

## KBC STANDARD TERMS AND CONDITIONS

### 1 INTERPRETATIONS

1.1 In these Terms and Conditions the following words have the following meanings:-

**"the Company"** means KBC Holdings, whose registered office is at 8-12 Fleet House, New Bridge Street, London, EC4V 6AL;

**"the Customer"** means the person or company whose order for the Products or Services are accepted by the Company;

**"Contract"** means any contract between the Company and the Customer for the sale and purchase of the Products or the provision by the Company of the Services on the terms set out in these Terms and Conditions and the "Scope of the Works" (if any), including the Technical Support Services Agreement;

**"Documentation"** means documentation for Software and/or Equipment supplied by the Company under these Terms and Conditions or supplied in connection with the Services;

**"Equipment"** means hardware products (computer systems, related hardware, accessories and spare parts, but excluding Software) supplied by the Company under these Terms and Conditions;

**"Intellectual Property"** means all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature;

**"New Releases"** means a release of a new version of the Software that improves its functionality and which is deemed by the Company to be of benefit to the Customer;

**"Products"** means Equipment and Software, documentation and any other products supplied by the Company under these Terms and Conditions, including Equipment and Software supplied by the Company under the brand name of a third party;

**"Scope of the Works"** means the specification in respect of the Services or Products provided by the Company to the Customer in accordance with these Terms and Conditions;

**"Services"** means provision and/or installation of Equipment and Software, maintenance, support or any other services supplied by the Company in accordance with the Contract;

**"Software"** means the Products which are computer software programs supplied by the Company under these Terms and Conditions; and

**"Technical Support Services Agreement"** means an agreement between the Company and the Customer for the supply of maintenance and consulting services for the Products, and in which these Terms and Conditions are incorporated.

1.2 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

### 2 FORMATION AND INCORPORATION

2.1 Subject to variation under condition 2.4, the Contract will be on these Terms and Conditions, the Technical Support Services Agreement (if applicable) and the "Scope of the Works" (if any) as set out below to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document).

- 2.2 Each order for Products or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase the Products or the Services subject to these Terms and Conditions.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, specification or similar document will form part of the Contract simply as a result of a reference to such document being referred to in the Contract.
- 2.4 Any variation to the Contract and representations about Products or Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.
- 2.5 The Customer must ensure that the terms of any "Scope of the Works" are complete and accurate.
- 2.6 In the event of any conflict or ambiguity between these Terms and Conditions and the Technical Support Services Agreement, the latter will take precedence.
- 2.7 In the event of any conflict or ambiguity between the Contract and the Scope of the Works, the latter will take precedence.

### **3 SALE OF PRODUCTS**

- 3.1 The Company shall supply and the Customer shall purchase such quantities of the Products as the Customer may order, subject to the terms of these Terms and Conditions.
- 3.2 The Company shall use its reasonable endeavours to supply the Products to the Customer in accordance with the Customer's orders.
- 3.3 Nothing in these Terms and Conditions shall entitle the Customer to any priority of supply in relation to the Products as against the Company's distributors or other customers.

### **4 PRICES**

- 4.1 The Customer agrees to pay the prices and charges as specified. Prices and charges are exclusive of delivery costs and Value Added Tax. Value Added Tax shall be charged at the rate in effect on the date of the invoice provided in respect of the Products or Services ("the Invoice") and shall be payable by the Customer in addition to the prices and charges set out in the Invoice. The Customer shall meet the cost for any special packaging that it requires.
- 4.2 Payments for Products and Services shall, unless stated otherwise in writing, be made in pounds sterling on the following basis:
- 4.2.1 50% of the price, including any charges, on placing of the order by the Customer for Products or Services;
- 4.2.2 the remaining sum outstanding within thirty (30) days of receipt of the Invoice for the Products or Services.
- 4.3 In the event of late payment for whatever reason the Company shall have the right to suspend any further performance of the Services until payment of all due sums is made in full;
- 4.4 If the Customer cancels or reschedules an order for Products less than thirty (30) days prior to the delivery date stipulated by the Company, the Company may levy a cancellation or reschedule charge of twenty five per cent (25%) of the price for the cancelled or rescheduled Products. Unless otherwise agreed in writing by the Company, orders for Services and orders for Products which include the provision of Services may not be cancelled or rescheduled.
- 4.5 The Company shall be entitled to vary the prices and charges upon reasonable prior notice to the Customer.

