



COTOPAXI LIMITED
TERM & CONDITIONS OF SUPPLY

Cotopaxi Limited's Terms & Conditions of Supply

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

1. Interpretation

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

1.1 Definitions:

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.9.

Contract: the contract between Cotopaxi and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Cotopaxi: Cotopaxi Limited registered in England and Wales with company number **07038605**

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

Customer Data: (a) any and all data input by the Customer (and/or its authorised users) and/or by Cotopaxi on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services and/or (b) data automatically collected by the Software during Customer's (or its authorised users) use of the Services.

Deliverables: the deliverables set out in the Proposal produced by Cotopaxi for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: means an event beyond the reasonable control of Cotopaxi including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, pandemic or epidemic, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors..

Goods: the goods (or any part of them) set out in the Proposal.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is set out in the Proposal or otherwise agreed in writing by the Customer and Cotopaxi.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services.

Proposal: Cotopaxi's written proposal to the Customer for the supply of Goods and/or Services.

Services: the services, including the Deliverables, agreed to be supplied by Cotopaxi to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services that is set out in the Proposal or otherwise agreed in writing by the Customer and Cotopaxi.

Software: the computer program(s) to be licensed to the Customer by Cotopaxi as part of the Services, as more particularly detailed in the Proposal.

Software Licence: the terms and conditions applicable to the licence of the Software by Cotopaxi to the Customer.

1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Cotopaxi issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Cotopaxi and any descriptions of the Goods or illustrations or descriptions of the Services contained in Cotopaxi's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 The Proposal and any other quotation given by Cotopaxi shall not constitute an offer, and is only valid for the period stated on the Proposal or quotation.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 Where there is a conflict between the Proposal and these Conditions the terms of the Proposal shall apply.

3. Goods

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Cotopaxi against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Cotopaxi arising out of or in connection with any claim made against Cotopaxi for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Cotopaxi's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

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

3.4 For the avoidance of doubt, the Software is not, and shall not be considered "Goods" under the Contract. The terms and conditions applicable to the Software are exclusively set out in the Software Licence.

4. Delivery of Goods

4.1 Cotopaxi shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows, all relevant Customer and Cotopaxi reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to Cotopaxi. The Customer shall make any such packaging materials available for collection at such times as Cotopaxi shall reasonably request. Returns of packaging materials shall be at Cotopaxi's expense.

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

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

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

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

4.6 If the Customer fails to accept delivery of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the day following the day on which Cotopaxi notified the Customer that the Goods were ready or attempted to make delivery; and

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

4.7 If ten days after Cotopaxi notified the Customer that the Goods were ready for delivery or attempted to make delivery the Customer has not accepted delivery of them, Cotopaxi 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 charge the Customer for any shortfall below the price of the Goods.

4.8 Cotopaxi 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. Quality of Goods

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

(a) conform in all material respects with the Goods Specification;

(b) be free from material defects in design, material and workmanship;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by Cotopaxi.

5.2 Subject to clause 5.3, Cotopaxi shall, at its option, repair or replace defective Goods, or refund the price of the defective Goods in full if:

(a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) Cotopaxi is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by Cotopaxi) returns such Goods to Cotopaxi's place of business at the Customer's cost.

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

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow Cotopaxi's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

(c) the defect arises as a result of Cotopaxi following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of Cotopaxi;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

(f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

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

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Cotopaxi. 5.6 For the avoidance of doubt, the warranties set out in this Condition 5 do not apply to the Software, the warranties for which are exclusively set out in the Software Licence.

6. Title and risk

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

6.2 Title to the Goods shall not pass to the Customer until Cotopaxi receives payment in full in cleared funds for the Goods and any other goods that Cotopaxi has supplied to the Customer in respect of which payment has become due.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Cotopaxi's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Cotopaxi's behalf from the date of delivery;
- (d) notify Cotopaxi immediately if it becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(c); and
- (e) give Cotopaxi such information relating to the Goods as Cotopaxi may require from time to time.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(c), then, without limiting any other right or remedy Cotopaxi may have:

- (a) the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and
- (b) Cotopaxi may at any time:
 - (i) require the Customer to deliver up all Goods in its possession; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

7.1 Cotopaxi shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 Cotopaxi shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal or otherwise set out in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Cotopaxi reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Cotopaxi shall notify the Customer in any such event.

