given in Clause 15.2.

Goods: the goods (or any part of them) which the Company has agreed to supply to the Customer.

Intellectual Property Rights: all intellectual property rights, 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 including all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 rights, topography rights, rights in confidential information (including know-how and trade secrets).

Operating Instruction: any instruction given by the Company or its Representatives to the Customer or its Representatives concerning the use, operation, storage or handling of any Goods including but not limited to any instruction manual, training or instruction or notice set out on any of the Goods.

Order: any order placed by the Customer for the supply of Goods or Ancillary Services in the Company.

Order Confirmation: the written order from the Company (if provided by the Company) for Goods or Ancillary Services incorporating or attached to the Clauses.

Representative: a representative of the Company or the Customer, as the case may be.

Specification: any specification for the Goods and Ancillary Services, including any related plans and drawings, that the Company has agreed to be bound by, and which is provided in writing by the Company to the Customer.

Warranty Period: has the meaning given in Clause 6.1.

1.2 In the Agreement, 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 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;

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

1.2.4 A reference to writing or written includes faxes and e-mails.

1.3 To the extent of any conflict between the Agreement Terms, the following order of precedence shall apply:

1.3.1 Any Specification as agreed in writing by the Company;

1.3.2 Any Order Confirmation;

1.3.3 The Clauses;

1.3.4 Any other document forming part of the Agreement; and

1.3.5 Any other term of the Agreement subject to Clause 2.8.

2. Basis of contract

2.1 The Agreement Terms apply to the Agreement 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 An Order placed by the Customer, for Goods and/or Ancillary Services, shall constitute an offer by the Customer to purchase the Goods and/or Ancillary Services in accordance with the Agreement Terms.

2.3 The Agreement shall come into existence when the Order is accepted by the Company.

2.4 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or websites are produced for the sole purpose of giving an approximate idea of the Goods or Ancillary Services described in them. They shall not form part of the Agreement or have any contractual force.

2.5 The Agreement shall continue in full force and effect until either:

2.5.1 the parties have discharged all their obligations under it (at which point it shall expire); or

2.5.2 it is terminated in accordance with the Agreement Terms.

2.6 A quotation for the Goods or Ancillary Services given by the Company shall not constitute an offer.

2.7 The Agreement Terms constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Agreement Terms. This Clause 2.7 is subject to Clause 14.2.

2.8 The Company shall not be bound by any term or condition of the Agreement not set out in writing, save that the Company agrees to be bound by anything it agrees verbally which relates to the specifics of an Order such as the quantity and type of Goods or the Ancillary Services.

3. The Company's obligations

3.1 The Company will carry out its obligations under the Agreement with reasonable skill and care.

3.2 The Company will carry out its obligations in accordance with the Agreement Terms in all material respects.

3.3 The Company will use reasonable endeavours to meet any performance dates specified in any Order or Specification (or otherwise agreed by the parties in writing), but any such dates shall be estimates only and time shall not be of the essence in respect of the Company's performance of its obligations or the delivery of any Goods or Ancillary Services.

3.4 The Company shall have the right (but not an obligation) to make any changes to the Goods or the Ancillary Services which do not materially affect the nature or quality of any such Goods or Ancillary Services and the Company shall notify the Customer in any such event.

3.5 The Company shall have no obligation to provide any services or support in connection with the Goods save for those services and support which comprise the Ancillary Services.

4. The Customer's obligations

4.1 Subject to Clause 4.2 the Customer shall:

4.1.1 be responsible for the installation and maintenance of the Goods.

4.1.2 ensure that the Goods it has ordered meet its requirements and are fit for the purpose for which the Customer wishes to use them.

