

## SCHEDULE 1 TERMS AND CONDITIONS

The Customer's attention is particularly drawn to the provisions of clause 15 (Limitation of liability).

### 1. Interpretation

The following definitions and rules of interpretation apply in this Contract.

#### 1.1 Definitions:

**Anti-Slavery Laws:** any and all statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decisions of the European Council, decrees and laws (including any common law or civil law judgment, demand, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act.

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

**Authority:** any government, agency, regulator or prosecutor.

**CFA:** the Criminal Finances Act 2017.

**CFA Offence:** an offence under section 45 or section 46 of the CFA.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions, the Summary Sheet, the Privacy Policy and any other appendices or schedules to this Contract.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data (as defined in the Data Protection Legislation) and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Delivery Location(s):** has the meaning given in clause 4.2.

**Facilitation of Tax Evasion Offence:** a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence, as those terms are defined in the CFA.

**Force Majeure Event:** has the meaning given to it in clause 18.

**Goods:** the goods (or any part of them) supplied by the Supplier to the Customer, set out in the Order.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

**Modern Slavery Act:** the Modern Slavery Act 2015.

**Modern Slavery Practice:** any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol) (c) human trafficking or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Order.

**Supplier:** Oak Innovation Limited registered in England and Wales with company number 02102234.

**Supplier Materials:** has the meaning given in clause 8.1(h).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.

- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

## **2. Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's brochures or online catalogues are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. Goods**

- 3.1 The Goods are described in the Supplier's brochures or online catalogues unless modified by any agreement between the parties.
- 3.2 To the extent that the Goods are designed in accordance with a particular specification supplied by the Customer (**Goods Specification**), the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or

alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

#### **4. Delivery of Goods**

- 4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

- 4.2 The Supplier shall deliver the Goods to the location or locations set out in the Order or such other location or locations as the parties may agree (**Delivery Location(s)**) at any time after the Supplier notifies the Customer that the Goods are ready.

- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location(s).

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

- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 4.6 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them.

4.7 The Supplier may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. Quality of Goods

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full 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 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier'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 Supplier following any Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (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.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

**6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(d); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(d), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:

- (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. Supply of Services**

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 7.2 The Supplier reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. Customer's obligations**

8.1 The Customer shall:

- (a) ensure that the terms of the Order 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 in order to supply the Services, and ensure that such information is complete and 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) comply with all applicable laws, including health and safety laws; and
- (h) keep 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.

8.2 If the Supplier's performance of any of its obligations under the Contract 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) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case 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 8.2; 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.

## **9. Charges and payment**

9.1 The price for Goods and/or Services shall be the price set out in the Order.

9.2 The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or any Goods Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.3 Subject to clause 9.4:

- (a) in respect of Goods only orders, the Supplier shall invoice the Customer on or at any time after completion of delivery;
- (b) in respect of Services orders or orders for Goods and Services, the Supplier shall invoice the Customer on completion of the Services; and
- (c) for Goods and/or Services that are provided on a monthly basis, invoices will be rendered monthly.

- 9.4 The Supplier reserves the right to invoice the Customer 50% of the total costs of the Contract prior to delivery of Goods or completion of Services if, due to an act or omission of the Customer, the provision of the Goods/Services are protracted for a period of more than 90 days.
- 9.5 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 16 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10. Intellectual property rights**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 11. Data protection

11.1 The Customer will comply with all applicable requirements of the Data Protection Legislation and will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.

## 12. Anti-corruption and anti-tax evasion

12.1 The Supplier will, and will procure that the Supplier's personnel and any other persons who perform services for the Supplier or on the Supplier's behalf in connection with the Contract will:

- (a) not commit any act or omission which causes or could cause the Customer or the Supplier (or that person) to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
- (b) comply with the Customer's anti-corruption policy and any policies in respect of money laundering and prevention of tax evasion, as updated from time to time;
- (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received in connection with the Contract and the steps taken to comply with this clause 12.1, and permit the Customer to inspect those records as reasonably required;
- (d) promptly notify the Customer of:
  - (i) any request or demand for any financial or other advantage received by the Supplier (or that person); and
  - (ii) any financial or other advantage the Supplier (or that person) give or intend to give whether directly or indirectly in connection with the Contract;
- (e) promptly notify the Customer of any breach, or suspected breach, of this clause 12.1;
- (f) not do or omit to do any act or thing which constitutes or may constitute a UK tax evasion offence, a foreign tax evasion offence (as those terms are defined in the CFA) or a Facilitation of Tax Evasion Offence;
- (g) not do or omit to do any act or thing which causes or may cause the Customer to commit a CFA Offence;
- (h) without prejudice to **paragraph (g)**, not do or omit to do any act or thing which would cause the Customer to commit a CFA Offence or may do so if the Customer was unable to prove that the Customer had in place prevention procedures as referred to in section 45(2) or section 46(4) of the CFA; and
- (i) provide the Customer (at the Supplier's cost) with such assistance as the Customer may require from time to time to enable the Customer to perform any activity required by any relevant Authority in any relevant jurisdiction for the purpose of compliance with any proceeds of crime, anti-money laundering or prevention of tax evasion law

(including the CFA) or to enable the Customer to self-disclose any conduct to or to cooperate with any Authority.