7.4 Cotopaxi warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 For the avoidance of doubt, the warranties set out in this Condition 7 do not apply to the Software, the warranties for which are exclusively set out in the Software Licence.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that any information it provides to Cotopaxi is complete and accurate;
- (b) co-operate with Cotopaxi in all matters relating to the Services;
- (c) provide Cotopaxi, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Cotopaxi to provide the Services;
- (d) provide Cotopaxi with such information and materials as Cotopaxi may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of Cotopaxi (**Cotopaxi Materials**) at the Customer's premises in safe custody at its own risk, maintain Cotopaxi Materials in good condition until returned to Cotopaxi, and not dispose of or use Cotopaxi Materials other than in accordance with Cotopaxi's written instructions or authorisation; (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification; and
- (j) comply with the reasonable requests and instructions of Cotopaxi to facilitate the provision of the Goods and/or Services.

8.2 If Cotopaxi's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Cotopaxi shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Cotopaxi's performance of any of its obligations;
- (b) Cotopaxi shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Cotopaxi's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Cotopaxi on written demand for any costs or losses sustained or incurred by Cotopaxi arising directly or indirectly from the Customer Default.

8.3 The Customer shall, and shall procure that each authorised user shall, agree to the Software Licence before using the Software. Customer acknowledges and agrees that it (nor any authorised user) shall not be permitted to utilise the Software until the Software Licence has been entered into by Customer. Failure by a Customer to enter into the Software Licence shall be deemed a Customer Default.

8.4 On Completion of the Services, Cotopaxi shall deliver formal confirmation to the Customer that it considers the Services to have been completed. Customer

shall acknowledge such notice and confirm completion (or submit any dispute) within 15 days of the date of receipt. If Customer does not provide a response to such notice within 15 days of the date of receipt, the Services shall be deemed formally accepted and completed and Cotopaxi shall be entitled to issue any final invoices (to the extent any fees remain due to be invoiced under the applicable Contract). **9. Charges and payment**

9.1 The price for Goods shall be the price set out in the Proposal or, if no price is quoted, the price set out in Cotopaxi's published price list as at the date of the Order.

9.2 The charges for Services shall be the charges set out in the Proposal.

9.3 Cotopaxi reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Cotopaxi that is due to:

- (i) any factor beyond the control of Cotopaxi (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Cotopaxi adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, Cotopaxi shall invoice the Customer as set out in the Proposal, or at any time after completion of delivery. In respect of Services, Cotopaxi shall invoice the Customer as set out in the Proposal or weekly in arrears.

9.5 The Customer shall pay each invoice submitted by Cotopaxi:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by Cotopaxi and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by Cotopaxi, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Cotopaxi to the Customer, the Customer shall, on receipt of a valid VAT invoice from Cotopaxi, pay to Cotopaxi such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to Cotopaxi under the Contract by the due date, then, without limiting Cotopaxi's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual property rights

10.1 The Customer acknowledges and agrees that:

- (i) the Intellectual Property Rights in the Goods and any materials prepared by Cotopaxi or on its behalf which relate to the Goods and their development (including, without limitation, drawings, designs, samples, models and similar items) (the "Goods Materials") are the property of Cotopaxi or the third party manufacturers of the Goods (as applicable);
- (ii) nothing in these Conditions or in a Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in the Intellectual Property Rights in the Goods or the Goods Materials.

10.2 The Customer shall not use (other than pursuant to these Conditions or a Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trade mark or trade name which Cotopaxi owns or claims rights in anywhere in the world.

10.3 If at any time it is alleged that the Goods infringe the rights of any third party or if, in Cotopaxi's reasonable opinion, such an allegation is likely to be made, Cotopaxi may at its option and its own cost:

- (i) modify or replace the Goods in order to avoid the infringement; or
- (ii) procure for the Customer the right to continue using the Goods; or
- (iii) repurchase the Goods at the price paid by the Customer, less depreciation at the rate Cotopaxi applies to its own equipment.

10.4 The Customer shall promptly notify Cotopaxi of:

- (i) any actual, threatened or suspected infringement of any of the Intellectual Property Rights in the Goods or the Goods Materials (or both) which comes to the Customer's notice; and
- (ii) any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Goods or the use of the Goods Materials (or both) infringes the rights of any person.

10.5 The Customer agrees (at Cotopaxi's request and expense) to do all such things as may be reasonably required to assist Cotopaxi in taking or resisting any proceedings in relation to any infringement or claim referred to in Condition 10.4, and the Customer shall not make any admissions or statements in respect of or compromise any such claim other than with the prior written consent of Cotopaxi.