4.1.3 ensure that any information it provides to the Company is complete and accurate;

4.1.4 co-operate with the Company in all matters relating to the Agreement;

4.1.5 provide the Company and its Representatives with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company;

4.1.6 provide the Company with such information and materials as the Company may reasonably require in order to supply the Goods and any Ancillary Services, and ensure that such information is accurate in all material respects;

4.1.7 where appropriate, prepare the Customer's premises for the supply of Ancillary Services;

4.1.8 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which any Ancillary Services are to start, and which are required to enable the Company to provide the Ancillary Services during the term of the Agreement; and

4.1.9 keep all materials, equipment, documents and other property of the Company which are in the possession of the Customer (Dutypoint Materials) at the Customer's premises in safe custody at its own risk, maintain Dutypoint Materials in good condition until returned to the Company, and not dispose of or use Dutypoint Materials other than in accordance with the Company's written instructions or authorisation.

4.2 If the Company is to provide Ancillary Services then the Customer's obligations set out in Clauses 4.1.1 and 4.1.2 shall only be obligations of the Customer to the extent that they are not obligations of the Company as part of the provision of Ancillary Services.

4.3 If the Company's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

4.3.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of its obligation until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the obligation to perform any of its obligations to the extent that the Customer Default prevents or delays the Company's performance of any of its obligations;

4.3.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this Clause 4.3;

4.3.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from any Customer Default; and

4.3.4 any sums not yet paid by the Customer in respect of the Goods or any Ancillary Services shall immediately become due to the Company.

5. Delivery

5.1 If the Company requires the Customer to return any packaging materials to the Company, that fact shall be clearly communicated to the Customer. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.

5.2 The Goods shall be supplied on an ex works basis but, if requested, the Company shall deliver the Goods to such location as the parties may agree in writing (Delivery Location) at any time after the Company notifies the Customer that the Goods are ready or at any time on or after a date requested by the Customer (so long as the Goods are ready for delivery).

5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.4 If the Company fails to deliver the Goods, its liability shall be limited to the price of the Goods which the Company failed to deliver.

The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, a breach of the Agreement by the Customer or the Customer's negligence.

5.5 If the Customer fails to take delivery of the Goods, then, except

where such failure or delay is caused by a Force Majeure Event or the Customer's failure to comply with its obligations under the Agreement: 5.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company first attempted the delivery; and

5.5.2 the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.6 If 30 Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Company may, but shall have no obligation to, 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.

5.7 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. Quality

6.1 The Company warrants that on delivery, and for a period of 12 months from the date of delivery, or such longer period as agreed by the Company in writing, (Warranty Period), the Goods shall:

6.1.1 conform in all material respects with their description as set out in the Agreement;

6.1.2 be free from material defects in design, material and workmanship; and

6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.2 Subject to Clause 6.3, if:

6.2.1 the Customer gives notice in writing to the Company 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; and

6.2.2 the Company is given a reasonable opportunity to examine such Goods; and

6.2.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business, 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 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;

6.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage,

commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

6.3.3 the defect arises as a result of the Company following any drawing, design or Specification supplied by the Customer;

6.3.4 the Customer alters or repairs such Goods without the written consent of the Company;

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 defect arises as a result of the Customer's negligence or the Customer's breach of the Agreement.

6.4 Clause 6.2 is the Customer's sole remedy in respect of the matters described therein.

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 Agreement.

6.6 The terms and conditions of the Agreement apply to any repaired or replacement Goods supplied by the Company.

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 Company has received payment in full (in cash or cleared funds) for:

7.2.1 the Goods; and

7.2.2 any other goods or services that the Company has supplied to the Customer in respect of which payment has not been made in full.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

7.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.4 maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

7.3.5 notify the Company immediately if it becomes subject to any of the events listed in Clause 13.2; and

7.3.6 give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 13.2, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. Price and payment

8.1 The price of the Goods shall be the price specified by the Company to the Customer.

8.2 The Company may cancel the Order if its costs in connection with the Goods or any Ancillary Goods increases. This includes costs resulting from foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs. In the event of such cancellation the Company shall refund any sums paid by the Customer for Goods and any Ancillary Goods and subject to this the Company shall have no liability as a result of the cancellation.

