

# FUNDAMENTALS LTD TERMS AND CONDITIONS FOR PURCHASE 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 purchase its Products and Services (as defined below) from Seller (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 Product of the Seller.

"Acceptance" means Fundamentals' 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 2.8.

"Commissioning Certificate" means such documentation as agreed between the End 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 specification, the Price List, the contents of each Quote, the Order, the Documentation and other technical details of each Product.

"Contract" means these Terms and Conditions together with the Order

"End Customer" means the customer of Fundamentals who is the recipient of Goods or Services from Fundamentals that is the subject of the Order.

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

"Delivery Terms" means the INCOTERMS specified in the relevant Order or (if none has been prepared) it shall be Carriage Paid To CPT for any Delivery Address within the United Kingdom, or Carriage Paid To CPT to Port 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 Seller 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.

"Goods"	means the goods (including any instalment, component, part of or raw materials used in such goods) described in the Order
"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 Goods and/or Services, issued by Fundamentals and referencing either the Price List or a Quote, and which is subject to these Terms and Conditions to the exclusion of all others.
"Outage"	means a period of time which is notified to Seller as being scheduled and authorised by End Customer's SAP.
"Price List"	means Sellers' then-current price list for the Products and standard Services, as made available to Fundamentals on its website, or in electronic or paper form.
"Product"	means a Seller Product or a 3 <sup>rd</sup> Party Product as applicable, to be supplied to Fundamentals 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 Seller's written quotation for the provision of Products and/or Services that specifies: <ul style="list-style-type: none"> <li>a) a description of any Products to be supplied, together with the applicable Product Prices;</li> <li>b) a description of any Services to be supplied, together with the applicable Services Fees (or the mechanism for calculating them);</li> <li>c) details of the Site (for Services) and/or the Delivery Address and Delivery Terms (for Products);</li> <li>d) the approximate delivery timescales for Products;</li> <li>e) the planned dates during which any Services will be supplied;</li> <li>f) any assumptions and specific obligations for Seller and Fundamentals</li> </ul>
"Safety Documentation"	means the documentation issued by the End Customer to permit the Services to commence at a Site.
"SAP"	means End Customer's Senior Authorised Person, an individual authorised by End 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 Seller as described in an Order.
"Services Fees"	means the price payable by Fundamentals for the Services, as set out in an Order.
"Site"	means the physical location at which Fundamentals requests Seller to deliver the Service, as set out in an Order or otherwise agreed in writing between the parties.

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

“Standing Fee” means the fee payable for time Seller was scheduled to deliver Services but was unable to do so because of unsafe weather conditions or as a result of End 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. Standing Fees will only apply in the case that End Customer has agreed this with Fundamentals and only if explicitly specified as applicable in the Order along with the basis on which they will be charged.

“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 Seller, Seller may request that Fundamentals arrange access to the Site in order to conduct a Site survey. At its sole discretion Fundamentals shall make reasonable endeavours to agree this with End Customer and this may include:
  - a) endeavour to obtain for Seller Technical Information relevant to the Site and the proposed Services prior to commencement of the Site survey; and
  - b) endeavour to arrange that End Customer’s SAP shall be available at a mutually agreed for the Site survey to occur, in order to grant access to Seller.
- 2.2 The Order constitutes an offer by Fundamentals to purchase the Goods and/or acquire the Services subject to these Terms and Conditions
- 2.3 A binding Contract for the purchase by Fundamentals and the supply by Seller of the Products in accordance with these Terms and Conditions may be created by Fundamentals’ written acceptance of Seller’s Quote as evidenced by Fundamentals issue of a valid Order and one of:
  - a) the commencement of any work by the Seller or
  - b) the delivery of any Goods or the performance of any Services by or on behalf of the Seller
  - c) Seller’s acknowledgement of the Order referencing these Terms and Conditions
- 2.4 These Terms and Conditions shall apply to each Contract to the exclusion of any other terms and conditions on which any quotation has been given to Fundamentals or subject to which the Order is accepted or purported to be accepted by the Seller. If any future contract is made with the Seller without reference to these Terms and Conditions, such contract shall be deemed to be subject to these Terms and Conditions.
- 2.5 No variation to the Order or these Terms and Conditions shall be binding unless agreed in writing by the authorised representative of Fundamentals.
- 2.6 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 including any Special Conditions
  - b) These Terms and Conditions
  - c) The Quote

