

## FUNDAMENTALS TERMS AND CONDITIONS FOR SUPPLY OF PRODUCTS AND SERVICES

These terms and conditions (the “Terms and Conditions”) set out the terms on which Fundamentals Limited, a company registered in England and Wales with registered number **02939559** and registered company address Unit 2, Hillmead Enterprise Park, Marshall Rd, Swindon SN5 5FZ (“Fundamentals”), will supply its Products and Services (as defined below) to Customer (as defined below).

### 1 Definitions.

The following terms have the meanings set forth below whenever they are used in these Terms and Conditions:

“3<sup>rd</sup> Party Product” means a product supplied under these Terms and Conditions that is not a Fundamentals Product, as described in a Quote.

“Acceptance” means Customer’s acceptance of Products and/or Services in accordance with the provisions of Clause 4 (for Products) and Clause 6 (for Services).

“Cancellation Fee” means the fee payable for cancelling ordered services, calculated as set out in Clause 2.6.

“Commissioning Certificate” means such documentation as agreed between the Customer and Fundamentals to confirm the correct performance of the Services.

“Confidential Information” means any information (whether disclosed in oral, written or electronic form) belonging or relating to a party's business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances, and includes these Terms and Conditions, the Price List, the contents of each Quote, the Documentation and other technical details of each Product.

“Contract” means these Terms and Conditions together with the Quote (if one has been prepared), the Order and Fundamentals’ Order Acknowledgement, as set out in Clause 2.1 below.

“Customer” means the customer whose details are set out on the Order and who seeks to purchase the Products and/or Services.

“Delivery Address” means the Delivery Address to which Customer requires Fundamentals to deliver the Products, as set out in the applicable Order or otherwise advised by Customer in writing.

“Delivery Terms” means the INCOTERMS specified in the relevant Quote or (if none has been prepared) it shall be Delivered Duty Paid DDP for any Delivery Address within the United Kingdom, or Ex Works EXW if the Delivery Address is outside the United Kingdom, each as defined in INCOTERMS 2010.

“Documentation” means the applicable Product specifications and other information generally made available by Fundamentals at Fundamentals’ discretion in either printed or machine readable form with respect to the Products, and which are identified in writing as being binding in respect of such Products.

“Fundamentals Product” means a product supplied under these terms and conditions that is developed and manufactured by, or on behalf of, Fundamentals, as described in the Price List.

“Insolvency Event” means that Customer has a receiver or administrative receiver appointed over it passes a resolution for winding up or a court of competent jurisdiction makes an order to that effect, or Customer becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on its business or any substantially similar event shall takes place under the laws of another jurisdiction.

“Manufacturer” means a manufacturer of a 3<sup>rd</sup> Party Product.

“Order” means a purchase order for the Products and/or Services, issued by Customer and referencing either the Price List or a Quote, and which is subject to these Terms and Conditions to the exclusion of all others.

“Order Acknowledgement” means Fundamentals’ written acknowledgement and acceptance of an Order as further described in Clause 2 below.

“Outage” means a period of time which is agreed in writing between the parties and scheduled and authorised by Customer’s SAP.

“Price List” means Fundamentals’ then-current price list for the Products and standard Services, as made available to Customer by Fundamentals on its website, or in electronic or paper form, and as amended from time to time.

“Product” means a Fundamentals Product or a 3<sup>rd</sup> Party Product as applicable, to be supplied to Customer as set out in the applicable Order.

“Product Price” means the price of each individual Product, excluding VAT, as specified in the Price List or the applicable Quote.

“Quote” means Fundamentals’ written quotation for the provision of Products and/or Services that specifies:

- a) that it is subject to these Terms and Conditions
- b) a description of any Products to be supplied, together with the applicable Product Prices;
- c) a description of any Services to be supplied, together with the applicable Services Fees (or the mechanism for calculating them);
- d) details of the Site (for Services) and/or the Delivery Address and Delivery Terms (for Products);
- e) the approximate delivery time-scales for Products;
- f) the date of the planned and agreed Outage during which any Services will be supplied;
- g) any assumptions and specific obligations for Customer that will apply to the Quote; and
- h) any Special Conditions that will apply to the Quote.