### **5 DELIVERY**

- 5.1 Unless otherwise agreed in writing or where the Company is required to undertake installation, delivery of any Products provided will be deemed to take place when the Company notifies the Customer that such Products are available for collection from the Company's premises ("the Delivery Date").
- 5.2 The Company shall use its reasonable endeavours to deliver Products and install the Products (if it has agreed to do so and a delivery and/or installation address is stipulated) and/or provide the Services by the agreed date provided that such date shall not be binding. Failure to comply with such dates shall not constitute a breach of contract and the Company shall not be liable for any losses or damages, direct or indirect, caused by such failure.
- 5.3 Unless otherwise expressly agreed, the Company may effect delivery in one or more instalments. Each instalment shall be treated as a separate contract. Failure by the Company to deliver any one or more of the instalments in accordance with these Terms and Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

5.4 If the Customer refuses or fails to take delivery of Products tendered in accordance with these Terms and Conditions or fails to take any action necessary on its part for delivery and/or shipment of the Products (otherwise than by reason of the Company's fault), the Company shall, without prejudice to any other right or remedy, be entitled to:

5.4.1 store the Products (at the risk of the Customer) and charge the Customer for the reasonable costs of storage (including insurance); and/or

5.4.2 terminate the Contract with immediate effect, re-sell or otherwise dispose of the Products as the Company may determine and recover from the Customer any loss and additional costs incurred as a result of such refusal or failure.

5.5 Services will be performed at the location specified in the Scope of the Works.

## 6 DESCRIPTION

6.1 The description of the Products and Services to be provided under the Contract shall be set out in the Scope of the Works.

6.2 All drawings, descriptive material, specifications (other than the Scope of the Works) and advertising issued by the Company in respect of the Products and/or the Services or the manufacturer of the Products and any descriptions or illustrations contained in the Company's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products and/or Services described in them and will not form part of the Contract.

6.3 The Company may make any changes to the Scope of the Works for Products or Services and to the design, materials or finishes of Products, which are required in order to conform to any applicable safety or other statutory requirements.

6.4 No variation in the Scope of the Works or design of any Products which, in the Company's reasonable opinion, does not adversely affect the suitability of the Products for the particular purpose for which they are supplied by the Company will constitute a breach of contract or impose any liability upon the Company.

## 7 INSTALLATION

7.1 Where stipulated, the Company shall install the Products and in such cases the prices shall include installation of Products. The Customer is responsible for preparing and maintaining a safe and suitable installation site. The Customer will notify the Company of any potential safety or health risk that may exist at the installation site. Installation or other Services may not be performed by the Company if it reasonably believes conditions at the site represent a safety or health risk. Where the Company so requires, the Customer shall accompany the Company's personnel whilst on the Customer's premises for purposes in connection with the Products or Services provided in accordance with these Terms and Conditions.

7.2 The Customer shall allow the Company access to the installation site on such dates and during such hours as the Company may stipulate so as to enable the Company, in its reasonable opinion, to complete installation of any Products on or before the agreed date in any Scope of the Works.

## 8 RISK/OWNERSHIP

8.1 The Products contain the confidential information of the Company and of third parties, and all copyright, trade marks and other intellectual property rights in the Products are the exclusive property of the Company or have been licensed to the Company by a third party.

8.2 Risk of damage to or loss of Products shall pass to the Customer as at the Delivery Date as defined within condition 5.1.

8.3 Subject always to condition 12, ownership of the Products shall not pass to the Customer until the Company has received (in full in cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any account.