- 2.7 Fundamentals may request additions or amendments to an Order for Products. In response to such requests Seller shall advise Fundamentals as to whether such request can be met, and the parties shall agree any changes to the Products specified in the Order, 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 Seller from the date of such agreement.
- 2.8 If specified in the Order Fundamentals may cancel the Order or part of the Order prior to delivery, subject to payment of any Cancellation Fee specified in the Order.
- 2.9 With Fundamentals prior written agreement Seller may substitute alternative Products that meet or exceed the specifications set out in the Documentation.
- 2.10 Fundamentals may request additions or amendments to an Order. If a material change has occurred at the Site between the time of the Site survey and delivery of Services, Fundamentals may also deem this to be an addition or amendment to the Order.
- 2.11 In this event Seller shall advise Fundamentals as to whether such request can be met, and the parties shall agree any changes to the Services specified in the Order, including the specification for the additional or changed Services, price and timescales for delivery. Such changes may be agreed by email, fax or letter and shall be binding upon both Fundamentals and Seller from the date of such agreement.

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

- 3.1 Seller shall deliver the Goods 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 Seller shall use its reasonable endeavours to meet the timescales for delivery set out in the Order.
- 3.3 In the event that the Delivery Address is outside the UK, Fundamentals and Seller shall agree the responsibility for complying with any licences, permits, legislation or regulations governing the importing of Products into the Delivery Address country and this shall be done prior to issuing the Order. Fundamentals shall not be liable for any delays in delivery caused by delays in obtaining, or inability to obtain, such licences or permits.
- 3.4 Seller hereby warrants that for a period of five (5) years from delivery the 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, Seller 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> Party Products will be free of defects in materials and workmanship and will comply with a reasonable interpretation of their Documentation
- 3.6 Fundamentals hereby agrees that Fundamentals' sole remedy in respect of any non-conformance with the warranty in Clauses 3.4 and 3.5 is that at Fundamentals' sole discretion, Fundamentals shall return the defective Product to Seller at Fundamentals' cost, and Seller shall procure its repair or replacement and shall return the repaired or replacement Product to Fundamentals at Seller's cost OR Seller will repair the Product on Site at Seller's cost OR that Seller will refund the full cost paid by Fundamentals
- 3.7 If Seller procures the replacement of a Product, the replacement Product shall in any event be covered by the warranty in Clauses 3.4 and 3.5 for the remainder of the warranty period applicable to the original Product or for twelve (12) months, whichever is the longer.

- 3.8 Risk in the Products shall pass to Fundamentals upon delivery. However, title in the Products will not pass to Fundamentals until Seller has received payment in full of all sums due to Seller in respect of the Products.
- 3.9 Before title has passed to Fundamentals and without prejudice to any of Seller's other rights, if Seller terminates a Contract in accordance with Clause 9.8b) or if an Insolvency Event occurs, or Seller acting reasonably believes that such event may occur, Seller may repossess and/or sell some or all of the Products at any time and Seller's employees or agents may enter upon any or all of Fundamentals' 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.
- 3.10 For the avoidance of doubt the provisions of Clause 3.9 shall permit Seller 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 If an Acceptance process is set out in the applicable Order or is otherwise agreed in writing by the parties, Seller shall provide all assistance reasonably requested by Fundamentals for the purposes of testing in accordance with the Order or other written agreement.
- 4.2 If, following testing pursuant to 4.1, Fundamentals reasonably determines that such Product does not conform with a reasonable interpretation of the Documentation and Fundamentals notifies Seller of the same (together with reasonable details of such non-conformity), Seller shall use its reasonable endeavours to promptly remedy such failure to conform.
- 4.3 Fundamentals shall re-test any non-conforming function of the Product within fourteen (14) days of the delivery to Fundamentals of a fix for such non-conformance and shall notify Seller 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.
- 4.4 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, Fundamentals reasonably determines that such Product fully conforms with the applicable Documentation, Fundamentals shall notify Seller of the same and such notification shall constitute Acceptance of such Product.
  - b) If Fundamentals has not notified Seller of any non-conformity of the Product within fourteen (14) days of delivery, Acceptance shall automatically be deemed to have occurred.
  - c) If End Customer uses the Product in End Customer's operational environment notwithstanding any non-conformities notified to Seller in accordance with Clause 4.2, Acceptance shall automatically be deemed to have occurred.
- 4.5 In the event that all non-conformities notified to Seller during the period of testing set out in Clause 4.1 have been remedied and Fundamentals has not notified Seller in accordance with Clause 4.3 of the continued existence of any such non-conformities, Acceptance shall automatically be deemed to have occurred.