“Safety Documentation” means the documentation issued by the Customer to permit the Services to commence at a Site.

“SAP” means Customer’s Senior Authorised Person, an individual authorised by Customer to act on its behalf in respect of the delivery and Acceptance of the Services.

“Services” means services supplied under these Terms and Conditions by Fundamentals, as described in a Quote.

“Services Fees” means the price payable by Customer for the Services, as set out in (or calculated in accordance with) the applicable Quote.

“Site” means the physical location at which Customer requests Fundamentals to deliver the Service, as set out in a Quote or otherwise agreed in writing between the parties.

“Special Conditions” means any provision included on a Quote which directly varies, removes or adds to any provision of these Terms and Conditions by reference to its clause number.

“Standing Fee” means the means the fee payable for time Fundamentals was scheduled to deliver Services but was unable to do so because of unsafe weather conditions or as a result of Customer failing to meet its obligations as further described in Clause 7, and shall be calculated based on the Services Fees corresponding to the period of standing time.

“Technical Information” means representations of and notes related to the configuration of equipment and Products at a Site, including but not limited to drawings, photographs, specifications and diagrams.

“written” and “in writing” includes by email.

## **2 Contract Formation**

2.1 Prior to or after receipt of an Order for Services by Fundamentals, Fundamentals may request access to the Site in order to conduct a Site survey. Customer shall not unreasonably refuse or delay access to the Site for this purpose, and shall:

- a) Provide to Fundamentals all Technical Information relevant to the Site and the proposed Services prior to commencement of the Site survey; and
- b) Ensure that its SAP shall be available at the time agreed between the parties for the Site survey to occur, in order to grant access to Fundamentals.

2.2 Upon receipt by Fundamentals of an Order, Fundamentals will respond to Customer with either an Order Acknowledgement or with reasons why the Order cannot be accepted as currently written. Each Order Acknowledgement will confirm the details of the Order and will state Fundamentals’ anticipated lead times for the Products and/or Services.

2.3 A binding Contract for the purchase by Customer and the supply by Fundamentals of the Products in accordance with these Terms and Conditions may be created by:

- a) Customer’s written acceptance of Fundamentals’ Quote as evidenced by Fundamentals’ receipt of Customer’s valid Order referencing such Quote, followed by Customer’s receipt of a corresponding Order Acknowledgement; or
- b) Fundamentals’ receipt of Customer’s valid Order for Products, referencing the then-current Price List, followed by Customer’s receipt of a corresponding Order Acknowledgement.

2.4 In the event of any conflict, the following order of precedence shall apply, with the first of these taking the highest precedence:

- a) The Order Acknowledgement
- b) The Quote (including any Special Conditions)
- c) These Terms and Conditions
- d) The Order

In the event that Customer's Order contains terms and conditions in addition to or at variance with these Terms and Conditions then the formation of a binding Contract shall not occur until Customer has received an Order Acknowledgement stating expressly that Fundamentals has accepted such terms as set out in Customer's Order.

- 2.5 Customer may request additions or amendments to an Order for Products. In response to such requests Fundamentals shall advise Customer as to whether such request can be met, and the parties shall agree any changes to the Products specified in the Quote, including the specification for the additional or changed Products, price and approximate timescales for delivery. Such changes may be agreed by email, fax or letter and shall be binding upon both Fundamentals and Customer from the date of such agreement.
- 2.6 Customer may cancel the Services after placing an Order but prior to delivery subject to payment of the Cancellation Fee. The Cancellation Fee shall be as specified in the Quote or, if not defined in the Quote, it shall be equal to:
  - a) all expenses incurred directly in connection with the scheduled Services and not recoverable, recharged at cost (as evidenced by appropriate receipts); PLUS
  - b) Products and supplies already procured and/or built specifically for the Services, whether or not delivered to the Site, charged at the price in the Quote; PLUS
  - c) If more than 30 days notice, 0% of the Services Fees
  - d) If between 30 - 15 days notice, 50% of the Services Fees
  - e) If less than 15 days notice, 100% of the Services Fees