8.4 Until ownership of the Products has passed to the Customer, the Customer must:-

8.4.1 store the Products (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

8.4.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;

8.4.3 not modify the Products except in accordance with the Company's instructions;

8.4.4 maintain the Products in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and

- 8.4.5 hold the proceeds of any insurance on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 8.5 The Company shall be entitled to recover payment for the Products, notwithstanding that ownership of any of the Products has not passed from the Company.
- 8.6 Until title in the Products has passed to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the Products to the Company and, if the Customer fails to do so immediately, the Company reserves the immediate right of re-possession of any such Products. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter into any premises where the Products are or may be stored in order to inspect them or, where the Customer's right to possession has terminated, to recover them.
- 8.7 The Customer shall not be entitled to pledge or in any way charge by way of security for indebtedness any of the Products which remain the property of the Company, but if the Customer does so, all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable

## 9 WARRANTIES

- 9.1 The Company, where it is not the manufacturer or producer of the Software or Equipment provided by it in accordance with these Terms and Conditions, shall endeavour to transfer to the Customer the benefit of any third party warranty or guarantee given to the Company in respect of Equipment or Software provided but shall give no other warranties or guarantees regarding such Equipment or Software.
- 9.2 The Company warrants that Software and any Equipment developed and produced by the Company for the Customer shall substantially conform to the applicable Scope of Works for a period of three months from delivery or such other period as agreed by the parties in writing] ("the Warranty Period").
- 9.3 The Company warrants that the Services will be carried out with reasonable skill and care and in accordance with the Scope of the Works (if any).
- 9.4 Except as expressly set forth in conditions 9.1 to 9.3, all conditions, warranties and representations expressed or implied by statute, common law or otherwise with respect to the Services are excluded to the fullest extent permitted by law.
- 9.5 Upon receiving written notice from the Customer of any non-conformity to the above warranties in respect of Software, Equipment or Services (subject to condition 9.1 above) the Company shall subject to condition 9.6, at its own expense and within a reasonable time after receipt of such notice:-
- 9.5.1 In the case of Software or Equipment take reasonable steps to remedy the defect or error in question PROVIDED THAT the Company shall have no liability or obligations under the warranty specified in condition 9.2 above unless it has received prompt written notice of the defect or error in question within the Warranty Period.
- 9.5.2 In the case of non-conforming Services, take reasonable steps to remedy such non-conformity PROVIDED THAT the Company shall have no liability or obligations under the warranty specified in condition 9.3 above unless it has received written notice of the relevant non-conformity within 7 days after the performance of the Services.
- 9.6 The warranty in condition 9.2 above shall not apply in the event of failure of the Equipment or Software to conform to the Scope of the works due to:-
- 9.6.1 failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions;
- 9.6.2 accident, transportation, neglect, misuse or default of the Customer, its employees or agents or any third party;
- 9.6.3 any fault in any attachment or associated equipment (whether or not supplied by the Company) which do not form part of the Equipment;
- 9.6.4 act of God, fire, flood, war, act of violence or any other similar occurrence;
- 9.6.5 any attempt by any person other than the Company's personnel to adjust, repair or maintain the Equipment; or
- 9.6.6 any other circumstance that is beyond the reasonable control of the Company.
- 9.7 If in the Company's opinion, the Company is unable to remedy the warranty non-conformance, the Company may at its sole discretion refund any sum paid in accordance with the Invoice for the Software and/or Equipment or in the case of Services provided refund a portion or all of the charges made in accordance with the Invoice for the effected Services.

## 10 **LIMITATION OF LIABILITY**

10.1 The following provisions and the provisions of condition 10 set out the entire liability of the Company (including any liability for acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:-

10.1.1 any breaches of the Contract; and

10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 Nothing in the Contract shall exclude or limit the liability of the Company for death or personal injury caused by the Company's negligence.

