

## Terms and Conditions of Sale

1. **Interpretation**
  - Definitions:**
  - Business Day** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
  - Conditions** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.
  - Contract** the contract between Visilume and the Customer for the sale and purchase of the Product in accordance with these Conditions.
  - Customer** the person or firm who purchases the Product from Visilume.
  - Customer Information** the most current version of any information and/or details, in either oral or written form to include but not limited to any related specification, plans, drawings, photographic or other images and specification, as supplied by the Customer to Visilume in terms of its requirements in relation to Product and any circumstances surrounding its requirement for Product.
  - Delivery Location** has the meaning given in clause 4.2.
  - Force Majeure Event** an event, circumstance or cause beyond a party's reasonable control.
  - Intellectual Property Rights or IPRs** patents, copyright and neighbouring and related 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 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.
  - Order Acknowledgment** Visilume's written acceptance of the Order.
  - Order** the Customer's order for the Product, as set out in the Customer's purchase order form including any Customer Information or in the Customer's written acceptance of Visilume's quotation, as the case may be.
  - Product** the Product (or any part of it) as set out in the Order. **Products** shall be construed accordingly.
  - Specification** any specification for the Product, including any related Customer Information, that is agreed in writing with the Customer by Visilume.
  - Visilume** Visilume Limited registered in England and Wales with company number 01607816, whose registered office is at Borough Works, High Street West, Glossop, Derbyshire, SK13 8ER.
- 1.1 **Interpretation:**
  - 1.1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.1.2 A reference to a party includes as appropriate, its personal representatives, successors and permitted assigns.

- 1.1.3 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.
- 1.1.4 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.
- 1.1.5 A reference to **writing** or **written** includes fax and email.

## 2. **Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an unconditional offer by the Customer to purchase the Product in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Customer Information are complete and accurate in all respects.
- 2.3 A quotation issued by Visilume is an invitation to treat and no more the Order shall only be deemed to be accepted when Visilume issues a written acceptance of the Order to the Customer, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Visilume (but excluding any Specification and/or any Customer Information provided by the Customer and reproduced by Visilume) and any descriptions or illustrations contained on or in Visilume's website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Product referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Product given by Visilume shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue, unless Visilume agrees otherwise with the Customer in writing.
- 2.7 The Customer shall at all times be responsible to Visilume for ensuring the accuracy of all Customer Information, and/or the Order and/or any changes to the Customer Information and/or Order including but not limited to any applicable information and/or specification submitted by the Customer, and for providing to Visilume any necessary information specific to the Order and/or Customer Information and/or Product and/or Specification.
- 2.8 The Customer further acknowledges that Visilume will rely on the Customer Information when accepting and were appropriate manufacturing the Order.
- 2.9 To the extent that the Product is to be manufactured in accordance with an Order which contains or refers to particular information of whatever nature, for the avoidance of doubt, including Customer Information supplied by the Customer. The Customer shall indemnify Visilume 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 Visilume in connection with any claim made against Visilume for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Visilume's use of any information contained therein and/or in any Customer Information. This clause 2.9 shall survive termination of the Contract.

## 3. **Product**

- 3.1 The Product are described in the most recent version of Visilume's brochure and/or on its website and as stated above and any descriptions or illustrations contained therein are produced for the sole purpose of giving an approximate idea.
- 3.2 To the extent that the Product are to be manufactured in accordance with a Specification and/or Customer Information supplied by the Customer, the Customer shall indemnify Visilume 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 Visilume in connection with any claim made against Visilume

for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Visilume's use of the Specification and/or Customer Information or any part thereof. This clause 3.1 shall survive termination of the Contract.

- 3.3 Visilume reserves the right to amend the specification of the Product for the avoidance of doubt to include any Specification if required by any applicable statutory or regulatory requirements.