- where all days are based on calendar days prior to the scheduled delivery date.
- 2.7 Fundamentals may at its discretion substitute alternative Products that meet or exceed the specifications set out in the Documentation.
- 2.8 Customer or Fundamentals may request additions or amendments to an Order for Services. If a material change has occurred at the Site between the time of the Site survey and delivery of Services, this may also be deemed to be an addition or amendment to the Order.
- 2.9 In this event Fundamentals shall advise Customer as to whether such request can be met, and the parties shall agree any changes to the Services specified in the Quote, including the specification for the additional or changed Services, price and approximate timescales for delivery. Such changes may be agreed by email, fax or letter and shall be binding upon both Fundamentals and Customer from the date of such agreement.

### **3 Sale of Products.**

- 3.1 Fundamentals shall deliver the Products to the Delivery Address, in accordance with the Delivery Terms.
- 3.2 While time shall not be of the essence of these Terms and Conditions or any Contract Fundamentals shall use its reasonable endeavours to meet the timescales for delivery set out in the Quote or, if no Quote has been given, in accordance with the lead times set out in the Order Acknowledgement.
- 3.3 In the event that the Delivery Address is outside the UK, Customer shall be responsible for complying with any legislation or regulations governing the importing of Products into the Delivery Address country. While Fundamentals shall use its reasonable endeavours to obtain such export licences or other permits as may be required for the export of the Products to such

country, it shall not be liable for any delays in delivery caused by delays in obtaining, or inability to obtain, such licences or permits. Customer hereby warrants that it shall not subsequently export the goods from such country without Fundamentals' prior written consent.

- 3.4 Fundamentals hereby warrants that for a period of five (5) years from delivery the Fundamentals Products will be free of defects in materials and workmanship and will comply with a reasonable interpretation of their Documentation.
- 3.5 In respect of 3<sup>rd</sup> Party Products, Fundamentals warrants that for a period of one (1) year from delivery, or such longer period as is supported by the applicable Manufacturer, the 3<sup>rd</sup> Products will be free of defects in materials and workmanship and will comply with a reasonable interpretation of their Documentation
- 3.6 Customer hereby agrees that Customer's sole remedy in respect of any non-conformance with the warranty in Clause 3.4 is that Customer shall return the defective Product to Fundamentals at Customer's cost, and Fundamentals shall procure its repair or replacement and shall return the repaired or replacement Product to Customer at Fundamentals' cost.
- 3.7 Save as expressly provided in Clause 3.4 (Products warranty) and in Clause 5.6 (Services warranty), Fundamentals specifically excludes but without limitation all other conditions, warranties, representations or other terms relating to these Terms and Conditions and any Quotes hereto including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into these Terms and Conditions, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.
- 3.8 The warranties given in Clause 3.4, are provided subject to Fundamentals' limit of liability as set out in Clause 10 and shall not apply to the extent that the warranty claim arises from any element of the Products:
  - a) being used outside its normal environmental or operational parameters as set out in the Documentation; or
  - b) being subject to accidental damage; or
  - c) being modified other than by Fundamentals or under Fundamentals' explicit written instructions; or
  - d) being integrated with third party software or hardware without Fundamentals' prior written consent.
- 3.9 If Fundamentals procures the replacement of a Product, the replacement Product may be new or used but it shall in any event be covered by the warranty in Clause 3.4 for the remainder of the warranty period applicable to the original Product or for three (3) months, whichever is the longer.
- 3.10 Risk in the Products shall pass to Customer upon delivery. However, title in the Products will not pass to Customer until Fundamentals have received payment in full of all sums due to Fundamentals in respect of the Products.
- 3.11 Until title in the Products passes to Customer, Customer shall:
  - a) hold the Products as bailee for Fundamentals and take proper care of them;
  - b) store or keep the Products separately so as to show clearly that they belong to Fundamentals;
  - c) not sell or part with possession of the Products;