10.3 Subject to condition 10.2:-

10.3.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the agreed price for the applicable Product or Services; and

10.3.2 the Company shall not be liable to the Customer for any negligence or tortious loss or for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise and whether or not the Company is advised of the possibility of loss, liability, damage or expense):

10.3.3 loss of revenue;

10.3.4 loss of actual or anticipated profits (including for loss of profits on contracts);

10.3.5 loss of the use of money;

10.3.6 loss of anticipated savings;

10.3.7 loss of business;

10.3.8 loss of operating time or loss of use;

10.3.9 loss of opportunity;

10.3.10 loss of goodwill;

10.3.11 loss of reputation;

10.3.12 loss of, damage to or corruption of data; or

any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, where such loss or damage is of the type specified in conditions 10.3.1 to 10.3.12.

## 11 **CUSTOMER'S OBLIGATIONS**

11.1 The Customer agrees to give the Company such information, advice and assistance relating to the subject matter of the Contract as the Company may reasonably require within sufficient time to enable the Company to perform the Services in accordance with the terms of the Contract.

11.2 The Customer shall be responsible to the Company for ensuring the accuracy of information submitted by the Customer to the Company.

11.3 The Customer shall indemnify the Company against all losses, damages, costs and expenses awarded against or incurred by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which result from the use by the Company of information provided by the Customer.

11.4 Any property supplied to the Company by or on behalf of the Customer shall be held by the Company at the Customer's risk. The Company shall not be liable for any loss or damage to any such property.

11.5 The Customer shall provide such information as the Company considers necessary to enable the Company to comply with all applicable health and safety legislation and regulations whilst the Company is at the Customer's premises.

11.6 The Customer will not do any thing to harm the reputation of the Company or the reputation of any third party that has manufactured or developed the Products.

11.7 The Company and its nominated representatives shall have the right to audit all the Software provided or installed under these Terms and Conditions and all back-up copies of the Software to ensure that the use of the Software by the Customer is in compliance with the terms of these Terms and Conditions. Such audit shall take place no more than once every 12 months with effect from the commencement of the Contract and on not less than twenty-eight (28) days' written notice to the Customer. The Customer shall provide all reasonable assistance to the Company as the Company may require in the performance of such audit.

## 12 SOFTWARE

12.1 If the Contract requires the Company to develop Software for the Customer, then the Software, all pre-existing rights of the Company in the Software, and all related documentation and updates provided to the Customer shall remain the property of the Company and the Company grants to the Customer a non-exclusive, non-transferable, royalty free right to use such Software or related documentation solely for the purposes set out in the Contract for which such Software was developed. The right of use shall be subject to a separate licence agreement between the parties and is effective from the date of delivery of the Software and will remain in force (unless terminated in accordance with condition 12.2 below) until the Customer discontinues its use.

12.2 The Company may terminate the licence granted in accordance with condition 12.1 above if the Customer breaches its obligations under the Contract.

12.3 The Customer shall:

12.3.1 reproduce on any copy of the Software the Company's copyright and trade mark notices;

12.3.2 maintain an up-to-date record of the number of copies of the Software and their location and upon request forthwith produce such record to the Company;

12.3.3 only use the Software in accordance with the number of copies licensed to the Customer (and as set out in the order form); and

12.3.4 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the Confidential Information (as defined in condition 15.1 below) and Intellectual Property Rights of the Company in the Software.

## 13 NEW RELEASES

13.1 The Company may from time to time make New Releases of the Software available to the Customer.

13.2 The provision of Services under the Technical Service Support Agreement may, subject to the Company's discretion, extend to the New Releases.

## 14 INTELLECTUAL PROPERTY RIGHTS

14.1 To the extent that any Intellectual Property protecting or relating to the Products or any goodwill associated with the Company's trade marks vests in the Customer by operation of law or otherwise, the Customer hereby assigns (by way of assignment of present and future rights) without payment all such Intellectual Property and goodwill to the Company with full title guarantee. If a further assignment is required or if the Customer is unable to assign such Intellectual Property and goodwill as there are differences between the laws of England and the applicable law, the Customer shall forthwith execute all documents that may be necessary to effect the transaction that most closely resembles the commercial intent of an assignment and is permitted in the relevant territory. Pending the above assignments and remaining formalities relating to such assignments, the Customer shall hold all such Intellectual Property and goodwill on trust for the Company.