#### 4. **Delivery**

- 4.1 Visilume shall ensure that each delivery of the Product is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Product (including the code number of the Product, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments confirmation of this.
- 4.2 Visilume shall deliver the Product to the location set out in the Order Acknowledgement or such other location as the parties may agree in writing (**Delivery Location 1**) at any time after Visilume notifies the Customer that the Product are ready. Or in the alternative the Customer shall collect the Product from Visilume's premises at Borough Works, High Street West, Glossop, Derbyshire, SK13 8ER or such other alternative location as may be advised by Visilume prior to delivery (**Delivery Location 2**) within three Business Days of Visilume notifying the Customer that the Product are ready unless Visilume agrees in writing with the Customer an alternative timescale.
- 4.3 Delivery is completed on the completion of the unloading of the Product at the Delivery Location 1; or in the alternative in the event that the Customer is collecting the Product at Delivery Location 2 then, Delivery is completed on the completion of the loading of the Product by Visilume (onto the transport vehicle supplied by the Customer) at Delivery Location 2.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery at either Delivery Location 1 and Delivery Location 2 is not of the essence. Visilume shall not be liable for any delay in delivery of the Product that is caused by a Force Majeure Event or the Customer's failure to provide Visilume with adequate delivery instructions or any other instructions that are relevant to the supply of the Product.
- 4.5 If Visilume fails to deliver the Product, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Product of similar description and quality in the cheapest market available, less the price of the Product. Visilume shall have no liability for any failure to deliver the Product to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Visilume with adequate delivery instructions or any other instructions that are relevant to the supply of the Product.
- 4.6 If the Customer fails to take or accept delivery of the Product within three Business Days (or such alternative date that the parties agree in writing in accordance with clause 4.2 above) of Visilume notifying the Customer that the Product are ready, then, except where such failure or delay is caused by a Force Majeure Event or Visilume's failure to comply with its obligations under the Contract:
- 4.6.1 delivery of the Product shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Visilume notified the Customer that the Product were ready; and
- 4.6.2 Visilume shall store the Product until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If after ten Business Days after the day on which Visilume notified the Customer that the Product was ready for delivery or in the alternative such alternative date as agreed between the parties in accordance with clause 4.2 above the Customer has not taken or accepted actual delivery of them, Visilume may resell or otherwise dispose of part or all of the Product and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Product or charge the Customer for any shortfall below the price of the Product.
- 4.8 If Visilume delivers up to and including 5% more or less than the quantity of Product ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Product was delivered, a pro rata adjustment shall be made to the Order invoice.

- 4.9 Visilume may deliver the Product 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.
5. **Quality**
- 5.1 Unless Visilume agrees otherwise with the Customer in writing Visilume warrants that on delivery, and for a period of 12 months from the date of delivery ('**warranty period**'), the Product shall:
- 5.1.1 conform in all material respects with their description; and
  - 5.1.2 be free from material defects in design, material and workmanship; and
  - 5.1.3 be fit for any purpose held out by Visilume based entirely on the Customer Information.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to Visilume during the warranty period and in any event within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
  - 5.2.2 Visilume is given a reasonable opportunity of examining such Product either in the environment the Product is used or otherwise; and
  - 5.2.3 the Customer (if asked to do so by Visilume) returns such Product to Visilume's place of business on the basis all licence fees and duties are paid ;
- Visilume shall, at its option, repair or replace the defective Product, or refund the price of the defective Product in full.
- 5.3 Visilume shall not be liable for the Product' failure to comply with the warranty set out in clause 5.1, during the Warranty Period or otherwise, in any of the following events:
- 5.3.1 the Customer makes any further use of such Product after giving notice in accordance with clause 5.2;
  - 5.3.2 the defect arises because the Customer failed to follow Visilume's oral or written instructions as to the transit, storage, commissioning, installation, use and maintenance, including servicing of the Product or (if there are none) good trade practice regarding the same;
  - 5.3.3 inappropriate fixtures are used;
  - 5.3.4 inappropriate, inadequate or no quality checks are carried out prior to the use.
  - 5.3.5 the defect arises as a result of Visilume following or relying on any Customer Information supplied by the Customer;
  - 5.3.6 the Customer, moves, installs, alters or repairs such Product other than via a suitably experienced and authorised repair or maintenance engineer or without the written consent of Visilume;
  - 5.3.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal use or working conditions, for the avoidance of doubt, glass, bulbs and gaskets are not covered by any warranty; or
  - 5.3.8 the Product differs from its description and/or the Customer Information as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, Visilume shall have no liability to the Customer in respect of the Product' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Product Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Product supplied by Visilume.
6. **Title and risk**
- 6.1 The risk in the Product shall pass to the Customer on completion of delivery.
- 6.2 Title to the Product shall not pass to the Customer until the earlier of:

- 6.2.1 Visilume receives payment in full (in cash or cleared funds) for the Product and any other Product that Visilume has supplied to the Customer in respect of which payment has become due, in which case title to the Product shall pass at the time of payment of all such sums; and
- 6.2.2 the Customer resells the Product, in which case title to the Product shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Product has passed to the Customer, the Customer shall:
  - 6.3.1 store the Product separately from all other Product held by the Customer so that they remain readily identifiable as Visilume's property;
  - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Product;
  - 6.3.3 maintain the Product in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 6.3.4 notify Visilume immediately if it becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4; and
  - 6.3.5 give Visilume such information as Visilume may reasonably require from time to time relating to:
    - 6.3.5.1 the Product; and
    - 6.3.5.2 the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Product in the ordinary course of its business (but not otherwise) before Visilume receives payment for the Product. However, if the Customer resells the Product before that time:
  - 6.4.1 it does so as principal and not as Visilume's agent; and
  - 6.4.2 title to the Product shall pass from Visilume to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Product passes to the Customer, Visilume:
  - 6.5.1 may by notice in writing, terminate the Customer's right under clause 6.4 to resell the Product or use them in the ordinary course of its business; and
  - 6.5.2 require the Customer to deliver up all Product in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Product are stored in order to recover them.
- 7. **Price and payment**
  - 7.1 The price of the Product shall be the price set out in the Order, or, if no price is quoted, Visilume's current price in force as at the date of delivery.
  - 7.2 Visilume may, by giving notice to the Customer at any time up to 20 Business Days before delivery, increase the price of the Product to reflect any increase in the cost of the Product that is due to:
    - 7.2.1 any factor beyond Visilume's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Product ordered, or the Specification; or
    - 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Visilume adequate or accurate information or instructions.
  - 7.3 The price of the Product:
    - 7.3.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Visilume at the prevailing rate, subject to the receipt of a valid VAT invoice; and
    - 7.3.2 excludes the costs and charges of transport of the Product, which shall be invoiced to the Customer.
  - 7.4 Visilume may invoice the Customer for the Product on or at any time after the Order Acknowledgment is issued.
  - 7.5 The Customer shall pay each invoice submitted by Visilume:

- 7.5.1 within 30 days of the date of the invoice or sooner in accordance with any credit terms agreed by Visilume and confirmed in writing to the Customer, for the avoidance of doubt the Customer hereby acknowledges and agrees that Visilume can require the Customer to pay in full prior to the Product being despatched and or delivered (in accordance with the provision of clause 4 of these Conditions); and
- 7.5.2 in full and in cleared funds to a bank account nominated in writing by Visilume, and time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to Visilume under the Contract by the due date, then, without limiting Visilume's remedies under clause 9 (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 7.6 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%.
- 7.7 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).
8. **Limitation of liability**
- 8.1 Visilume has obtained insurance cover in respect of its own legal liability for claims not exceeding an aggregate in the sum of £5,000,000 for each calendar year.
- 8.2 Subject to clause 8.5 below, the restrictions on legal liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.3.1 death or personal injury caused by negligence;
- 8.3.2 fraud or fraudulent misrepresentation;
- 8.3.3 breach of the terms implied by section 12 of the Sale of Product Act 1979; or
- 8.3.4 defective Product under the Consumer Protection Act 1987.
- 8.4 Subject to clause 8.3, the following types of loss are wholly excluded:
- 8.4.1 loss of profits;
- 8.4.2 loss of sales or business;
- 8.4.3 loss of agreements or contracts;
- 8.4.4 loss of anticipated savings;
- 8.4.5 loss of use or corruption of software, data or information;
- 8.4.6 loss of or damage to goodwill; and
- 8.4.7 indirect or consequential loss.
- 8.5 Visilume's total liability to the Customer arising under or in connection with this Contract for any claim or series of claims shall be limited to £1,000,000 and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.6 This clause 8 shall survive termination of the Contract.
9. **Termination**
- 9.1 Without limiting its other rights or remedies, Visilume may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 days of that party being notified in writing to do so;
- 9.1.2 the Customer 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), obtaining a moratorium, 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 9.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, Visilume may suspend provision of the Product under the Contract or any other contract between the Customer and Visilume if the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4, or Visilume reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, Visilume may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to Visilume all of Visilume's outstanding unpaid invoices and interest and, in respect of Product supplied but for which no invoice has been submitted, Visilume shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10. **Force majeure**
- 10.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
  - 10.1.1 acts of God, flood, drought, earthquake or other natural disaster;
  - 10.1.2 epidemic or pandemic;
  - 10.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 10.1.4 nuclear, chemical or biological contamination or sonic boom;
  - 10.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - 10.1.6 collapse of buildings, fire, explosion or accident;
  - 10.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Customer seeking to rely on this clause, or companies in the same group as the Customer);
  - 10.1.8 non-performance by suppliers or subcontractors; and
  - 10.1.9 interruption or failure of utility service.
- 10.2 Provided it has complied with clause 10.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 10.3 The corresponding obligations of the other party will be suspended, and it's time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 10.4 The Affected Party shall:
  - 10.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, it's likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

- 10.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 10.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 1 week's written notice to the Affected Party.
11. **General**
- 11.1 **Assignment and other dealings.**
- 11.1.1 Visilume may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Visilume.
- 11.2 **Confidentiality.**
- 11.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.2.
- 11.2.2 Each party may disclose the other party's confidential information:
- 11.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
- 11.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 11.3 **Entire agreement.**
- 11.3.1 This 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.
- 11.3.2 Each party agrees that it 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.
- 11.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.7 **Notices.**



- 11.7.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 11.7.1.1 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
  - 11.7.1.2 sent by email to the address specified in the Order or such alternative email address notified to either of the parties.
- 11.7.2 Any notice shall be deemed to have been received:
- 11.7.2.1 if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address; and
  - 11.7.2.2 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
  - 11.7.2.3 if sent by 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 11.7.2.3, 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.
- 11.7.3 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.
- 11.7.4 A notice given under the Contract is not valid if sent by fax.
- 11.8 **Third party rights.**
- 11.8.1 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.
  - 11.8.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.9 **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.
- 11.10 **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 this Contract or its subject matter or formation.