

# WESTERHAM BREWERY

## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

**1.1 Definitions.** In these Conditions, the following definitions apply:

**Best Brewing Practice:** industry guidelines issued by SIBA a copy of which can be found at [www.siba.co.uk](http://www.siba.co.uk)

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when UK clearing banks in the city of 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 14.6.

**Containers:** includes all packaging of any nature, including, but not limited to kegs, bottles, casks, crates, pallets, polypins, minipins, minicasks and cases.

**Confirmed Order:** a Proposed Order which has been accepted by the Supplier by the issue of an Order Confirmation or Delivery Note.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions concluded upon the issue by Supplier of the Order Confirmation.

**Customer:** the person, firm or body corporate who enters into a Contract purchases the Goods from the Supplier.

**Delivery Note:** a written or electronic description of the Goods delivered

**Deposit:** has the meaning given at Condition 5.

**Distributor:** any distributor, warehouse, value added reseller, logistics company (or their respective sub-contractors) who are appointed by the Supplier to warehouse, distribute or deliver the Goods (or any part of them) to the Customer.

**Distributor Contract:** the contract between the Supplier and the Distributor pursuant to which the Distributor performs services and supplies the Goods to the Customer on behalf of the Supplier

**Force Majeure Event:** has the meaning given in clause 13

**Goods:** the goods (or any part of them) set out in the Confirmed Order

**Minor:** any person under the age of 18 (eighteen) years.

**Order Confirmation:** a written or electronic confirmation of the order or Delivery Note which is supplied in advance or at the time of delivery of the Goods.

**Proposed Order:** the Customer's order for the Goods

**Requisite Licences:** any licences and authorisation required pursuant to the Licensing Act 2003 or any other applicable legislation.

**Returnable Containers:** all Containers which are legally and beneficially owned by the Supplier (and for the avoidance of

doubt are not leased from a third party) which the Customer is required to return to the Supplier or the Distributor.

**Settlement Date:** the agreed payment date based on the Terms as set out on the Customer Invoice

**Shelf Life:** the shelf life of the Goods as stated on the packaging label or stated best before date

**SIBA:** The Society of Independent Brewers.

**Supplier:** Westerham Brewery Co Ltd (registered in England and Wales with company number 4819899) and registered office address Beggars Lane, Westerham, TN16 1QP.

**1.2 Construction.** In these Conditions, the following rules apply:

(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 or permitted assigns.

(c) 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.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes e-mails.

### 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 trade, custom, practice or course of dealing.

2.2 The Proposed Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Proposed Order submitted by the Customer are complete and accurate whether supplied in writing or by telephone.

2.3 The Proposed Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Proposed Order ("**Order Confirmation**"), at which point the Contract shall come into existence.

2.4 The Supplier shall be entitled to reject a Proposed Order for any reason, including but not limited to, where the Supplier has reason to believe that the person placing the order on behalf of the Customer is a Minor or where the Customer does not possess the Requisite Licences, or that either party has other contracted restrictions forbidding such a Proposed Order.

2.5 At anytime after the issue of the Order Confirmation and prior to Delivery, the Supplier may (without any liability) cancel any Confirmed Order where it has come to the Supplier's attention that;

(b) the person who placed the Proposed Order on behalf of the Customer was a Minor

(c) the Customer did not at the time of the Proposed Order or at that time does not possess the Requisite Licences including a valid AWRS registration;

(d) either party has other contracted restrictions forbidding such Confirmed Order; or

(e) if complying with the terms of the Proposed Order would be in breach of any relevant law, legislation or code of conduct applicable to either party. ]

2.6 The Contract 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 Supplier which is not set out in the Contract.

2.7 Any samples, descriptive matter, or advertising produced by the Supplier including those contained in the Supplier's Directory (if any) are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.8 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

### 3. GOODS

3.1 The Goods are described in the Supplier's Brochure or other marketing materials or price lists.

3.2 Availability: All products and goods are subject to availability

### 4. DELIVERY

4.1 The Supplier shall deliver or shall procure that the relevant Distributor shall deliver the Goods in accordance with these Conditions. In the event that a Distributor is appointed the Supplier shall notify the Customer in the Order Confirmation and the Customer shall comply with any instructions given by the Distributor as though it were the Supplier.

4.2 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods, special storage instructions (if any).

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

4.4 Delivery of the Goods shall be completed on the Goods arrival at the Delivery Location whether or not they are accepted by the Customer ("**Delivery Date**").

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay or failure to deliver of the Goods that is caused by:

(a) a Force Majeure Event; or

(b) the Customer's failure to provide the Supplier or the Distributor with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or any act or omission by the Customer or any third party who is performing services for and acting on behalf of the Customer ("**Customer Default**").