- d) comply fully with all storage, safety and/or environmental requirements applicable to or marked on the Products, specified by Fundamentals and/or required by law;
  - e) keep the Products free from any mortgage, charge, lien or other encumbrance;
  - f) not remove, alter, obscure, or otherwise interfere with any identifying marks, labels or storage instructions placed on the Products or their packaging by Fundamentals or the manufacturer; and
  - g) keep the Products insured at Customer's expense with an insurer of good repute against all insurable risks including (but not limited to) loss or damage by fire or theft for an amount not less than the applicable Product Price.
- 3.12 Before title has passed to Customer and without prejudice to any of Fundamentals' other rights, if Fundamentals terminates a Contract in accordance with Clause 9.8b) or if an Insolvency Event occurs, or Fundamentals acting reasonably believes that such event may occur, Fundamentals may repossess and/or sell some or all of the Products at any time and Fundamentals' employees or agents may enter upon any or all of Customer's premises or vehicles for that purpose, with or without vehicles. This right and licence shall continue after and despite the termination for any reason of any Contract or these Terms and Conditions.
- 3.13 For the avoidance of doubt the provisions of Clause 3.12 shall permit Fundamentals to repossess any Products conforming to the Documentation set out in or referenced in the applicable Order for which title has not yet passed, up to the total quantity of Products set out in that Order, regardless of whether certain individual Products may have been delivered under a separate Order.

#### **4 Acceptance of Products.**

- 4.1 On receipt of the Product from Fundamentals, Customer shall test such Product to confirm that, when used, such Product conforms with a reasonable interpretation of the Documentation.
- 4.2 If an Acceptance process is set out in the applicable Quote or is otherwise agreed in writing by the parties, Fundamentals shall provide all assistance reasonably requested by Customer for the purposes of testing in accordance with such Quote or other written agreement.
- 4.3 If, following testing pursuant to Clause 4.1 or 4.2, Customer reasonably determines that such Product does not conform with a reasonable interpretation of the Documentation and Customer notifies Fundamentals of the same (together with reasonable details of such non-conformity), Fundamentals shall use its reasonable endeavours to remedy such failure to conform.
- 4.4 Customer shall re-test any non conforming function of the Product within five (5) days of the delivery to Customer of a fix for such non-conformance and shall notify Fundamentals as soon as reasonably possible but in any event within five working days of the completion of such re-testing if the original non-conformity has not been remedied.
- 4.5 Acceptance of the Product shall occur or shall be deemed to have occurred on whichever of the following trigger events occurs first:
- a) If, following testing pursuant to Clause 4.1 or 4.2, Customer reasonably determines that such Product fully conforms with the applicable Documentation, Customer shall notify Fundamentals of the same and such notification shall constitute Acceptance of such Product.
  - b) If Customer has not notified Fundamentals of any non-conformity of the Product within seven (7) days of delivery, Acceptance shall automatically be deemed to have occurred.

- c) If Customer uses the Product in Customer's operational environment notwithstanding any non-conformities notified to Fundamentals in accordance with Clause 4.3, Acceptance shall automatically be deemed to have occurred.
- 4.6 In the event that all non-conformities notified to Fundamentals during the period of testing set out in Clause 4.1 have been remedied and Customer has not notified Fundamentals in accordance with Clause 4.4 of the continued existence of any such non-conformities, Acceptance shall automatically be deemed to have occurred.

