



SPS Terms & Conditions

1. DEFINITIONS

The definitions and rules of interpretation in this clause apply in these terms and conditions.

Assignment Instructions or SOP's: means the assignment instructions to be agreed between the Parties before the Services are provided at the Premises and which detail the specific services and method statements to be used by the Supplier in delivering the Services, or such other assignment instructions as the Parties shall enter into from time to time in writing and, once agreed between them, shall form part of the Contract.

Customer: means the company, partnership, business, individual or any other legal entity that the Supplier has agreed to provide the Services to pursuant to the Quotation.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Customer's Manager: the Customer's manager for the Services, appointed in accordance with clause 5.1.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts), the Suppliers Personnel, personal protective equipment and uniforms.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Dog Handling Staff: means the Supplier's dog handling staff that have (with their dog) passed the British Institute of Professional Dog Trainers basic security course.

Finish Date: means the date on which the Supplier shall cease to deliver the Services as stated in the Quotation or such other date as shall be agreed between the Parties.

The Parties: means each of the Supplier and the Customer.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract, including computer programs, data, reports and specifications.

Premises: means the Customer's premises (or such other premises as the Customer shall notify the Supplier) as detailed in the Quotation from which the Services are to provided.



Private Security Industry Act 2001: is the act that provides statutory regulation for private security industry and details the SIA licensing requirements and the establishment and constitution of the SIA.

Quotation: means the Quotation (or any amended quotation agreed between the Parties) given to the Customer by the Supplier and which the Customer has accepted in accordance with the terms of clause 3.2 and which details the Services to be provided by the Supplier.

Services: the services detailed in the Quotation and to be provided by the Supplier subject to these terms and conditions together with any other services which the Supplier provides or agrees to provide to the Customer and to be delivered in accordance with the Assignment Instructions.

SIA: means the Security Industry Authority which has been set up to manage the licensing of the private security industry as set out in the Private Security Industry Act 2001.

SIA Licensed Staff: means the Supplier's private security operatives who have been correctly licensed by the SIA to carry out security services pursuant to the Private Security Industry Act 2001 and who have been screened and vetted to BS 7858:2006 standards.

Site Survey: means the site survey that the Supplier will carry out (at its sole discretion) in order to allow it to produce and agree the Assignment Instructions and in order to carry out risk and threat assessments.

Social Responsibility Policy: means the social responsibility policy of the Supplier from time to time which the Supplier shall take into consideration when producing and agreeing the Assignment Instructions.

Standard Hourly Charge: for the purposes of clause 5.7 the Supplier's Standard Hourly Charge shall be £ .

Start Date: means the date on which the Supplier shall deliver the Services as stated in the Quotation or such other date as shall be agreed between the Parties.

Supplier: means S.P.S. Specialist Protection Services Limited incorporated and registered in England and Wales with company number 03731647 whose registered office is at The BTC, Bessemer Drive, Stevenage, Herts SG1 2DX.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the Parties under which title passes to the Customer.

Supplier's Manager: the Supplier's manager for the Services appointed under clause 4.2.

Supplier's Personnel: means the supplier's employees, agents, sub-contractors and consultants



from time to time and such definition shall include SIA Licensed Staff and Dog Handling Staff.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

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

1.2 Words in the singular shall include the plural and vice versa.

1.3 A reference to writing or written includes faxes but not e-mail.

2. COMMENCEMENT AND DURATION

2.1 Subject to earlier termination of the Services pursuant to clause 13 the Supplier shall provide the Services to the Customer from the Start Date and at the times stated in the Quotation and shall continue to provide the Services until the Finish Date.

2.2 The Supplier shall provide the Services to the Customer on these terms and conditions.

3. THE SERVICES

3.1 The Services shall be agreed in the following manner:

(a) the Customer shall provide the Supplier with a request for services, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, number of Supplier's Personnel to be provided, any key dates and working hours and details of any Deliverables information in relation to the Premises from which the Services are to be provided and such other information as the Supplier may request to allow the Supplier to prepare a quotation for the services to be provided; and

(b) the Supplier shall have the right (and the Customer shall cooperate fully with the Supplier in granting access to the Premises and the Customer Manager) to conduct a Site Survey in order to allow the Supplier to give an accurate quotation in relation to the Services;

3.2 Once the Supplier has given the Quotation to the Customer it must be accepted by the Customer giving written notice to the Supplier within 7 days of the Start Date that they wish to accept the Quotation subject to these terms and conditions and once the Quotation has been accepted by the Customer the parties accept that the Quotation shall become a binding contract between them (the "Contract").

3.3 Once the Services have been agreed and signed in accordance with clause 3.2, no amendment shall be made to it except in accordance with clause 6 and clause 15.