10.6 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of such party's rights by any of the Intellectual Property Rights in the Goods or the Goods Materials (or both), Cotopaxi shall defend the claim, proceeding or suit at Cotopaxi's expense, subject to:

(i) the Customer promptly notifying Cotopaxi in writing of any such claim, proceeding or suit; and (ii) Cotopaxi being given sole control of the defence of the claim, proceeding or suit and provided that Cotopaxi shall not be liable and shall not defend the claim, proceeding or suit to the extent that such infringements arise out of or in connection with modifications to the Goods or the Goods Materials (or both) made by anyone except Cotopaxi or its authorised representative, or out of use or annexation of the Goods or the Goods Materials (or both) with or to products or third party materials not specified or expressly approved in advance in writing by Cotopaxi, or where the claim, proceeding or suit arises from Cotopaxi's adherence to the Customer's requested changes to the Specification for Goods or from infringing items of the Customer's origin, design or selection.

10.7 Cotopaxi shall reimburse the Customer with an amount equal to any liability assessed against the Customer by final judgment on account of an infringement described in Condition 10.6.

10.8 Save for any Customer Data, all Intellectual Property Rights in the or arising out of the or in connection with the Services shall be owned by Cotopaxi.

10.9 All Intellectual Property Rights in the materials, equipment, documents and other property of Cotopaxi are the exclusive property of Cotopaxi or of its licensors and shall be returned to Cotopaxi on demand.

10.10 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data. It is the Customer's sole duty to preserve (or otherwise) the Customer Data. Customer grants Cotopaxi an non-exclusive, irrevocable, worldwide, royalty free licence to (i) process, store and use the Customer Data to perform the Services and (ii) to process, store and use the Customer Data (when in an aggregated, anonymised, form) for Cotopaxi's (and its affiliates') own business and/or product development purposes (without limitation on scope or use). The terms of this Condition 10.10 shall survive and continue notwithstanding completion or termination of the Contract.

11. Confidentiality

11.1 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.

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Save as set out in clause 10.10, neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

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

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) any liability that Cotopaxi cannot legally exclude.

12.2 Subject to clause 12.1, Cotopaxi shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; or
- (g) any indirect or consequential loss.

12.3 Subject to clause 12.1, Cotopaxi's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract.

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE WARRANTIES, AND ALL LIMITATIONS AND EXCLUSIONS OF COTOPAXI'S LIABILITY, SET OUT IN THESE CONDITIONS ARE REASONABLE AND ARE REFLECTED IN THE PRICE OF THE GOODS OR SERVICES (OR BOTH) (AS APPLICABLE) AND THE CUSTOMER SHALL ACCEPT RISK OR INSURE ACCORDINGLY (OR BOTH).

12.6 This clause 12 shall survive termination of the Contract.

13. Termination

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

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing to do so; (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or 13.2 Without affecting any other right or remedy available to it, Cotopaxi may terminate the Contract with immediate effect by giving written notice to the Customer if: (a) the Customer fails to pay any amount due under the Contract on the due date for payment;

(b) there is a change of control of the Customer; or (c) the Customer's financial position deteriorates to such an extent that in Cotopaxi's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy

13.3 Without affecting any other right or remedy available to it, Cotopaxi may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Cotopaxi if the Customer fails to pay any amount due to Cotopaxi on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(c), or Cotopaxi reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of termination

14.1 On termination of the Contract:

(a) the Customer shall immediately pay to Cotopaxi all of Cotopaxi's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Cotopaxi shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of Cotopaxi Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Cotopaxi may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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

15. Force majeure

(a) Cotopaxi shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

(b) If the Force Majeure Event prevents Cotopaxi from providing any of the Services or Goods (or both) for more than 90 days, Cotopaxi shall, without limiting its other rights or remedies, have the right to terminate the Contract with the Customer immediately by giving notice in writing to the Customer.

16. General

16.1 Assignment and other dealings

(a) Cotopaxi may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

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

16.2 Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email to the address specified in the Proposal or as notified by one party to the other from time to time.

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

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

16.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6 Trade Prohibitions. (a) The Customer undertakes to Cotopaxi that the Customer shall not re-sell or otherwise supply the Goods and/or Services to a third party which is the subject of any statutory trade prohibition of the United States of America or a member state of the European Union ("Sanctioned Third Party"). (b) Without prejudice to Condition 16.6(a), if Cotopaxi shall have notice of or reasonable grounds to believe that the Customer intends to re-sell or otherwise supply the Goods and/or Services to a Sanctioned Third Party, Cotopaxi may upon giving notice thereof to Customer refuse to deliver the whole or any part of the Goods and/or Services and shall have no liability to the Customer for such refusal.

16.7 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

16.8 Third parties rights. 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.

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

16.10 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.

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