

DIESEL 24 LIMITED - TERMS AND CONDITIONS OF FUEL CARD ACCOUNTS

PLEASE READ CAREFULLY: THESE TERMS AND CONDITIONS CREATE LEGALLY BINDING RIGHTS AND OBLIGATIONS. IN PARTICULAR, THE CUSTOMER'S ATTENTION IS DRAWN TO THE COMPANY'S RIGHT TO CHANGE THE PRICE OF FUEL AT ANY TIME AND FOR ANY REASON IN ITS DISCRETION PURSUANT TO CLAUSES 5.1 AND 5.2 AND TO THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN CLAUSES 3.2 AND 8

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires the following words and phrases shall have the following meanings:

"Account" the nominal account which the Company maintains which nominally tracks the amount of Fuel and Other Items obtained using Cards allocated to the Customer and sums received by way of payment;

"Application" the application for the Services, which can be made by completing an application form issued by the Company, on the Website or over the telephone;

"Business Day" a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

"Company" Diesel 24 Limited a company registered in Scotland with company number SC452459 whose registered office is situated at 100 – 106 Orbiston Street, Motherwell, Lanarkshire ML1 1QA and any successor or assign;

"Contract" has the meaning given to it in clause 2.1;

"Customer" the person or organisation identified in the Application;

"Card(s)" personalised plastic card(s) authorised by the Company which allows Users to obtain Fuel and/or Other Items at the Sites;

"Force Majeure" shall include any act of God, flood, fire, tempest, war, civil commotion, riot, shortage of materials, enactment of legislation by Government or municipal authorities, industrial disputes or any other cause (whether or not of the same nature as the foregoing) which is beyond the reasonable control of the party affected;

"Fuel" any form of fuel intended for use in a road vehicle which is purchased using your Card;

"Insolvency Event" if the Customer goes into liquidation (whether compulsory or voluntary) or a winding up petition is presented in respect of it (other than for the purpose of a solvent bona fide reconstruction) and such petition is not discharged within 7 days of its presentation or an order is made for the appointment of an administrator or documents are filed for the appointment of an administrator or notice of intention to appoint an administrator is given by the Customer, its directors or a qualifying floating charge holder; or a receiver or administrative receiver is appointed over the whole or any part of the assets of the Customer or it proposes to enter or makes any arrangement or composition with its creditors or makes an application to a court for the protection of its creditors in any way, is otherwise unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or is the subject of any similar event in any jurisdiction;

"Other Item(s)" any items which are available for purchase at any of the Sites using the Card other than Fuel;

"Per Card Fee" the per card fee as notified to and payable by the Customer from time to time (and which will be made available by the Company on request from the Customer);

"PIN" personal identity number;

"Price" the price for Fuel which is determined and charged by the Company pursuant to clause 5.1 (which will be made available to the Customer at any time on request, and in any event, confirmed in the Customer's invoices);

"Services" the Account and Card service(s) the Customer has chosen as detailed in these Terms and Conditions and the Website and as specified on the Application;

"Site(s)" any participating site specified by the Company from time to time on the Website (and the Company shall confirm the participating sites on request by the Customer);

"Terms and Conditions" these terms and conditions (as updated by the Company from time to time in accordance with clause 2.6);

"User" any agent, employee, contractor or officer of the Customer permitted by the Customer to use a Card; **"Website"** the website at www.diesel24.co.uk (and any website which replaces it);

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

1.3 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.

1.4 A reference to a party includes its personal representatives, successors or permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.6 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 or following those terms.

1.7 A reference to writing or written includes faxes and e-mails.

2. Terms & Conditions

2.1 The Company shall consider and approve or reject the Customer's Application in its absolute discretion.

2.2 The Services shall be provided by the Company to the Customer subject to these Terms and Conditions and to the exclusion of all other terms and conditions which the Customer purports to apply under any purchase order, acceptance of quotation or other document.

2.3 The Customer shall be deemed to have accepted these Terms and Conditions on the earlier to occur of:

(a) the Customer signing the reverse of the Card; or

(b) the Customer's first use of the Card (the "Contract")

2.4 The only circumstances in which the Customer will not be bound by these Terms and Conditions is if the Customer immediately returns the Card to the Company on receipt of the Card and before the Card is signed or used.