3.4 The Services shall be delivered in accordance with the Assignment Instructions.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to provide and deliver the Services with all due care and attention in accordance with its then current Assignment Instructions, and to deliver the Supplier's Personnel and the Deliverables to the Customer.

4.2 The Supplier shall appoint the Supplier's Manager who shall have authority contractually to bind the Supplier on all matters relating to the Services. The Supplier may replace the Supplier's Manager



from time to time where reasonably necessary in the interests of the Supplier's business.

4.3 The Supplier, its employees, agents, consultants and sub-contractors shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's Premises and that have been communicated to it under clause 5.1(e), provided that it shall not be liable under these terms and conditions if, as a result of such observation, it is in breach of any of its obligations under these terms and conditions or the Contract.

4.4 The Supplier shall replace any of its employees, agents, consultants or sub-contractors engaged in the provision of the Services as soon as reasonably practicable in the event that the Customer asks for the removal and replacement of that employee provided that such request by the Customer shall not be made unreasonably nor vexatiously and that the Customer shall allow the Supplier to carry out all investigations (with the full support of the Customer) as the Supplier reasonably believes to be necessary in the circumstances in order for the Supplier to make an informed decision.

4.5 The Supplier shall provide the Customer with a copy of the Curriculum Vitae of each of the Supplier's Personnel engaged in the provision of the Services if the Customer has reasonable cause to request this from the Supplier.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager in relation to the Services, who shall have the authority contractually to bind the Customer on matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's Premises, office accommodation, data and other facilities as reasonably required by the Supplier or any of them in providing the Services;
- (c) provide, in a timely manner such other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant Premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its Premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this clause 5.1(d);
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's Premises;
- (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment and the use of the Customer's Equipment in relation to the Supplier's Equipment insofar as such licences, consents and legislation relate to the Customer's business, Premises, staff and equipment, in all cases before the date on which the Services are to start;



- (h) keep, maintain and insure the Supplier's Equipment in accordance with the Supplier's instructions as notified by the Supplier's Manager from time to time and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;
- (i) not cause or permit any third party to make use of or benefit from the Services in any way without the prior written consent of the Supplier's Manager and in the event that the Customer breaches the terms of this sub-clause the Customer must indemnify the Supplier against all and any claims made by that third party against the Supplier regardless of the cause of action and arising out of or in connection with the provision of Services to any property which is not the Customer's Premises; and
- (j) to comply in all other respects with the Customer's obligations under the Services.

5.2 If the Supplier's performance of its obligations under these terms and conditions or the Contract are prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the Start Date to the expiry of six (6) months after the Finish Date (or earlier termination pursuant to clause 13) solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, or Supplier Personnel, consultants or subcontractors of the Supplier in the provision of the Services or any former key employee of the Supplier who had been employed by the Supplier during the preceding six (6) months from the Start Date.

5.4 Any consent given by the Supplier in accordance with clause 5.3 shall be subject to the Customer paying to the Supplier a sum equivalent to four (4) weeks time charges based on a sixty (60) hour working week and at the Supplier's Standard Hourly Charge.

6. REVIEW OF SERVICES

6.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Supplier's charges arising from the change; and
- (c) any other impact of the change on these terms and conditions.

6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the Parties have agreed the necessary variations to its charges, the Services and any other relevant terms of these terms and conditions or the Contract to take account of the change and provided these terms and conditions and the Contract have been varied in accordance with clause 15 and at that time the Parties shall agree and sign new Assignment Instructions.

6.4 Notwithstanding clause 6.3, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least one (1) months' notice of any change.



7. CHARGES AND PAYMENT

7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Quotation (the "Charges").

7.2 The Customer accepts that additional charges will be levied in relation to:

- (a) services requested by the Customer outside of the Services agreed in the Quotation;
- (b) overtime charges which will be charged at [x2] the agreed hourly rate; and
- (c) official public and bank holidays.

7.3 All additional services requested by the Customer and provided by the Supplier outside of the agreed Services shall be charged separately and must be agreed between the Parties in accordance with these terms and conditions and shall be paid by the Customer in accordance with this clause 7.

7.4 All charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.

7.5 The Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services and the Supplier shall use such time sheets to calculate the charges.

7.6 The Supplier shall invoice the Customer for the Services monthly in arrears or on the Finish Date (which ever is the earlier) and the Customer shall pay each invoice in full and in cleared funds (without set off) within 30 days of the invoice date.

7.7 The Parties agree that the Supplier may review and increase its Charges subject to clause 7.8 and on giving the Customer written notice of any such increase one (1) month before the proposed date of that increase.