## **5 Sale of Services**

- 5.1 Fundamentals shall deliver the Services at the Site, in accordance with the Quote.
- 5.2 Fundamentals may deliver the Services by itself or using its third party delivery partners, provided always that Fundamentals shall remain liable for the proper performance of the Services in accordance with these Terms and Conditions.
- 5.3 Subject to Customer's compliance with the provisions of Clause 7, Fundamentals shall use its reasonable endeavours to complete delivery of the Services within the agreed period of Outage. However, Customer acknowledges that on Site issues may arise beyond either party's reasonable expectations or control (particularly, but not limited to, where Technical Information is not accurate, complete and up to date prior to delivery of the Services). Customer agrees, therefore, that time shall not be of the essence in respect of Service delivery.
- 5.4 Where update of specified components of Technical Information is part of the Services, Fundamentals will provide the Customer with a hand marked-up copy prior to completion of the Services so that they reflect the configuration of equipment at the Site as at the point of completion of the Services. Customer agrees that Fundamentals may take a copy of the Drawings for the purpose of preparing formal updates for delivery after the completion of the Services.
- 5.5 Upon completion of the Services Fundamentals shall, where specified in the description of the Services, re-commission the equipment at the Site and demonstrate its correct operation to Customer and the Customer shall sign a Commissioning Certificate to confirm that the Services have been completed in accordance with the requirements set out in the Quote.
- 5.6 Fundamentals hereby warrants that the Services will be delivered with reasonable skill and care in accordance with the standards and processes set out in Fundamentals' quality management system, by personnel with the skills and experience appropriate to the work they are performing.
- 5.7 Customer hereby agrees that its sole remedy in respect of any non-conformance with the warranty in Clause 5.6 shall be that Fundamentals will re-perform or correct the Services in question in order to remedy the non-conformance and if in Fundamentals' reasonable opinion, it is unable to remedy such non-conformance then Fundamentals will refund the corresponding Services Fee, if paid. In order to benefit from this remedy, Customer must notify Fundamentals of the warranty claim within twelve (12) months of the completion of the Services or as soon as it becomes aware of the issue, whichever occurs first.

## **6 Acceptance of Services.**

- 6.1 Acceptance of Services shall occur or shall be deemed to have occurred as specified in the Quote, or if acceptance is not defined in the Quote, on whichever of the following trigger events occurs first:
  - a) If Customer's SAP has signed a Commissioning Certificate as described in Clause 5.5; or



- b) If Customer uses the Site in Customer's operational environment notwithstanding the absence of a signed Commissioning Certificate, Acceptance of the Services shall automatically be deemed to have occurred; or
- c) If Customer cancels the Safety Documentation raised to enable the delivery of the Services.

## **7 Customer's Co-operation.**

- 7.1 Customer shall provide co-operation and support to Fundamentals in Fundamentals' efforts to deliver the Products and the Services, including but not limited to:
  - a) making available such personnel, materials and equipment and access to premises as may be required to unload and take delivery of the Products into Customer's premises at the agreed date and time;
  - b) promptly making available Technical Information and such other information as Fundamentals may reasonably require to complete the Site survey and deliver the Services;
  - c) scheduling an appropriate period of Outage to enable Fundamentals to complete the Services and agreeing this with Fundamentals so that Fundamentals can schedule its resources accordingly;
  - d) providing appropriate Safety Documentation to enable Fundamentals to access the Site;
  - e) making available its SAP to provide Fundamentals with access to the Site when reasonably required for performing the Services, and to authorise and observe the commissioning of the Site and sign the Commissioning Certificate; and
  - f) those other Customer responsibilities set out in the relevant Quote.
- 7.2 Customer shall take reasonable precautions to ensure the health and safety of Fundamentals' staff, agents and subcontractors while they are on Customer's premises and Customer shall provide, at Customer's cost:
  - a) all training, authorisations and approvals that are necessary for Fundamentals' staff to be permitted on Site; and
  - b) all health and safety briefings that are required prior to Fundamentals' staff having access to the Site.
- 7.3 Customer agrees that Fundamentals' staff time in attending training, health and safety briefings and other activities required by Customer in connection with attending Site shall be considered a chargeable part of the Services.
- 7.4 Customer agrees that if Customer does not perform Customer's obligations under these Terms and Conditions and such non-performance affects Fundamentals' ability to perform:
  - a) Fundamentals shall not be considered in default under these Terms and Conditions to the extent so affected; and
  - b) Customer shall pay the Standing Fee for such time as Fundamentals is unable to perform the Services as a result of such failure.

## **8 Personnel.**

- 8.1 Without in any way restricting the right of an employee freely to accept employment and change employment if Fundamentals or Customer induces an employee of the other party who has been involved in the delivery or receipt of the Services to enter their service at any time while Services are being provided to Customer by Fundamentals or during a period of six months



thereafter then the hiring party shall pay to the other party an amount being equivalent to fifty percent (50%) of the employee's net annual salary such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of the other party's business.