12.2 The Customer may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of clause 12.1.

12.3 The Customer will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to remove from the performance of this Contract any of the Supplier's personnel or any other person who performs services for or on the Supplier's behalf in connection with this Contract and in respect of whom the Supplier is in breach of any of the Supplier's obligations under clause 12.1.

### **13. Anti-slavery**

13.1 The Supplier will not engage in any Modern Slavery Practice.

13.2 The Supplier will:

- (a) conduct proper and detailed checks on any agency or person used by the Supplier to provide labour, employees, contractors or other persons to undertake tasks for the Supplier (in each case whether on a permanent or temporary basis) to ensure that any such agency or person does not engage in any Modern Slavery Practice;
- (b) provide the Customer (at the Supplier's cost) with such reasonable assistance and information as the Customer may reasonably require from time to time to enable the Customer to:
  - (i) perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws or as reasonably required by the Customer;
  - (ii) prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act and to include the matters referred to in section 54(5) of that Act; and
  - (iii) conduct due diligence and to measure the effectiveness of the steps the Customer are taking or wish to take to ensure that Modern Slavery Practices are not taking place in the Customer's business or supply chains; and
- (c) permit the Customer, and any person nominated by the Customer for this purpose (and any regulator of the Customer's or the Customer's Group Companies), to have such access on demand to the Supplier's premises, personnel, systems, books and records as the Customer or any regulator of the Customer's or the Customer's Group Companies may reasonably require to verify the Supplier's compliance with this clause 13.

- 13.3 The Supplier warrant to the Customer that the Supplier's responses to any anti-slavery due diligence questionnaire issued to the Supplier by the Customer or on the Customer's behalf are and/or shall be complete and accurate.
- 13.4 The Supplier will immediately give written notice to the Customer:
- (a) upon a breach, or suspected breach, of any of the Supplier's obligations referred to in clauses 13.1 or 13.2 occurring; and
  - (b) upon becoming aware of a breach of the Supplier's warranty set out in clauses 13.3.
- The notice will set out reasonable details of the breach or suspected breach or non-compliance.
- 13.5 The Customer may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of any of the Supplier's obligations under clauses 13.1 or 13.2 or the Supplier's warranty under clause 13.3.
- 13.6 The Customer will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to:
- (a) remove from the performance of the Contract any of the Supplier's personnel whom the Customer believe to be engaging in any Modern Slavery Practice; and/or
  - (b) take such action as the Customer reasonably require to ensure that the Supplier fully comply with any Anti-Slavery Law.

#### **14. Confidentiality**

- 14.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

- 15. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 15.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 15.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 15.3 Subject to clause 15.2, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.
- 15.4 In clause 15.3:
- (a) **cap.** The cap is the total charges in the contract year in which the breaches occurred;
  - (b) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it;
  - (c) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer; and
  - (d) **total liability.** The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 15.5 This clause 15.5 sets out specific heads of excluded loss:
- (a) Subject to clause 15.2, the types of loss listed in clause 15.5(b) are wholly excluded by the parties.
  - (b) The following types of loss are wholly excluded:
    - (i) Loss of profits.
    - (ii) Loss of sales or business.
    - (iii) Loss of agreements or contracts.
    - (iv) Loss of anticipated savings.
    - (v) Loss of use or corruption of software, data or information.
    - (vi) Loss of or damage to goodwill.

(vii) Indirect or consequential loss.

15.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

15.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

15.8 This clause 15 shall survive termination of the Contract.

## **16. Termination**

16.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 90 days' written notice.

16.2 Without affecting any other right or remedy available to it, either 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 the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

16.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

16.4 Without affecting any other right or remedy available to it, 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 the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **17. Consequences of termination**

17.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has 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 or Goods 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.

17.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

17.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **18. Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

## **19. General**

19.1 **Assignment and other dealings**

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

19.2 **Notices.**

- (a) Any notice given to a party under or in connection with this Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by fax to its main fax number or sent by email to, in the case of the Customer, the email address notified to the Supplier as being the main contact email address and in the case of the Supplier, [info@oak.co.uk](mailto:info@oak.co.uk).
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent

of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.6 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

19.7 **Third parties rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

19.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.