4.6 Where any delay in delivery or failure to deliver is caused by an act or omission by the Distributor or any third party who is acting on behalf of the Distributor, the Supplier's liability shall be limited to the lower of:

(a) the amount for which the Distributor is liable to the Supplier for such delay in delivery or failure to deliver under the Distributor Contract; and

(b) 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.

4.7 If the Customer fails to accept delivery of the Goods at the Delivery Location on the Delivery Date or within three Business Days of the Supplier or the Distributor notifying the Customer that

the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

(a) 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 Supplier or the Distributor notified the Customer that the Goods were ready; and

(b) the Supplier or the Distributor shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If 10 Business Days after the day on which the Supplier or the Distributor notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may 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 the Deposit or charge the Customer for any shortfall below the price of the Goods and the Deposit.

4.9 The Customer shall not be entitled to reject the Goods if the Supplier or the Distributor delivers up to and including 5% more or less than the quantity of Goods ordered. If the Customer believes that less than 95% of the Goods ordered have been delivered, provided that:

(a) the Customer gives notice to the Supplier in writing of the shortfall;

(b) the customer has not tapped, used or sold any of the Goods; and

(c) the Supplier is given reasonable opportunity to inspect the Goods,

the Supplier shall, at its option, make a pro rata adjustment to the invoice relating to those Goods or deliver or instruct the Distributor to deliver to the Customer additional Goods equal to the amount of the shortfall, in accordance with these Conditions.

4.10 The Supplier or the Distributor may deliver the Goods by instalments, which shall 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. CONTAINERS

5.1 Where the Supplier requires the Customer to return any or all of the Containers, the Supplier or the Distributor shall notify the Customer of that fact in writing.

5.2 The Supplier is entitled to charge a deposit against the return of the Containers of an amount equal to 50% of the value of the Containers] ("**Deposit**") or the amount stated in the Order Confirmation which shall be payable within 3 Business Days of the date of the Order Confirmation and shall be repaid to the Customer once the Supplier or the Distributor has had the Containers returned in accordance with clause 5.3.

5.3 The Customer shall promptly notify the Supplier or the Distributor once the Containers are empty and return them to or make them available for collection by the Supplier or the Distributor, at the Customer's cost and in the absence of such notification, the Supplier and/ or the Distributor shall be entitled to request the return of the Containers within 15 days of the Delivery Date, even where the Containers have not been tapped and/or are not empty.

5.4 The Supplier shall upon return of the Containers refund the Deposit to the Customer.

### 6. QUALITY

6.1 It is the responsibility of the Customer to rotate Goods in stock so that the oldest are sold first. No rights exist for the return of out of date Goods.

6.2 The Supplier warrants that on the Delivery Date, and for the lesser duration of;

(a) the Shelf Life of the Goods; or

(b) the period of 3 months from the Delivery Date ("**Warranty Period**"),

the Goods shall:

- (i) conform in all material respects with their description;
- (ii) be of a quality in accordance with Best Brewing Practice; and
- (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.3 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- (b) the Supplier and/or the Distributor is given a reasonable opportunity of testing such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's or the Distributor's place of business at the Customer's cost, the Supplier shall, at its option, replace the defective Goods or require the Distributor to do so, or refund the price of the defective Goods in full.

6.4 The Supplier shall not be liable for Goods' failure to comply with the Warranty set out in clause 6.1 in any of the following events:

- (a) the Customer makes any further use of or continues to sell such Goods after giving notice in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's or the Distributor's oral or written instructions as to the storage and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or tampers with such Goods without the written consent of the Supplier;
- (d) the defect arises as a result of wilful damage, negligence, or abnormal or storage conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.5 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.6 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 Contract.

6.7 These Conditions shall apply to any replacement Goods supplied by the Supplier.

## 7. SPOILT BEER – ULLAGE

7.1 Customers that use funnels or filters to return beer to casks are ineligible for ANY spoilt beer or ullage returns.

7.2 The Customer shall notify the Supplier of any spoilt beer or ullage returns within 24 hours of discovery.

7.3 The Customer shall retain all spoilt beer or ullage for testing by the Supplier. Failure to retain the beer will result in any ullage request being rejected.

## 8. UNDRINKABLE SEDIMENT

8.1 In all cask products there is undrinkable sediment. From time to time this is notified to Customs and Excise and is agreed between them and the Brewery. The dutiable volume of all cask beer are notified on Customer invoices.

## 9. TITLE AND RISK

9.1 The risk in the Goods shall pass to the Customer on the Delivery Date.

9.2 Title to the Goods shall not pass to the Customer until:

- (a) the Supplier has received payment in full (in cash or cleared funds) for the Goods; and
- (b) any and all Containers have been returned to the Supplier in accordance with clause 5.3

9.3 For the avoidance of doubt, title to the Containers shall not pass to the Customer or any third party and shall remain at all times with the Supplier.