2.5 The Customer warrants, represents and undertakes to the Company that all information provided by the Customer including information submitted in connection with the Application shall be true, accurate and complete and the Customer shall immediately notify the Company if any information becomes untrue, inaccurate, incomplete or misleading. The Customer acknowledges that the Company has been induced to enter into the Contract in reliance on the information provided by the Customer.

2.6 The Customer may not apply for any Card other than on behalf of itself and the Customer confirms that the Application is in its own name and for its own benefit (and not for the benefit of any third party).

2.7 The Company may require the Customer to provide documentation which the Company requires in relation to the operation and evaluation of the Account from time to time including the Customer's latest set of accounts.

2.8 The Company may change these Terms and Conditions from time to time and it shall notify the Customer of any changes (save that changes to the Price shall be dealt with in accordance with clause 5.1). Use of the Card by the Customer after the date of such changes shall constitute the Customer's deemed acceptance of the changes (including changes to Price). In the event that the Customer does not wish to be bound by any changes to the Terms and Conditions (including changes to Price), the Customer shall return all Cards to the Company and terminate the Contract pursuant to clause 7.3.

3. Services

3.1 The Company shall provide the Services with reasonable care and skill, and in particular, the Company shall use reasonable endeavours to:

(a) ensure that information which it makes available in connection with the Card and the Services (including records of Fuel and Other Items obtained using the Cards) is accurate and complete but the Company provides no warranty or representation that Information made available by the Company is accurate, up-to-date or complete

(b) supply the Customer on request with the details of the balance of the Account.

3.2 The Customer acknowledges and agrees that the Fuel and Other Items are made available by third parties and that the Sites are operated by third parties, and as such, the Company is not responsible or liable in connection with the Fuel, Other Items or Sites (and any issues, damage or loss relating to any of them) and does not provide any warranty or guarantee that Fuel or Other Items will be available at any particular Site.

Any dispute between the Customer and any third party regarding Fuel, Other Items and/or the Sites (and any issues connected with them) is the sole responsibility of the Customer and the relevant third party.

3.3 The Company reserves the right in its absolute discretion without giving notice to the Customer to vary the Sites in any directory of Sites from time to time produced by the Company and also to exclude any one or more of the Sites.

3.4 The Customer acknowledges that the Company may share information relating to the Customer and/or User with each fuel services provider, their Affiliates and their successors and assigns for the purpose of monitoring and operating the Account.

3.5 Unless the Company expressly states otherwise in writing in connection with any particular promotions, the Card does not entitle the Customer or any User to participate in any promotions or special offers that may be available to the public from time to time.

4. Use of Card & Services

4.1 The Company shall, subject to the Customer observing and performing all its obligations under the Contract, make available to the Customer such number of Cards as the Customer shall reasonably require to enable the Customer to obtain Fuel and/or Other Items from the Sites. The Company may in its absolute discretion from time to time set limits as to the amount of Fuel and/or Other Items the Customer is permitted to obtain and may also charge for the non-use of such Cards or suspend/terminate Cards during periods of non-use (as determined in the Company's discretion in each case). The limits, charges and restrictions applicable to the Card shall be as stated on the Application and the Website, made available by the Company on request from the Customer and will also be notified by the Company to the Customer.

4.2 The Cards:

(a) shall only be used for the purchase of Fuel and Other Items at the Sites and for no other purpose whatsoever;

(b) shall at all times remain the property of the Company and shall be returned to the Company on demand and may be retained at any time by the Company or any person acting on the Company's behalf;

(c) shall not be used after its expiry date and the Customer shall, on the day after such expiry date, destroy the Card;

(d) are not transferable or assignable in any way and shall only be used by the Customer and/or its Users; and

(e) the operation of the Account/Cards may be suspended, cancelled or their use withdrawn by the Company in its absolute discretion at any time.

4.3 The Customer shall at all times ensure that the Cards are not damaged or defaced.

4.4 If a Card is lost or stolen or the Customer believes that the security of a Card is or may be compromised, the Customer shall immediately notify the Company of the same quoting the Card number (and if such notification is given orally it must be confirmed in writing as soon as is reasonably practicable and in any event within 3 days). In such event the Company shall cancel the Card so notified and shall issue a new Card with a different number. The Company may apply a fee for the provision of replacement Cards and the fee will be notified to the Customer before the replacement Cards are issued (and shall be determined in the Company's discretion).

4.5 The Customer shall immediately notify the Company if at any time the Customer suspends cancels or otherwise prohibits use of any Card by a User for any reason (and if such notification is given orally it shall be confirmed in writing as soon as is reasonably practicable and in any event within 3 days). Such notification shall include details of the User's name and Card number.

