

Churchill Court 3, Manor Royal, Crawley, West Sussex, RH10 9LU  
Tel: 01293 804512 Fax: 01293 804543

## **Plant & Machinery Thorough Examination/Inspection**

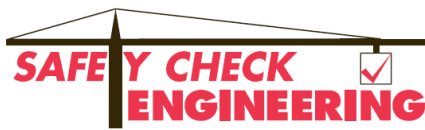
### **Terms & Conditions**

*Safety Check Engineering Limited (SCE) shall provide a Thorough Examination and/or Inspection for the Customer in accordance with the Lifting Operations and Lifting Equipment Regulations 1998 and/or the Provision and Use of Work Equipment Regulations 1998 (as may be amended or varied) subject to SCE's Terms and conditions. The Customer acknowledges that it has received and agreed those Terms and Conditions.*

*The service will apply to those items of plant listed in the plant schedule. SCE will examine the plant during normal working hours and thereafter supply a Report(s) of Thorough Examination and/or Inspection to the Customer.*

*SCE's service does not include carrying out or witnessing special tests of a non-routine nature (including any ultrasonic radiographic hydrostatic or NDT tests or in the case of lifting and handling plant any proof load stability anchorage or similar tests) unless specifically agreed otherwise.*

*This Agreement is effective from the date of first Thorough Examination and/or Inspection and will continue until terminated in accordance with the Terms and Conditions.*



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**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7.**

## **1. INTERPRETATION**

### **1.1 Definitions:**

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

**"Charges"**: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**"Commencement Date"**: has the meaning set out in clause 2.2.

**"Competent Person"**: The Supplier and/or any engineer surveyor, or other such appropriately qualified person authorised and employed or subcontracted by the Supplier to perform the Services (as the context may require).

**"Conditions"**: these terms and conditions as amended from time to time in accordance with clause 10.5.

**"Contract"**: the contract between the Supplier and the Customer for the supply of 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.

**"Customer"**: the person or firm who purchases Services from the Supplier.

**"Customer Default "**: has the meaning set out in clause 4.2.

**"Intellectual Property Rights"**: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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 Services.

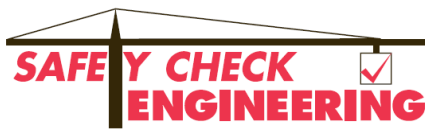
**"Plant"**: any plant which will be subject to the Services.

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

**"Specification"**: the description or specification of the Services provided in writing by the Supplier to the Customer.

**"Supplier"**: Safety Check Engineering Limited registered in England and Wales with company number 04542893.

**"Supplier Materials"**: has the meaning set out in clause 4.1(i).



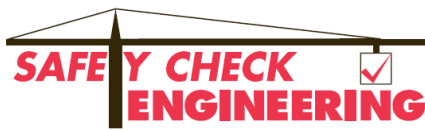
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1.2 **Interpretation:**

- (a) 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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) 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.
- (c) A reference to **writing** or **written** includes fax and email.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted when the Supplier agrees written or electronic acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 The Supplier may decline to carry out the Services after an Order is accepted if:
  - (i) in its opinion, to do so would pose a risk to the health, safety or welfare of the Competent Person or to the Customer or to any other person who may be affected; or
  - (ii) the Customer or any employee, agent, contractor or other such person associated with the Customer behaves in a threatening or abusive manner towards the Competent Person or any other employee, agent or contractor of the Customer (and any such threatening or abusive behaviour shall constitute a material breach of the Contract on the part of the Customer for the purpose of Clause 8.2 (a);
  - (iii) the Customer requires the Competent Person to undertake induction sessions, training or to comply with permit to work or other risk assessment regimes or procedures specific to the Customer's own health, safety and welfare procedures of which the Supplier was not made aware when the Order was accepted or renewed;