#### **5 Sale of Services**

- 5.1 Seller shall deliver the Services at the Site, in accordance with the Order

- 5.2 Seller may deliver the Services by itself or using its third-party delivery partners, provided always that Seller shall remain liable for the proper performance of the Services in accordance with these Terms and Conditions. Seller shall not use partners or subcontractors without the prior written consent of Fundamentals, such consent not to be unreasonably withheld.
- 5.3 Where update of specified components of Technical Information is part of the Services, Seller will provide the Fundamentals 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. Fundamentals agrees that Seller may take a copy of the Drawings for the purpose of preparing formal updates for delivery after the completion of the Services.
- 5.4 Upon completion of the Services Seller shall, where specified in the description of the Services, re-commission the equipment at the Site and demonstrate its correct operation to Fundamentals and if applicable the End Customer and if applicable, Fundamentals will request that the End Customer shall issue a Commissioning Certificate to confirm that the Services have been completed in accordance with the requirements set out in the Order.
- 5.5 Seller hereby warrants that the Services will be delivered with reasonable skill and care in accordance with the standards and processes set out in Fundamentals' specification or if not specified the reasonable standards and processes applicable to the industry, by personnel with the skills and experience appropriate to the work they are performing.
- 5.6 Fundamentals hereby agrees that its sole remedy in respect of any non-conformance with the warranty in Clause 5.5 shall be that Seller will re-perform or correct the Services in question in order to remedy the non-conformance. At Fundamentals' sole, reasonable opinion, if Seller is unable to remedy such non-conformance then Seller will refund the corresponding Services Fee, if paid. In order to benefit from this remedy, Fundamentals must notify Seller 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 Order, or if acceptance is not defined in the Order, on whichever of the following trigger events occurs first:
- a) if End Customer's SAP has issued a Commissioning Certificate as described in Clause 5.4; or
  - b) if End Customer uses the Site in End 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 End Customer cancels the Safety Documentation raised to enable the delivery of the Services; or
  - d) on Fundamentals written acceptance of the Services

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

- 7.1 Where Products or Services are to be provided to an End Customer, Seller may request and Fundamentals at its discretion may contact End Customer to request co-operation and support to Fundamentals and Seller in their 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 Seller or Fundamentals may reasonably require to complete the Site survey and deliver the Services;
  - c) scheduling an appropriate period of Outage to enable Seller or Fundamentals to complete the Services and agreeing this with Fundamentals so that Fundamentals can provide information to Seller to schedule its resources accordingly;
  - d) providing appropriate Safety Documentation to enable Seller or Fundamentals to access the Site;
  - e) making available its SAP to provide Seller or Fundamentals with access to the Site when reasonably required for performing the Services, and to authorise and observe the commissioning of the Site and issue the Commissioning Certificate; and
  - f) those other End Customer responsibilities set out in the relevant Order.
- 7.2 Seller shall take reasonable precautions to ensure the health and safety of End Customer, Fundamentals' and Seller's staff, agents and subcontractors while they are on End Customer's premises and Seller shall at its own cost comply with:
- a) all training, authorisations and approvals that are necessary for Seller's staff to be permitted on Site; and
  - b) all health and safety briefings that are required prior to Seller's 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.