## **9 Fees & Payment.**

- 9.1 Fundamentals may invoice the Product Prices in accordance with the Quote, or, if no Quote has been prepared, it may invoice the Product Prices in full upon delivery.
- 9.2 Delivery of Fundamentals Products shall be free of charge to any Delivery Address within the United Kingdom. For delivery of 3<sup>rd</sup> Party Products, and for delivery of Fundamentals Products to a Delivery Address outside the United Kingdom, Fundamentals shall invoice Customer for the cost of delivery as set out in the Quote or as otherwise agreed between the parties in writing.
- 9.3 Fundamentals may invoice the Services Fees in accordance with the Quote or, if invoicing terms are not specified in the Quote, upon Acceptance of the Services.
- 9.4 Fundamentals may invoice Cancellation Fees as soon as the notice of cancellation is received.
- 9.5 Fundamentals may invoice Standing Fees monthly in arrears.
- 9.6 Customer hereby agrees to pay Fundamentals' invoices within thirty (30) days of the date thereon.
- 9.7 Customer shall be liable for any other agreed upon fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable. For the avoidance of doubt, should Customer be required by any law or regulation to make any deduction on account of tax including but not limited to Withholding Tax or otherwise on any sum payable under any Contract the sum payable shall be increased by the amount of such tax to ensure that Fundamentals receives a sum equal to the amount to be paid under the appropriate Contract. Customer shall pay an interest charge on any undisputed sum outstanding to Fundamentals at the rate of 8% above Barclays Bank Sterling base rate as at the date of invoice. Customer shall notify Fundamentals in writing within 10 days of receipt of an invoice that the invoice is in dispute.
- 9.8 If payment of the Product Price, Services Fee or any part thereof is overdue then unless Customer has notified Fundamentals in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice Fundamentals may at Fundamentals' option:
  - a) suspend all deliveries of the Products and Services until such payment is made; or
  - b) treat such as a material breach and terminate the applicable Contract immediately by giving written notice to Customer. All sums invoiced under the Contract shall immediately become due and payable upon such termination.

## **10 Limitation of Liability.**

- 10.1 Nothing in these Terms and Conditions shall exclude or limit Fundamentals' liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Fundamentals' employees in connection with the performance of their duties hereunder or by defects in any Product supplied pursuant to these Terms and Conditions, or (iii) any other liability that cannot be excluded by law.
- 10.2 Fundamentals will indemnify Customer for direct damage to tangible property caused by the negligence of Fundamentals' employees in connection with the performance of their duties pursuant to these Terms and Conditions or by defects in any Product supplied pursuant to these Terms and Conditions. Fundamentals' total liability under this Clause shall be limited to £250,000 (two hundred and fifty thousand pounds) for any one event or series of connected events.

- 10.3 Subject to Clause 10.1, in no event will Fundamentals be liable under these Terms and Conditions for personal injury or death caused by use of the Products by persons not appropriately trained and qualified in their correct use and/or installation or by use otherwise than in accordance with the relevant health and safety and/or user training and/or Documentation.
- 10.4 Subject to Clause 10.1, in no event will Fundamentals be liable under these Terms and Conditions for any damages resulting from: (i) loss of use, (ii) lost profits, (iii) loss of anticipated savings, (iv) loss of revenue and/or (v) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.
- 10.5 Except as provided in Clause 10.1, in Clause 10.2 and in Clause 10.4 Fundamentals' maximum aggregate liability to Customer for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the aggregate of the sums paid and payable by Customer in respect of the Order that is the subject of Customer's claim.
- 10.6 Fundamentals hereby excludes all liability that it has not expressly accepted in these Terms and Conditions. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 10 "Fundamentals" includes Fundamentals' employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause in terms of the Contracts (Rights of Third Parties) Act 1999.
- 10.7 No action, regardless of form, arising out of transactions occurring under or contemplated under these Terms and Conditions may be brought by either party more than two (2) years after the cause of action has accrued.
- 10.8 Save as provided in Clause 10.9 Customer shall have no remedy in respect of any representation (whether written or oral) made to it upon which Customer relied in entering into these Terms and Conditions ("Misrepresentation") and Fundamentals shall have no liability to Customer other than pursuant to the express terms of these Terms and Conditions and the Contract.
- 10.9 Nothing in these Terms and Conditions shall exclude or limit Fundamentals' liability for any Misrepresentation made by Fundamentals fraudulently.