7.8 If the Supplier's proposed increase, pursuant to clause 7.7, is not acceptable to the Customer (acting reasonably in all circumstances) then the Customer may, within 15 days of such notice being received or deemed to have been received in accordance with clause 22, give notice of its intention to terminate the Contract immediately prior to the proposed date of that increase and the Supplier shall have the right to either:

- (a) accept the Customer's notice to terminate the Contract; or to
- (b) withdraw its notice to increase its charges

and in the event that the Supplier withdraws its notice given to the Customer under clause 7.7 the Contract shall continue on these terms and at the charges previously agreed between the Parties.

7.9 A cancellation fee of 60% of the Charges shall be payable in the event that the Customer cancels the Contract at any time up to the Start Date and the Customer shall be liable to pay all of the Charges if the Contract is cancelled following commencement of the Services.

7.10 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and
- (b) suspend all Services until payment has been made in full.

7.11 Time for payment shall be of the essence of the Contract.



7.12 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision and without any right for the Customer to set off any actual or contingent liability of the Supplier to the Customer.

7.13 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

8.1 Save as otherwise agreed or disclosures required by law, court order or any other regulatory authority, both Parties agree to keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by either party to the other or its employees, agents, consultants or subcontractors and any other confidential information concerning either Parties business or its products which the other party may obtain during the course of the Contract.

8.2 Neither party shall use any such information for any purpose other than to perform its obligations under the Contract.

8.3 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's Manager's written instructions or authorisation.

9. INSURANCE

9.1 During the Contract the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance with a limit of at least £2,000,000 (two million pounds sterling) per claim (this includes the use of guard dogs by Dog Handling Staff as governed by the Guard Dogs Act 1975; and
- (b) employer's liability insurance with a limit of at least £5,000,000 (five million pounds sterling per claim).

9.2 In addition to those insurance policies detailed in clause 9.1 the Supplier shall also have in place insurance policies in relation to the stated liabilities and risks:

- (a) up to £100,000 (one hundred thousand pounds sterling) for any liability arising as a consequence of fraud, theft or dishonesty or an employee of the Supplier or up to £250,000 (two hundred and fifty thousand pounds sterling) for any series of claims per annum;
- (b) up to £10,000 (ten thousand pounds sterling) in any one claim for the loss of Customer's key(s) resulting in the replacement of the Customer's locks whilst the keys are in the care, custody and control of the Supplier and its employees;
- (c) up to £10,000 (ten thousand pounds sterling) for any one claim where, as a consequence of the Supplier or its employees losing the key(s) the Customer is unable to gain access to, or is unable to trade, at the Premises; and
- (d) up to £250,000 (two hundred and fifty thousand pounds sterling) for any loss or damage to



tangible goods and property belonging to or held in trust by the Customer at its Premises arising from the Supplier's negligence or wilful default (but excluding any claim for consequential losses).

9.3 The Supplier shall ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under these terms and conditions or that the Supplier shall extend its own insurance to cover sub-contractors delivering the Services under the Contract.

9.4 The Supplier shall notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

9.5 If the Customer requires the Supplier to increase any level of cover, as detailed in clause 9.2 of these terms and conditions, then the Supplier shall be entitled to charge the Customer for any additional premiums that it incurs in doing so and the Customer agrees to pay such additional premiums within 21 days of receiving a valid tax invoice from the Supplier.

9.6 The Customer warrants to the Supplier that it has all appropriate insurances in place and will continue to have all appropriate insurances in place for the continuance of the Contract that a prudent company engaged in the same business as the Customer would be expected to have in place and that it complies with all minimum statutory requirements (if applicable).

10. INDEMNITY

10.1 The Supplier shall indemnify the Customer and its affiliates which are resident at the Premises and any other persons present on the Premises with the permission of the Parties mentioned against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable and proper professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with or as a result of the Supplier's default in providing the Services and such liability shall be limited in accordance with the terms of clause 11.

10.2 If any such loss or damage as is referred to in clause 9.2 above occurs, or if any liability arises as a result wholly or in part that is the fault of the Customer, its employees, agents, sub-contractors or consultants then the amount payable by reason of the Supplier's liability to indemnify the Customer under clause 9.2 shall be reduced to the fullest extent permitted by law, having regard to the degree to which such fault of the Customer, its employees, agents, sub-contractors or consultants is responsible for the loss, damage or liability in question.

10.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract or these terms and conditions, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

10.4 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

11. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE



11.1 This clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract or these terms and conditions;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these terms and conditions and the Contract.

11.3 Nothing in these terms and conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- (c) for any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

11.4 Subject to clause 11.2 and clause 11.3 and unless otherwise specifically stated and limited in these terms and conditions:

- (a) the Supplier shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to those amounts stated in clauses 9.1 and 9.2 or in any other situation to the price paid for the Services.

12. DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

13. TERMINATION

13.1 Without prejudice to any other rights or remedies which the Parties may have, either party may



terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract or these terms and conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of these terms and conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of these terms and conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these terms and conditions; or
- (d) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (e) the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
- (g) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(d) to clause 13.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

13.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing



Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

(c) the accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13.3 On termination of the Contract (however arising) clauses 8, 11, 13 and 23 shall survive and continue in full force and effect.

14. FORCE MAJEURE

14.1 A party, provided that it has complied with the provisions of clause 14.3, shall not be in breach of these terms and conditions, nor liable for any failure or delay in performance of any obligations under these terms and conditions (and, subject to clause 14.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
- (f) fire, explosion or accidental damage;
- (g) extreme adverse weather conditions;
- (h) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
- (i) any labour dispute, including but not limited to strikes, industrial action or lockouts;
- (j) non-performance by subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (k) interruption or failure of utility service, including but not limited to electric power, telecommunication, gas or water.

14.2 The corresponding obligations of the other party will be suspended to the same extent.

14.3 Any party that is subject to a Force Majeure Event shall not be in breach of these terms and conditions or the Contract provided that:

- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under these terms and conditions and the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

14.4 If the Force Majeure Event prevails for a continuous period of more than three (3) months,



either party may terminate the Contract by giving thirty (30) days' written notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of these terms and conditions or the Contract occurring prior to such termination.

15. VARIATION

Subject to clause 3 and clause 6, no variation of these terms and conditions or of the Contract or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

16. WAIVER

16.1 Failure to exercise, or any delay in exercising, any right or remedy provided under these terms and conditions or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

16.2 No single or partial exercise of any right or remedy provided under these terms and conditions or by law shall preclude or restrict the further exercise of any such right or remedy.

16.3 A waiver (which may be given subject to conditions) of any right or remedy provided under these terms and conditions or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

16.4 Unless specifically provided otherwise, rights arising under these terms and conditions are cumulative and do not exclude rights provided by law.

17. SEVERANCE

17.1 If any provision of these terms and conditions or of the Contract (or part of any provision) are found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these terms and conditions or the Contract, and the validity and enforceability of the other provisions in these terms and conditions and the Contract shall not be affected.

17.2 If a provision of these terms and conditions or of the Contract (or part of any provision) are found illegal, invalid or unenforceable, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

18. ENTIRE AGREEMENT

18.1 These terms and conditions and the Contract and any documents referred to in them constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

18.2 Each party acknowledges that, in entering into the Contract it does not rely on any statement,



representation, assurance or warranty (Representation) of any person other than as expressly stated in these terms and conditions or the Contract. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in these terms and conditions but subject always to clause 11.

18.3 Nothing in this clause shall limit or exclude any liability for fraud.

19. ASSIGNMENT

19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights or obligations under these terms and conditions or the Contract.

19.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under these terms and conditions or the Contract provided that the Customer is notified by the Supplier as soon as reasonably possible following completion of any assignment, transfer or subcontracting.

19.3 Each party that has rights under these terms and conditions and the Contract is acting on its own behalf and not for the benefit of another person.

20. NO PARTNERSHIP OR AGENCY

Nothing in these terms and conditions or in the Contract is intended to, or shall operate to, create a partnership between the Parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. RIGHTS OF THIRD PARTIES

A person who is not a party to the Contract shall not have any rights under or in connection with it.

22. NOTICES

22.1 Any notice or other communication pursuant to, or in connection with these terms and conditions or the Contract shall be in writing and delivered personally, or sent by first class pre-recorded delivery post (air mail if overseas), to the party due to receive such notice at its address as set out in the Contract (or to such other address as may from time to time have been notified in writing to the other Parties in accordance with this Clause 22).

22.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of fax, at the time of transmission; or
- (c) in the case of pre-paid first-class post or recorded delivery, 48 hours from the date of posting; or
- (d) in the case of airmail, five days from the date of posting; or
- (e) if deemed receipt under the previous paragraphs of this clause 22.2 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a Business Day), when business next



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starts in the place of deemed receipt.

22.3 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22.4 The provisions of this clause 22 shall not apply to the service of any process in any legal action or proceedings.

22.5 A notice required to be given under or in connection with these terms and conditions and the Contract shall not be validly served if sent by e-mail.

23. GOVERNING LAW AND JURISDICTION

23.1 These terms and conditions, the Contract and any dispute or claim arising out of or in connection with them or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

23.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these terms and conditions, the Contract or their subject matter or formation (including non-contractual disputes or claims).

SPS Specialist Protection Services Ltd

Registered in England and Wales 03731647

Website: www.specialistprotection.com

Telephone: 0844 669 8345

Fax: 01279 201202

Email: info@specialistprotection.com

Address: Business & Technology Centre

Bessemer Drive, Stevenage

Hertfordshire, SG1 2DX, United Kingdom