4.6 In the event that a Card is cancelled and/or withdrawn from use for any reason the Customer shall destroy the Card in question and shall, if requested to do so, confirm in writing to the Company that the Card has been destroyed.

4.7 In either of the cases envisaged by clause 4.4 or clause 4.5 the Customer shall be liable for all Fuel and Other Items obtained from a Site using such a Card until, in the case of automated Sites capable of accepting stop list updates via electronic data transfer 1 Business Day after the Customer's written notice under clause 4.4 or clause 4.5 in respect of that Card is received by the Company or in the case of manual sites, 3 Business Days after such notice is given to and confirmed by the Company provided such notice is given before 2.30 pm during the course of a Business Day and any notice given outside such hours shall be deemed given at 9.00am on the Business Day thereafter.

4.8 The Customer shall, if requested to do so, give the Company and any person acting on the Company's behalf all assistance and information as to the circumstances of the loss, theft or possible or actual security compromise of the Card, and shall take all reasonable steps to assist the Company to recover the Card. The Customer consents to the disclosure to third parties of such information as is relevant concerning the User or use of the Card in connection with such loss, theft or possible or actual security compromise of the Card.

4.9 The Company may from time to time issue a list of stopped or invalid Cards and the Company shall not be liable for any loss or damage sustained by the Company in the event of any Card appearing on a list of stopped or invalid Cards (for whatever reason and including any Card being placed on a list of stopped or invalid Cards by an error of the Company or its employees agents or otherwise) or if a Card is not accepted for any other reason.

4.10 The Customer shall ensure that Users:

(a) keep all PINs provided for the Cards secret at all times;

(b) present a valid Card prior to the commencement of the transaction at the Site;

(c) allow the Card to be checked (including verification of the signature or the vehicle registration number on a Card) by the Company or any person authorised including the Site operator and its employees, agents or other persons authorised by the Site operator;

(d) comply with the terms of this Contract insofar as they relate to the use of the Card.

(e) shall not tamper with or try to alter or interfere with the fuel monitoring device or fuel delivery equipment at any Site. In the event that there appears to be a defect or fault in such monitoring or fuel delivery equipment or in any Fuel, the Customer shall immediately report the same to the operator of the Site and notify the Company.

4.11 The Customer shall:

(a) ensure that all details relating to the Card and the Services are kept confidential at all times including the PIN for each Card and any user names and/or passwords which are provided to the Customer in connection with the Website and that in particular such details are not left at any Site or in any Vehicle;

(b) ensure that each PIN is used only by the relevant User and shall not be disclosed to any other person (and shall ensure that each User memorises the PIN and any document on which it was supplied is destroyed and is not recorded in any other format);

(c) notify the Company immediately if it becomes aware of or suspects any loss or unauthorised use of or disclosure of the PIN or other information relating to the Card;

(d) ensure that any Card issued to a given vehicle shall not be used after the day on which the Customer ceases to own the vehicle or withdraws such vehicle;

(e) ensure that it (and its Users) collect and retain any sales vouchers issued at the time Fuel and/or Other Items are purchased (and this shall be the sole responsibility of the Customer);

(f) notify the Company within 6 months of the relevant transaction in the event that the Customer wishes to query or challenge the transaction (and after the expiration of this period, all transactions shall be deemed to be valid and accepted by the Customer and any right to challenge such transactions shall be waived by the Customer).

4.12 The Company shall only provide replacement and/or reminder PINs once satisfactory validity checks have been completed.

4.13 A Fleet PIN shall be set and issued by Company to the Customer and is for Users' use with Fleet PIN Cards and the Customer hereby agrees and acknowledges that:

(a) having a Fleet PIN in lieu of individual Card PINs described does reduce PIN security and that the decision to adopt a Fleet PIN is the Customer's alone and is in no way (whether expressly, impliedly or otherwise) endorsed or recommended by the Company;

(b) the Company shall not be responsible for any loss or damage arising out of the Customer's decision to adopt a Fleet PIN;

(c) notwithstanding anything to the contrary in the Agreement, the Customer shall be liable for all Card

transactions arising as a result of any loss, theft or misuse (whether fraudulent or otherwise) of any Fleet PIN and/or any Fleet PIN Card issued to it (or to its employees, agents or contractors) by the Company:

- (i) where a PIN authorisation is issued, without limit, notwithstanding any notification of cancellation or of Card loss, misuse or fraud it provides to the Company under this Agreement;
- (ii) where no PIN authorisation is issued, without limit up to the point it provides the Company with notification of cancellation or of Card loss, misuse or fraud under the Agreement (but with no further liability thereafter);
- (iii) a reissue fee of £1.00 exclusive of VAT per card will be charged to the Customer at the point the Fleet PINS and Cards are provided (and any relation to any re-issued Cards or changes to the Fleet PIN at the Customer's request).