## 15 CONFIDENTIALITY

15.1 All drawings and technical business, financial, commercial, [operational], organisation, legal and marketing information in whatever medium ("Confidential Information") supplied by one party to the other shall be deemed to have been furnished in confidence for the purpose authorised by the Contract and no other purpose. The recipient party shall take all reasonable precautions to prevent communication of such Confidential Information to any third party except as may be necessary in order to carry out the purpose of the Contract. The Customer shall not disclose any Confidential Information of the Company to any third party without the prior written consent of the Company, except to those of its employees, officers and advisers who need to have access to it.

15.2 The parties shall ensure that their respective employees, agents and sub-contractors comply with the provisions of this condition and are bound by terms and conditions of use and non-disclosure at least as onerous as those contained in this condition.

15.3 The obligations in this condition shall continue in force notwithstanding termination of the Contract for any reason.

15.4 If the Contract is terminated, the receiving party shall return or destroy at the request of the disclosing party all Confidential Information of the disclosing party.

- 15.5 Neither the Company nor the Customer shall use the name of the other in any publicity material or publish anything relating to work being undertaken pursuant to the Contract unless required to do so to carry out the purpose of the Contract without the prior written permission of the other (such permission not to be unreasonably withheld).
- 15.6 The obligations of confidentiality and non-publication contained in conditions 15.1 and 15.2 shall not apply to any information which:-
- 15.6.1 is in or enters the public domain other than by virtue of the recipient's act or omission;
  - 15.6.2 is known to the recipient at the time of disclosure to the recipient provided that the recipient produces to the other satisfactory evidence of the same within 14 days of such disclosure;
  - 15.6.3 is required to be disclosed by the recipient by order of a court of competent jurisdiction.
- 16 **FORCE MAJEURE**
- 16.1 The Company shall not be liable to the Customer or deemed to be in breach of this Contract by reason of any delay in performing or any failure to perform any of the Company's obligations under this Contract if the delay or failure was due to any cause beyond the Company's reasonable control.
- 16.2 Without prejudice to the generality of condition 16.1 above the following shall be included as causes beyond the Company's reasonable control:
- 16.2.1 governmental action, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;
  - 16.2.2 act of God, fire, explosion, flood, epidemic or accident;
  - 16.2.3 import or export regulations or embargoes;
  - 16.2.4 labour disputes; or
  - 16.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, parts, machinery or labour.
- 17 **TERMINATION**
- 17.1 Without prejudice to any other rights or remedies of the Company, the Company may terminate the Contract, in whole or in part, with immediate effect by written notice if the Customer fails to pay all or any prices and charges by the due date (save to the extent that there is a bona fide dispute in relation to the whole of the amount unpaid) and continues to fail to pay such sums for 10 working days after receipt of written notice to do so from the Company.
- 17.2 The Contract may be terminated:
- 17.2.1 immediately by either party on written notice, if the other is in material breach of a material obligation under the Contract (other than as mentioned in condition 17.1) and in the case of any such breach capable of remedy has failed to remedy the breach within a period of thirty (30) days after receipt of written notice to do so; or
  - 17.2.2 immediately by either party on written notice if the other (i) is unable to pay its debts as they fall due, (ii) passes a resolution for winding up (other than for the purposes of a solvent amalgamation or reconstruction) or if a court of competent jurisdiction makes an order to that effect, (iii) enters into a composition or scheme of arrangement with its creditors or if a receiver, manager, administrator or administrative receiver is appointed over any of its assets, or (iv) ceases or threatens to cease to do business; or (v) an analogous event occurs to the other party in any jurisdiction.
  - 17.2.3 immediately by the Company on written notice, if control of the Customer is transferred to any person or persons other than the person or persons in control of the Customer at the date hereof.
- 17.3 Termination or expiry of the Contract for any reason, whether under this condition 17 or not, shall be without prejudice to the accrued rights and liabilities of the parties on the date of such termination or expiry.
- 17.4 For the purposes of this condition, a breach shall be considered capable of remedy:
- 17.4.1 if the party in breach can comply with the provision in question in all respects other than as to the time of performance and
  - 17.4.2 if time of performance is not of the essence.
- 17.5 Upon the termination of the Contract for any reason, unpaid invoices rendered by the Company in respect of the Services will become immediately payable by the Customer.