## **11 Confidentiality**

- 11.1 Each party undertakes that for a period of five (5) years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under the relevant Contract. In any event, each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of the relevant Contract, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this Clause 11.
- 11.2 The provisions of Clause 11.1 shall not apply to:
  - a) any information in the public domain otherwise than by breach of the relevant Contract;
  - b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party, as evidenced by written documents;
  - c) information lawfully obtained without restriction from a third party, as evidenced by written documents; and

- d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.

11.3 Fundamentals may publicise its involvement with Customer with Customer's prior written consent, such consent not to be unreasonably withheld or delayed.

## **12 Intellectual Property.**

12.1 Any and all patents, copyright, design rights, trade secrets, trademarks and any other intellectual property rights which subsist in the Products, the Quotes and the Documentation are the property of Fundamentals or its licensors.

12.2 Title and all intellectual property rights to any design, new software, new protocol, new design, new configuration, new interface, enhancement, update, derivative works or any other items that Fundamentals create shall remain vested in Fundamentals or its licensors. Any rights not expressly granted herein are reserved to Fundamentals.

12.3 Customer warrants that it is the owner or licensor of the Technical Information and hereby grants Fundamentals the right to use, copy and update the Technical Information solely for the purpose of performing the Services. Any amended or updated Technical Information prepared by Fundamentals in connection with the Services shall belong to Customer.

## **13 Assignment.**

Customer may not assign any Contract or otherwise transfer any rights or obligations under any Contract except with Fundamentals' prior written consent. Customer hereby agrees that in the event of the transfer of all or substantially all of Fundamentals' business or assets to a third party Fundamentals' rights and obligations hereunder may be novated to such third party who will be liable for performance of each Contract thereafter. Customer shall do all acts and execute such documents, at Fundamentals' expense, as may be required to perfect such novation.

## **14 Force Majeure.**

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under these Terms and Conditions shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

## **15 Notices.**

All notices made pursuant to any Contract must be made in writing. Any written notice to be given or made pursuant to the provisions of the Contract shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above and shall be marked for the attention of "The Directors". Unless otherwise provided in these Terms and Conditions, all notices shall be deemed as given on the day of their receipt by the receiving party.

## **16 Entire Agreement.**

The Contracts, incorporating these Terms and Conditions, constitute the entire agreement between the parties with respect to the subject matter thereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written.

## **17 Dispute Resolution, Law & Jurisdiction.**

17.1 In the event of any dispute arising under these Terms and Conditions or any Contract the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute

Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of these Terms and Conditions or any Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

17.2 Subject to the provisions of Clause 17.1 each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to these Terms and Conditions or any Contract.

17.3 Notwithstanding the provisions of Clause 17.1, nothing in these Terms and Conditions shall limit either party's right to seek injunctive relief.

17.4 These Terms and Conditions and all Contracts shall be governed by English law.

## **18 Survival.**

The following clauses shall continue to be in effect after the termination or expiration of these Terms and Conditions: 1, 3.6, 3.7, 3.8, 3.10, 3.11, 3.12, 3.13, 9, 10, 11, 15 - 19 inclusive.

## **19 General.**

If any provision of these Terms and Conditions is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions of these Terms and Conditions shall not be affected thereby, and that the remainder of these Terms and Conditions shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under these Terms and Conditions. These Terms and Conditions may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Fundamentals and Customer. A person who is not a party to these Terms and Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions except as explicitly provided by Clause 10.6 herein but this does not affect any right or remedy of a third party that exists or is available apart from the Act.

June 2016