5. Price and Payment

- 5.1 The Customer expressly acknowledges and agrees that:
- (a) the Price may change at any time (including the methodology used by the Company to calculate the Price);
 - (b) different Prices may be applied at different Sites;
 - (c) the Price is dynamic and changes to the Price shall be applied by the Company in its discretion at any time and for any reason;
 - (d) the Company is not under any obligation to notify the Customer of changes to the Price (and shall only confirm the Price where requested to do so by the Customer or on the Customer's invoice following the purchase of Fuel); and
 - (e) the Price is subject to taxes, duties, levies, charges, surcharges, assessments and impositions which are imposed from time to time.
- 5.2 The Customer agrees that the Company's right to change the Price in its discretion is reasonable, understood and accepted by the Customer on the basis that:
- (a) the Customer has the right to request confirmation of the current Price at any time;
 - (b) the Price shall be confirmed on each invoice which the Customer receives from the Company;
 - (c) this Agreement is entered into on a non-exclusive basis and does not in any way restrict the Customer from utilising other fuelcards or alternative forms of fuel supply and payment; and
 - (d) the Customer may terminate this Agreement at any time at its discretion.
- 5.3 The Customer shall pay the Company the Per Card Fee for each Card issued. The Per Card Fee is non-refundable. The Company reserves the right to increase, decrease or withdraw the Per Card Fee in its absolute discretion at any time together with any other charges which the Company applies to the Customer's account from time to time and the Customer's use of the Card following the introduction of or any change to the Per Card Fee shall constitute the Customer's acceptance of the new/amended Per Card Fee.
- 5.4 The Company shall invoice the Customer at intervals notified by the Company to the Customer from time to time for all Fuel and Other Items obtained using the Card at the Price applicable at the time that such items were obtained using the Card and all other fees and payments due to the Company in connection with the Contract.
- 5.5 The Customer shall pay such invoices in full within the timeframe and in the manner notified by the Company to the Customer from time to time. All fees and payments referred to in these Terms and Conditions are exclusive of Value Added Tax which, where applicable, shall be added to the relevant charge. The Company may vary the invoicing and/or payment terms set out in this Contract by changing the day on which invoices are issued, the frequency at which invoices are issued and by varying the number of days within which the Customer is required to pay the invoices.
- 5.6 The Company may in its discretion:
- (a) issue the Customer with electronic invoices where legally permitted. For any Customer requesting to receive invoices via e-mail an electronic invoice or the provision of access to such a document will be sent or provided on behalf of the Company at regular intervals or at such times as are agreed by the Company. The Company reserves the right to charge for paper invoices if requested by the Customer; and
 - (b) apply an administration fee in respect of each Card at any time and in its absolute discretion. The Company shall set the administration fee in its absolute discretion and may increase, decrease or withdraw the administration fee at any time and the Customer's use of the Card following the introduction of the administration fee shall constitute the Customer's acceptance of the administration fee.
- 5.7 Where the Customer is required to make payment to the Company by direct debit, the Customer shall ensure that it has sufficient cleared funds available to enable the direct debit payment to be made.
- 5.8 No payments shall be deemed to have been received until the Company has received payment in full in cleared funds.
- 5.9 Where payment by direct debit falls due on a non-business day, the Company reserves the right to collect the payment on the business day preceding the non-business day.
- 5.10 The Company reserves the right in its absolute discretion to levy an administration fee, and to apply other charges and fees or to amend the Customer's account in any way that it determines based on the Customer's use and operation of its Account(s) (including as a result of any period of non-use in respect of the Cards, failure to adhere to minimum order commitments set out in the Application, to reflect any variation in the market or economy and any late payment or non-payment of amounts payable to the Customer). This shall include any pass-through of costs and expenses incurred by the Company in respect of the way in which the Customer operates its Account (including fees arising due to failed direct debit payments).
- 5.11 The Company may set a credit limit for the Customer, the level of which will be at the Company's discretion and the Company will notify the Customer of its assigned credit rating after receipt of the Application and the Customer shall operate its Account within the assigned credit limit. The Company may change the credit rating from time to time in its absolute discretion. Should the sums due to the Company exceed or look likely to exceed the Customer's assigned credit limit, the Company may suspend the Account with or without notice which means no more Fuel and/or Other Items may be obtained using the Cards until further notice.
- 5.12 The Customer shall make all payments due under the Contract without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise.
- 5.13 If the Customer fails to pay to the Company any sums due to the Company under the Contract:
- (a) the Customer will be liable to pay the full amount due together with interest from the due date for payment at the rate prescribed by law, accruing on a daily basis until payment is made, whether before or after judgment;
 - (b) the Company may terminate the contract for breach under clause 7.4(a);
 - (c) the Company may increase the Price and other fees and payments due under this Contract and/or reduce the payment period for invoices and/or require the payment of a deposit or the provision of additional security arrangements to cover the increased trade risk;
 - (d) the Company may suspend the Card(s) and/or Account and the Customer shall not be entitled to draw Fuel from the Sites and/or purchase Other Items or from otherwise use the Card;
 - (e) the Company may withdraw rebates or other allowances given to the Customer and such additional resulting sums shall become due to the Company immediately; and/or
 - (f) the Customer shall pay all of the Company's costs and expenses incurred in the course of recovering any overdue debt, including any credit card payments.
- 5.14 The Company may at any time require the Customer to provide a deposit as a condition of the Company agreeing to provide or to continue provision of the Services including in circumstances where the Company believes that there is a risk of the Customer experiencing an Insolvency Event or otherwise defaulting on its obligations pursuant to this Contract. In the event that the Customer breaches the Terms and Conditions, the Company shall be entitled to forfeit the deposit.