8.3 The price of the Goods is exclusive of the costs and charges for the packaging, insurance and transport of the Goods, which shall be invoiced to the Customer. The cost of delivering the Goods to the Delivery Location shall be payable by the Customer.

8.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 The Company may invoice the Customer for the Goods on or at any time after the completion of delivery, or deemed delivery, of those Goods (even if other Goods remain to be delivered).

8.6 Unless the Company has agreed otherwise in writing, the Customer shall pay the invoice in full and in cleared funds at the time of placing an Order with the Company. Payment shall be made to the bank account nominated in writing by the Company.

8.7 If the Customer fails to make any payment due to the Company under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount, at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998.

8.8 The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company 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 Company to the Customer.

9 Intellectual Property Rights

9.1 All Intellectual Property Rights in the Goods and any Ancillary Services and any Deliverables are the property of the Company and nothing in the Agreement shall transfer any such Intellectual Property Rights to the Customer.

10 Confidentiality

10.1 Subject to Clause 10.2, the Customer shall not acquire any rights to own or use the Confidential Information.

10.2 The Customer undertakes:

10.2.1 to keep Confidential Information confidential;

10.2.2 to restrict disclosure of Confidential Information to such of its Representatives as need to know it in order to take the benefit of the Goods or the Ancillary Services, and shall ensure that all such Representatives are subject to obligations of confidentiality corresponding to those set out in this Clause 10;

10.2.3 that any person employed or engaged by the Customer in connection with the Agreement shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Company;

10.2.4 to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed or used other than as permitted by the Agreement Terms.

10.3 The Customer may disclose Confidential Information to the extent required pursuant to Applicable Law.

11 Termination

11.1 Without limiting its other rights or remedies, the Company may terminate the Agreement with immediate effect by giving written notice to the Customer if:

11.1.1 the Customer commits a material or persistent breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of receipt of written notice of the breach; or

11.1.2 the Customer fails to pay any sums due under the Agreement within 10 Business Days of the due date for payment; or

11.1.3 any of the events specified in Clause 13.2 shall occur.

12. Consequences of termination

12.1 On expiry or termination of the Agreement or any part of it for any reason the following shall apply:

12.1.1 the Customer shall immediately return to the Company all Dutypoint Materials and until they have been delivered or returned, the Customer shall be solely responsible for their safe-keeping and will not use them for any purpose;

12.1.2 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods or Ancillary Services supplied. In respect of those supplies not invoiced, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

12.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

12.2 The following Clauses shall survive expiry or termination: 1 (Interpretation), 2 (Basis of contract) 6 (Quality) but only for the duration of the Warranty Period, 8 (Price and payment), 9 (Intellectual Property Rights), 10 (Confidentiality), 12 (Consequences of termination), 14 (Limitation of liability), 15 (Force majeure), 16 (Publicity) and 17 (General) and any other Clause which expressly or by implication has effect after expiry or termination shall continue in full force and effect.

13. Customer's insolvency or incapacity

13.1 If the Customer becomes subject to any of the events listed in Clause 13.2, or the Company reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further supplies or deliveries under the Agreement or under any other contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer and Ancillary Services performed shall become immediately due.

13.2 For the purposes of Clause 13.1, the relevant events are:

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

13.2.2 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;

13.2.3 the Customer shall fail to pay any invoice due to the Company within 10 Business Days of the due date for payment;

13.2.4 (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;

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

13.2.6 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;

13.2.7 any credit insurance policy in respect of the credit provided to the Customer by the Company is cancelled or withdrawn by the relevant insurer;

13.2.8 the Company receives a credit report indicating that the Customer will not be able to pay its debts as they fall due;

13.2.9 (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;

13.2.10 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

13.2.11 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

13.2.12 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 13.2.1 to Clause 13.2.11 (inclusive);

13.2.13 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

13.2.14 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; and

13.2.15 (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.