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

- (a) hold the Goods and any Containers on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods and the Containers separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) store and sell the Goods only by means of suitable equipment and in appropriate conditions, in accordance with best industry practice;
- (d) not remove, deface or obscure any identifying mark on the Containers or any other packaging relating to the Goods;
- (e) maintain the Goods and any Containers in satisfactory condition and in accordance with all applicable rules and regulation whether statutory or otherwise and keep them insured against all risks for their full price from the Delivery Date; and
- (f) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.2, but the Customer may resell or use the Goods but for the avoidance of doubt, not the Containers, in the ordinary course of its business.

9.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2, or the Supplier 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 Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and any Containers and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods and Containers are stored in order to recover them.

## 10. PRICE AND PAYMENT

10.1 The price for the Goods shall be the price set out in the Order Confirmation or Delivery Note, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the Delivery Date.

10.2 The price shall be exclusive of any Deposit required to be paid by the Customer in accordance with clause 5.2.

10.3 The Supplier may, by giving notice to the Customer at any time up to 5 Business Days before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier or the Distributor adequate or accurate information or instructions.

10.4 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

10.5 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 Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

10.6 The Supplier may invoice the Customer for the Goods:

- (a) upon sending the Order Confirmation to you;
- (b) on dispatch of the Goods;
- (c) on or after the Delivery Date; or
- (d) at any other time.

10.7 The Customer shall pay the invoice in full and in cleared funds according by the Settlement Date according to the Terms set out on the Customer Invoice.

10.8 Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

10.9 Where payment is made after the Settlement Date the Supplier reserves the right to withdraw and require payment of all discounts given in respect of Goods where payment has not been received.

10.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("**Settlement Date**"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

10.11 The Customer shall pay all amounts due under the Contract 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 Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier 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 Supplier to the Customer.

## 11. CUSTOMER'S INSOLVENCY OR INCAPACITY

11.1 If the Customer becomes subject to any of the events listed in clause 11.2, or the Supplier 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 Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

11.2 For the purposes of clause 11.1, the relevant events are:

(a) the Customer has failed to return or make available for collection any Containers within a reasonable amount of time, following a request for their return pursuant to clause 6.3.

(b) 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;

(c) 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;

(d) (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;

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

(f) 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;

(g) (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;

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

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

(j) 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 11.2(a) to clause 11.2(i) (inclusive);

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

(l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(m) (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.

11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 12. LIMITATION OF LIABILITY

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(d) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 10.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

(i) loss of profit; or

(ii) any indirect or consequential loss arising under or in connection with the Contract; and

(b) subject to clause 10.2(c), the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of:

(i) £10,000,000

(ii) three times the price of the Contract to which the liability relates.

(c) where the Customer has sustained losses as a result of an act or omission of the Distributor, arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, the Supplier's total liability to the Customer shall in no circumstances exceed the lower of:

(i) £10,000,000

(ii) three times the price of the Contract to which the liability relates; or

(iii) the amount for which the Distributor is liable to the Supplier in respect of the losses incurred by the Customer under the Distributor Contract

### 13. FORCE MAJEURE

13.1 A party, provided that it has complied with the provisions of clause 11.3, shall not be in breach of these Conditions nor liable for any failure or delay in performance of any obligations under these Conditions (and, subject to clause 11.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to any of the following:

- (a) Acts of God, flood, earthquake, windstorm or other natural disaster;
- (b) epidemic or pandemic;
- (c) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (d) terrorist attack, civil war, civil commotion or riots;
- (e) nuclear, chemical or biological contamination or sonic boom;
- (f) any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;
- (g) fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party) or accidental damage;
- (h) loss at sea;
- (i) extreme adverse weather conditions;
- (j) interruption or failure of utility service, including but not limited to electric power, gas or water;
- (k) any labour dispute, including but not limited to strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as such party);
- (l) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (m) collapse of building structures, failure of plant machinery, machinery, computers or vehicles.

13.2 The corresponding obligations of the other party or parties will be suspended to the same extent as those of the party first affected by the Force Majeure Event.

13.3 Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:

- (a) it notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance within three Business Days of its awareness of the existence of the Force Majeure Event; and
- (b) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

If the Force Majeure Event prevails for a continuous period of more than 2 months, any party may terminate this agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

## 14. GENERAL

### 14.1 Assignment and subcontracting.

(a) The Supplier 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 Contract.

(b) 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 Contract without the prior written consent of the Supplier.

### 14.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract 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, or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); 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 [or e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 14.3 Severance.

(a) If any court or competent authority finds  
(b) that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(c) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**14.4 Waiver.** A waiver of any right or remedy under the Contract 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 Contract 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.

**14.5 Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

**14.6 Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

**14.7 Governing law and jurisdiction.** The Contract, 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.