- 17.6 If the Company terminates part of these Terms and Conditions, it may, without incurring liability of any nature to the Customer:
- 17.6.1 terminate any other order which it has accepted;
  - 17.6.2 refuse to accept any future order; and/or
  - 17.6.3 suspend fulfilment of that or any other present or future order until it is satisfied to its reasonable satisfaction that the Customer will comply with its obligations in relation to that order, which may include requiring payment in advance or other method of guaranteed payment.
- 17.7 Upon the termination of the Contract for any reason:
- 17.7.1 the Company shall be entitled to cancel all orders placed by the Customer prior to the termination date, whether or not such orders have been accepted by the Company, without incurring any liability of any nature to the Customer; and
  - 16.7.2. outstanding unpaid invoices rendered by the Company in respect of the Products delivered by the Company shall become immediately payable by the Customer and invoices in respect of Products which the Company agrees to deliver after termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice.
- 18.7 Any termination of the Contract (however occasioned) shall not operate so as to affect any accrued rights or liabilities of either party.
- 18.8 Within fourteen (14) days of the termination of the Contract (howsoever and by whomsoever occasioned) the Customer shall return or destroy (as the Company shall instruct) all copies of the Products in its possession and a duly authorised officer of the Customer shall certify in writing to the Company that the Customer has complied with such obligation.

## 18 ENTIRE AGREEMENT

- 18.1 These Terms and Conditions together with any Scope of Works or Technical Support Services Agreement shall form the entire agreement between the Company in relation to the subject matter of the Contract and supersede any prior written or oral agreements, representations or understandings between the parties relating to the subject matter set out in any Scope of the Works. Neither party to this Contract has been induced to enter into the Contract by any statement or promise which it does not contain save that this condition shall not exclude liability which one party would otherwise have to the other in respect of any statements made fraudulently by that party.

## 19 COMMUNICATION

- 19.1 All communications between the parties regarding this Contract must be in writing and delivered by hand or sent by pre-paid first class post or by facsimile transmission:
- 19.1.1 (in the case of communications to the Company) to its registered office or such change of address as may be notified to the Customer by the Company or;
  - 19.1.2 (in the case of communications to the Customer) to the address of the Customer set out in the Contract, or change of address as may be notified in writing to the Company by the Customer.

## 20 ARBITRATION

- 21.1 Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of the Contract will, on the written request of one party served on the other, be submitted to arbitration to be conducted by the Centre for Effective Dispute Resolution in London, and in accordance with English law.
- 21.2 The parties will each appoint one person to hear and determine the dispute and if they are unable to agree, then the two persons so chosen will select a third impartial arbitrator whose decision will be final and conclusive on both parties.
- 21.3 The cost of arbitration will be borne in such proportions as the arbitrators decide.

22        **LEGAL FEES**

22.1        If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the terms of the Contract, the prevailing party shall be entitled to reasonable legal fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

23        **GENERAL**

23.1        Each right or remedy of the Company under this Contract is without prejudice to any other rights or remedies of the Company whether under this Contract or not.

23.2        Any provision of this Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidances, void ability, unenforceability or unreasonableness be deemed to be severable from the other provisions of this Contract and the remainder of such provisions shall not be affected.

23.3        Failure by either party to enforce or partially enforce any provisions of this Contract shall not be construed as a waiver of any of its rights under this Contract.

23.4        The Company may assign, licence or sub-contract all or any part of its rights or obligations under this Contract without the Customer's consent.

23.5        The Contract is personal to the Customer who may not assign, licence, or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

23.6        A person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

23.7        No amendment of these Terms and Conditions shall be effective unless it is in writing and signed by or on behalf of each of the parties.

23.8        The formation, construction, performance, validity and all aspects of this Contract are governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English and Welsh courts.