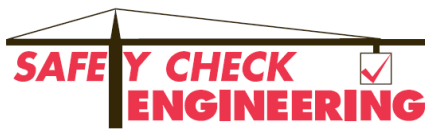


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- (iv) the Customer fails to prepare or make the Plant available to the Competent Person in accordance with these Conditions on an agreed pre-appointed date and time;
- (v) the Competent Person is delayed from commencing an inspection by more than fifteen (15) minutes because the Customer has failed to comply with its obligations under clause 4 of these Conditions; and/or
- (vi) the Competent Person is delayed from leaving the plant location by more than fifteen (15) minutes because of the Customer's requirements for services including but not limited to on-site meetings, verbal or written reports that are additional to the Contract.

### **3. SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 The Customer is responsible (at its own cost) for the care, custody maintenance, repair and control of the Plant at all times.
- 3.6 The purpose of the Services is to identify and assess defects in the workings of the Plant and where required by regulation the deterioration that affects the safety of the Plant, but not defects in existing designs or in any proposed design changes.
- 3.7 It is solely the Customer's obligation to ensure that the design of its Plant and any part of it is fit for purpose and reasonably safe, both by: arranging such analysis of its design as may be found necessary; and promptly rectifying any design defects of which they are or ought to be aware, including: i) any design defects to which any Competent Person may, without obligation, draw attention; and/or ii) by taking the Plant out of service until these matters have been attended to;
- 3.8 Unless agreed in writing between the Supplier and the Customer, the Supplier will not undertake the approval or the verification of the fitness for purpose of any design or design features of the Plant or any part of the Plant and observations and recommendations made by the Competent Person on aspects of a design that affects safety, shall not imply that the Supplier accepts any responsibility for the fitness for purpose of the design.



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3.9 Unless agreed in writing between the Supplier and the Customer, the Supplier shall not:

- (i) carry out any witnessing of ultrasonic, radiographic or other tests of a non-routine nature or any proof load, load, stability, anchorage or similar tests; and/or
- (ii) specify, re-inspect, verify or approve repairs unless agreed in writing between the Supplier and the Customer or unless required to do so by a regulation;

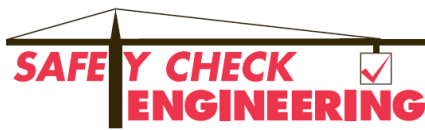
3.10 For the avoidance of doubt, the provision of the Services shall not include:

- (i) pre-commissioning inspections;
- (ii) laboratory services;
- (iii) consultation work;
- (iv) the provision of written schemes;
- (v) load testing;
- (vi) non-destructive testing;
- (vii) thermographic testing;
- (viii) checking of drawing or design;
- (ix) examinations prior to purchase or sale;
- (x) return visits in excess of those specified in the Order or following repairs; or
- (xi) any maintenance or repair of Plant.

#### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) provide the necessary assistance at each location, as agreed in advance, for access and/or egress to the plant and machinery to be examined, including the provision of safe access where work at height is required;



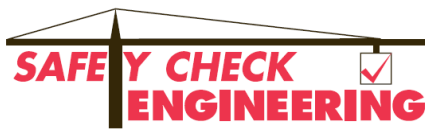
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- (g) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (h) provide the Supplier, its employees, agents, consultants and sub-contractors with safe access to the Plant including but not limited to access platforms, scaffolding and safety lines;
- (i) provide the Supplier, its employees, agents, consultants and sub-contractors with any safety apparatus that is required by legislation or recommended in good health and safety practice within the Customer's industry and or premises; and have in place up to date health and safety procedures relating to the Plant, its access and location including emergency rescue plans where applicable;
- (j) ensure that all documentation (including lists and/or details of Plant) provided to the Supplier is true, complete and accurate in all respects;
- (k) keep and maintain all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (l) comply with any additional obligations as set out in the Specification or Order or both.

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

- (a) the Supplier shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default (such costs to include wasted costs and the cost of resources the Supplier is unable to reallocate).