6. Data Protection

- 6.1 The Company will comply with the Data Protection Act 1998 in relation to any personal data which is provided to its Users' use of the Cards and the Customer confirms that it has the right and authority to permit the Company to process such personal data in the performance of the Services and in connection with the use of the Cards and the operation of the Account (including the supply of the Customer's/Users' personal data to third parties including its sub-contractors in order to perform the Services and credit reference agencies in order to determine the Customer's/Users' credit status).
- 6.2 The Company may, for the Customer's security, record telephone calls between the Company and the Customer. The Company will only do this to ensure that it is providing a high quality service.
- 6.3 The Customer will inform all Users that their personal data may be held, processed and used in the manner

set out in this clause 6 and secure their consent to such processing.

7. Termination

- 7.1 The Contract shall continue in full force and effect until terminated in accordance with this clause 7.
- 7.2 The Company shall be entitled to terminate the Contract at any time by notifying the Customer:
- 7.3 The Customer shall be entitled to terminate the Contract by giving at least 30 days notice in writing to the Company.
- 7.4 The Company shall be entitled to terminate the Contract immediately in whole or in part (or suspend the provision of the Services temporarily or indefinitely), if:
- (a) the Customer is in breach of any of its obligations under the Contract (regardless of whether such breach is trivial, material or repudiatory);
 - (b) there is a change of control of the Customer (within the meaning section 1124 of the Corporation Tax Act 2010);
 - (c) the Customer suffers an Insolvency Event;
 - (d) the Company, acting reasonably, believes the Company is at risk of suffering an Insolvency Event; or
 - (e) the Customer fails to comply with a request made by the Company under clauses 2.7, 4.8 or 5.13.
- 7.5 Upon termination of the Contract for whatever reason the Customer shall immediately cease use of the Cards, return each Card to the Company and all sums due to the Company shall become immediately due and payable.
- 7.6 Termination of the Contract shall be without prejudice to the rights and remedies which have accrued as at termination.
- 7.7 Clauses 1, 4.2(c), 4.8, 4.11(f), 7.5, 7.6, 8, 9.2, 9.3, 9.6, 9.8, 9.10 and 9.12 shall survive termination and shall continue in full force and effect.