13.3 If any of the events listed in clause 13.2 shall occur the Customer shall on request provide the Company with such information and security for the payment of monies due to the Company as the Company may require.

14. Limitation of liability

14.1 In this Clause 14, a reference to a party's liability for something is a reference to any liability whatsoever which that party might have, the consequences of the liability, and any direct, indirect or consequential loss, damage, costs or expenses resulting from the liability, whether the liability arises under the Agreement, in tort or otherwise, and even if the liability results from that party's negligence or from negligence for which that party would otherwise be liable.

14.2 Nothing in the Agreement shall limit or exclude a party's liability for:

14.2.1 death or personal injury caused by its negligence;

14.2.2 fraud or fraudulent misrepresentation;

14.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

14.2.4 defective products under the Consumer Protection Act 1987; or

14.2.5 any other matter to the extent to which it would be unlawful to exclude or restrict liability.

14.3 The Customer specifically agrees that:

14.3.1 the Company shall have no liability for any loss of profit;

14.3.2 the Company shall have no liability for indirect or consequential loss;

14.3.3 the Company shall have no liability for any loss of business, rent, profit or anticipated savings whether direct or indirect;

14.3.4 the Company shall have no liability for any damage to goodwill or reputation;

14.3.5 the Company shall have no liability for Goods or Deliverables not being used in accordance with any applicable Operating Instruction;

14.3.6 the Company shall have no liability for the Customer or its Representatives mishandling Goods in any way including dropping or throwing Goods or not handling Goods with reasonable skill and care;

14.3.7 the Company shall have no liability for a failure by the Customer to use Goods or Deliverables in accordance with good industry practice;

14.3.8 the Company shall have no liability for any alteration or repair made to the Goods or Deliverables without the written consent of the Company;

14.3.9 the Company shall have no liability for a failure by the Customer to give the Company full and accurate information or instructions;

14.3.10 the Company shall have no liability for any loss attributable to the suspension, delay or cancellation of any works or operations, including construction or building works, in connection with which Goods or Ancillary Services are supplied or are to be supplied even where such suspension, delay or cancellation was caused by the Company's negligence or breach of the Agreement;

14.3.11 the Company shall have no liability for any loss arising from damage to anything including any equipment, buildings, fixtures or

fittings used or installed in proximity to, or in conjunction with, Goods or Deliverables;

14.3.12 the Company shall have no liability for any flood, water or effluent damage arising out of or in connection with the Goods or the Ancillary Services or the Agreement even where such damage was caused by the Company's negligence or breach of the Agreement;

14.3.13 the Company shall have no liability for any damage caused by fire or heat, arising out of, or in connection with, the Goods or the Ancillary Services or the Agreement; or

14.3.14 the Company shall have no liability for any loss attributable to any liability or sum of money owed by, or allegedly owed by, the Customer to any third party (such as the Customer's customers).

14.4 Subject to Clause 14.1 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement shall in no circumstances exceed the price of the Goods and any Ancillary Services.

15. Force majeure

15.1 Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event.

15.2 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.

16. Publicity

16.1 The Customer shall not make any press announcements or publicise the existence or terms of the Agreement without the Company's prior written consent.

16.2 The Company shall be entitled to publicise the Agreement (or any information concerning it) for any reason without any obligation to give notice to the Customer.

17. General

17.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

17.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the Company.

17.3 Any notice or other communication given to a party under or in connection with the Agreement 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, recorded delivery, commercial courier, fax or e-mail.

17.4 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 17.3; if sent by pre-paid first class post or recorded delivery, 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 e-mail, one Business Day after transmission.

17.5 The provisions of Clauses 17.3 and 17.4 shall not apply to the service of any proceedings or other documents in any legal action.

17.6 If any provision of the Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Company it may be severed from the rest of the Agreement which shall remain in full force and effect unless the Company in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event the Company shall be entitled to terminate the Agreement by 10 Business Days' written notice to the Customer.

17.7 A waiver of any right or remedy under the Agreement 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 Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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

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

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

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