## **8 Personnel.**

- 8.1 Without in any way restricting the right of an employee freely to accept employment and change employment if Fundamentals or Seller 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 Fundamentals by Seller 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 Seller may invoice the Product Prices in accordance with the Order, or, if not specified in the Order it may invoice the Product Prices in full upon delivery.
- 9.2 Delivery of Seller's 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 Seller's Products to a Delivery Address outside the United Kingdom, Seller shall invoice Fundamentals for the cost of delivery as set out in the Order or as otherwise agreed between the parties in writing.
- 9.3 Seller may invoice the Services Fees in accordance with the Order or, if invoicing terms are not specified in the Order, upon Acceptance of the Services.

- 9.4 Seller may invoice Cancellation Fees, if applicable, as soon as the notice of cancellation is received.
- 9.5 Seller may invoice Standing Fees if applicable monthly in arrears.
- 9.6 Fundamentals hereby agrees to pay Sellers' invoices within the period stated in the relevant Order, or if none is specified within fourteen (14) days of receipt of monies by Fundamentals from End Customer, or if no End Customer within thirty (30) days of the end of the month thereon.
- 9.7 Fundamentals and Seller shall pay an interest charge on any undisputed sum outstanding to each other at the rate of 8% above Barclays Bank Sterling base rate as at the date of invoice. Fundamentals and Seller will notify the other party 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 Fundamentals has notified Seller in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice Seller may at Seller's option:
- a) suspend all deliveries of the Products and Services until such payment is made;
  - b) terminate the Contract.

## **10 Limitation of Liability.**

- 10.1 Nothing in these Terms and Conditions shall exclude or limit Seller's liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Seller's 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 Seller will indemnify Fundamentals for direct damage to tangible property caused by the negligence of Seller's 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. Seller's 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 either party 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.
- 10.4 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.
- 10.5 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.
- 10.6 Save as provided in Clause 10.7 Seller shall have no remedy in respect of any representation (whether written or oral) made to it upon which Seller relied in entering into these Terms and Conditions ("Misrepresentation") and Fundamentals shall have no liability to Seller other than pursuant to the express terms of these Terms and Conditions and the Contract.



10.7 Nothing in these Terms and Conditions shall exclude or limit Seller's liability for any Misrepresentation made by Seller 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 Either party may publicise its involvement with the other party with the other party's prior written consent, such consent not to be unreasonably withheld or delayed.

11.4 Seller shall not publicise its involvement with End Customer in connection with this Contract without Fundamentals prior written consent, such consent to be subject to Fundamentals obtaining such consent from End Customer. The application to End Customer for such consent shall be at Fundamentals sole discretion.

## **12 Intellectual Property.**

12.1 Title and all intellectual property rights which subsist in the Products, the Orders and the Documentation that were created by Seller prior to or outside the Contract (the "Background IPR") remains the property of Seller. Seller hereby grants Fundamentals an irrevocable non-exclusive royalty free licence to use (and permit its agents and contractors to use) such Background IPR for all purposes associated with the Contract, Fundamentals will be entitled to assign such licence.

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 Seller creates as part of the Contract shall remain vested in Fundamentals or its licensors. Any rights not expressly granted herein are reserved to Fundamentals.

12.3 Seller 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 this Contract. Any amended or updated Technical Information prepared by Seller in connection with the Services shall belong to Fundamentals.

- 12.4 Where any intellectual property rights required for the Contract are owned by a third party ("Third Party IPR"), the Seller will procure that the third party grants to Fundamentals an irrevocable non-exclusive royalty free licence to use (and permit its agents and contractors to use) such Third Party IPR for all purposes associated with the Contract, The Seller is responsible for the payment of all fees, royalties and other charges that may be payable in connection with Third Party IPR.

### **13 Assignment.**

Seller may not assign any Contract or otherwise transfer any rights or obligations under any Contract except with Fundamentals' prior written consent. Seller 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. Seller 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, 3.8, 3.9, 3.10, 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 10.4 herein but this does not affect any right or remedy of a third party that exists or is available apart from the Act.

June 2025