8. Limitation of Liability and Indemnity

- 8.1 Subject to clause 8.4, all conditions, warranties or other terms which might be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care and statements and representations made by the Company's employees and/or agents shall not be binding upon the Company and the Customer is advised to ask for such statements and representations to be confirmed in writing by the Company. In addition, the Company makes no warranty that Sites, Fuel and/or Other Items will be available nor that Sites will accept or honour the Card or that Account data will be accurate, up-to-date or complete.
- 8.2 Subject to clause 8.4, the Company shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever arising, including:
- (a) loss of profits;
 - (b) loss of anticipated savings;
 - (c) loss of business opportunity or contracts;
 - (d) damage to goodwill or reputation;
 - (e) third party claims; and/or
 - (f) loss of production.
- 8.3 Subject to clauses 8.2 and 8.4, the total liability of the Company, whether in contract, tort (including negligence) or otherwise howsoever arising and whether in connection with the Contract or any collateral contract shall in no circumstances exceed a sum equal to £150 in aggregate.
- 8.4 The exclusions in the Contract shall apply to the fullest extent permissible at law, but the Company does not exclude liability for death or personal injury caused by the negligence of the Company, its officers, employees, contractors or agents, for fraud or fraudulent misrepresentation, for breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982, or for any other liability which may not be excluded by law.
- 8.5 The Customer shall indemnify the Company in full and on demand against all loss damage action claims expenses and costs including but not limited to financial loss and the fees of the Company's legal advisers whatsoever and howsoever arising directly or indirectly out of or in connection with:
- (a) any breach by the Customer of its obligations contained herein (including late payment of the Company's fees and charges);
 - (b) use of a Card after the Customer has confirmed such Card as destroyed, stolen or damaged, subject to clause 4.7;
 - (c) any claim made by any third party against the Company as a result of the acts or omissions of the Customer or any User including the owner or operator of a Site; and/or
 - (d) the use of a Card or the Website by anyone other than a User.
- 8.6 All risk of loss relating to each Card shall (except as otherwise expressly stated in these Conditions) pass to and shall be borne by the Customer from the date of dispatch of the Card by the Company to the Customer.

9. General

- 9.1 Neither party shall be under liability whatsoever to the other for failure or delay in the performance of any of its obligations hereunder if and for so long as such performance becomes impracticable by reason of Force Majeure, except that the Customer shall still be liable to pay any sums which have become payable by the Customer under the Contract. The party which is prevented from performing its obligations hereunder by Force Majeure shall advise the other party as soon as practicable of its inability to meet its obligations specifying the cause of the force majeure and shall advise the other party when such difficulty ceases.
- 9.2 Any dispute relating to this Contract shall be notified in writing to the Company within 28 days from the earlier of the date of the statement or invoice to which the dispute relates or the date on which the Customer became aware (or ought to have been aware) of the dispute. Thereafter, all statements and invoices shall be deemed to be final and conclusive and the Customer waives its right to dispute such statements and invoices.
- 9.3 Each right or remedy of the parties under the Contract shall not affect any other right or remedy of the parties whether under the Contract, at law, in equity or otherwise.
- 9.4 Any purported waiver by the Company of any breach of any of the conditions herein shall not be deemed a waiver unless and until confirmed by the Company in writing and such purported or confirmed waiver shall not be construed as a waiver of any earlier or later default of a like nature.
- 9.5 In the event of the invalidity or unenforceability of any part or provision of the Contract such invalidity or unenforceability shall be deemed omitted or as the case may be reduced in size or duration to the extent necessary to render such provision or part enforceable but it shall not affect the validity or enforceability of any other part or provision which shall remain in full force and effect.
- 9.6 Nothing in the Contract shall be deemed to create a partnership or relationship of agent and principal or relationship of employer and employee between the Company and the Customer.
- 9.7 Where the Customer consists of two or more persons acting in partnership or otherwise such expression throughout shall mean and include such two or more persons and each or any of them and all obligations and liability on the part of such a Customer shall be joint and several.
- 9.8 Any notice served hereunder pursuant to the Contract shall be in writing and shall be deemed to have been properly served on the addressee if delivered by hand sent by facsimile transmission or sent by pre-paid first class ordinary or registered or recorded delivery post to the addressee at its address set out above in the case of the Company and set out in the Application in the case of the Customer or at such other address as shall have later been notified to the sender in writing and such notice shall, subject to clause 4.7, be deemed to have been given at the time of delivery if delivered by hand or facsimile transmission or 48 hours after despatch of it posted as aforesaid.
- 9.9 The Company may assign, transfer, charge or deal with the Contract or any part of it. The Customer may not assign, transfer, charge or deal with the Contract or any part of it.
- 9.10 A person who is not a party to the Contract shall not have any rights under or in connection with it pursuant to the Contract (Rights of Third Parties Act) 1999.
- 9.11 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.
- 9.12 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.