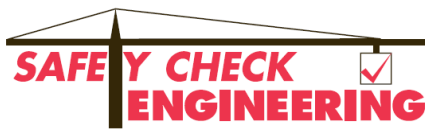
4.3 For the avoidance of doubt, it is the Customer's responsibility to ensure that any inspections that are required by law or any industry regulation or otherwise are undertaken on time. The Supplier shall not have any liability whatsoever for any fines or penalties or liabilities incurred by the Customer as a result of any failure on the Customer's part to comply with such obligations.



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## 5. CHARGES AND PAYMENT

- 5.1 Subject to clause 5.2 the Charges for the Services shall be the fee ("**Fee**") quoted on the Order unless specified otherwise by the Supplier.
- 5.2 The Supplier reserves the right to revise the Fee or invoice for the Customer for additional work, including but not limited to the following circumstances:
- (a) If the Supplier is required to undertake any additional work to that set out in the Order;
  - (b) If upon the Supplier's initial inspection of the Plant it is apparent to the Supplier that the original Fee quoted is incorrect;
  - (c) The Supplier is required to provide the Services at the Customer's request outside Normal Working Hours as defined in clause 5.3;
  - (d) There is a change in the original instructions received from the Customer
- 5.3 The Supplier's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days ("**Normal Working Hours**");
- (a) the Supplier shall be entitled to charge an overtime rate of £175 + VAT per half day 8am - 1pm, 1pm - 6pm including travel time or for any time worked by individuals whom it engages on the Services outside Normal Working Hours; and
  - (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.4 The Supplier reserves the right to increase its standard daily fee rates. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 week's' written notice to the Customer.
- 5.5 The Charges shall become payable on the dates specified in the Order.
- 5.6 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice (the "**Due Date**"); and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.



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- 5.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the Due Date for payment, the Supplier shall have the right to charge interest on the overdue amount at the rate stated in the Late Payment of Commercial Debts (Interest) Act 1998 from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 5.10 The Supplier reserves the right to charge the Customer for the provision of copies of examination reports.

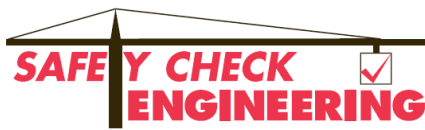
## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 6.3 All Supplier Materials are the exclusive property of the Supplier.

## **7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 7.1 Nothing in the Contract 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;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.



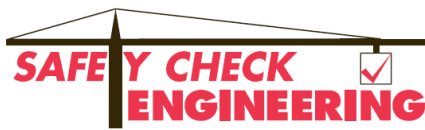


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- 7.2 Subject to clause 7.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
  - (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 damage to goodwill; and
  - (g) any indirect or consequential loss.
- 7.3 Subject to clause 7.1, the Supplier'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 £2,000,000.
- 7.4 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.
- 7.5 This clause 7 shall survive termination of the Contract.

## **8. TERMINATION**

- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 30 days' written notice.
- 8.2 Without limiting its other rights or remedies, 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 any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified 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



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(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Customer.

8.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

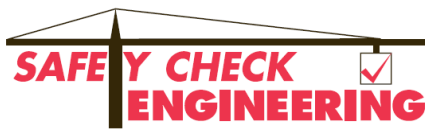
## 9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

## 10. GENERAL

10.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.



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**10.2 Assignment and other dealings.**

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

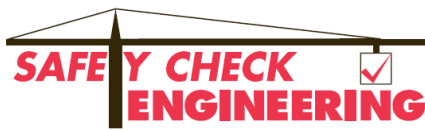
**10.3 Confidentiality.**

- (a) Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) 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 10.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**10.4 Entire agreement.**

- (a) This agreement 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 agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**10.5 Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).



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- 10.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
  - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 10.7 **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.
- 10.8 **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 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, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
  - (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 10.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, 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.
- 10.9 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 10.10 **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.
- 10.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England 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.