

## HIGHWAY CARE – TERMS AND CONDITIONS – SUPPLY OF GOODS AND SERVICES

### 1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions and rules of interpretation apply:

**“Business Day”** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**“Conditions”** these terms and conditions as amended from time to time in accordance with clause 16.8.

**“Contract”** the contract between Highway Care and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**“Customer”** the person or firm who purchases the Goods and/or Services from Highway Care.

**“Data Controller”** has the meaning set out in Data Protection Legislation.

**“Data Processor”** has the meaning set out in Data Protection Legislation.

**“Data Subject”** has the meaning set out in Data Protection Legislation.

**“Deliverables”** the deliverables (if any) set out in the Order.

**“Delivery Location”** has the meaning set out in clause 4.2.

**“Data Protection Legislation”** means: (i) Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR); (ii) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (as amended or replaced from time to time) and applicable laws implementing that directive in European Union Member States; and (iii) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

**“Emergency”** services other than the Services, requested at short notice by the

**“Services”** Customer for dealing with acute issues outside of those set out in the Order.

**“Force Majeure Event”** an event beyond the reasonable control of Highway Care including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), interruption or failure of a utility service or transport network, act of God, acts of war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, accident, breakdown of plant or machinery, fire, flood, storm, or default or non-performance of suppliers or subcontractors.

**“Goods”** the goods (or any part of them) set out in the Order.

**“Highway Care”** Highway Care Limited a company registered in England and Wales with company number 2506334 whose registered office is at Trinity House 3 Bullace Lane, Dartford, Kent, DA1 1BB.

**Highway Care Materials”** has the meaning set out in clause 8.1.8.

**“Incoterm”** the Incoterm rule set out in an Order selected from the ICC Incoterms 2010.

**“Intellectual Property Rights”** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress and get-up, rights in goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Order”** the Customer's offer for the supply of Goods and/or Services, as set out in the Customer's order request in the form attached to Highway Care's quotation.

**“Personal Data”** has the meaning set out in the Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which Highway Care is providing the Services.

**“Processing and process:”** have the meaning set out in Data Protection Legislation.

**“Services”** the services, including the Deliverables (if any), supplied by Highway Care to the Customer as set out in the Specification and/or the Order or a request for Emergency Services.

**“Specification”** in relation to Goods, any specification for the Goods (including any relevant plans or drawings) that is produced by Highway Care as amended by Highway Care from time to time or as agreed in writing by the Customer and Highway Care, and in relation to Services, the description or specification for Services provided by Highway Care to the Customer as amended by Highway Care from time to time.

**“Survey”** has the meaning set out in clause 8.1.5.

1.2 Interpretation:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory 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;

1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.2.5 a reference to writing or written includes faxes and emails; and

1.2.6 in the event that any Incoterm is specifically referenced in the Order and such reference results in any inconsistency or conflict between a term of these Conditions and the Incoterm, the relevant part of the Incoterm shall prevail and apply.

2 **BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from Highway Care in accordance with these Conditions.

2.2 The Order or a request for Emergency Services shall only be deemed to be accepted when Highway Care issues written acceptance of the Order or a request for Emergency Services at which point and on which date the Contract shall come into existence.

2.3 Highway Care shall be under no obligation to accept, and shall not be liable for any loss or damage to the Customer as a result of not accepting, an Order or a request for Emergency Services.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Highway Care which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by Highway Care and any descriptions or illustrations contained in Highway Care's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or any other contract between Highway Care and the Customer for the supply of the Goods and/or Services.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by Highway Care shall not constitute an offer and, unless stated otherwise in Highway Care's quotation, is only valid for a period of 20 Business Days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 **GOODS**

3.1 The Goods are described in the Specification.

3.2 Highway Care reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirement, or by the manufacturer of the Goods or for any other commercial reason and which in each case do not materially affect the strength or efficiency of the Goods and Highway Care shall notify the Customer in any such event.

4 **DELIVERY OF GOODS**

4.1 Highway Care shall ensure that each delivery of the Goods is accompanied by an information note which shows the date of the Order, all relevant Customer and Highway Care reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the

- Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The “**Delivery Location**” shall be as set out in the Order, or such other location as the parties may agree, at any time after Highway Care notifies the Customer that the Goods are ready.
- 4.3 Where the Delivery Location is to be Highway Care’s premises, delivery of the Goods shall be completed on completion of loading. If the Customer fails to accept or take delivery of the Goods within five Business Days of Highway Care notifying the Customer that the Goods are ready for collection, if forwarding instructions are not received within five Business Days after the date of notification that the Goods are ready for collection, then except where such failure or delay is caused by a Force Majeure Event or by the Highway Care’s failure to comply with its obligations under the Contract in respect of the Goods:
- 4.3.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the tenth Business Day following the day on which Highway Care notified the Customer that the Goods were ready; and
- 4.3.2 Highway Care shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.4 Where the Delivery Location is a location other than Highway Care’s premises, as may be agreed pursuant to clause 4.2:
- 4.4.1 the Customer shall provide and shall clearly indicate to Highway Care the point at which the Customer wishes the Goods to be unloaded which, in the reasonable opinion of Highway Care, must be safe and proper and reasonable for access, manoeuvring and exit of the delivery vehicle; and
- 4.4.2 delivery of the Goods shall be completed on the Goods’ arrival at the Delivery Location or, at Highway Care’s option, the completion of unloading of the Goods at the Delivery Location; and
- 4.4.3 if, in Highway Care’s reasonable opinion, access required in accordance with clause 4.4.1 is not available or is unsuitable or Highway Care is unable to deliver the Goods on time because the Customer has not provided appropriate information, instructions, documents, licences or authorisations, Highway Care reserves the right to refuse to deliver and/or to charge the Customer additional costs. The Customer shall indemnify Highway Care in respect of all costs, claims, losses or expenses (including legal costs) which Highway Care may incur as result of a breach of this clause 4.4.3 by the Customer.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Highway Care shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer’s failure to provide Highway Care with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If Highway Care fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Highway Care shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer’s failure to provide Highway Care with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.7 If, 15 Business Days after Highway Care notified the Customer that the Goods were ready for delivery, the Customer has not accepted or taken delivery of them, Highway Care may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if Highway Care delivers up to and including 10 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 Save where otherwise agreed in writing by Highway Care, the Customer may not re-direct delivery of the Goods or of any instalment of the Goods.
- 4.10 Highway Care may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.11 Where applicable, pursuant to clause 1.2.6, Highway Care shall deliver the Goods in accordance with such Incoterm 2010 as may be set out in the Order.
- 5 QUALITY OF GOODS**
- 5.1 Subject to clause 5.2, Highway Care warrants that on delivery, and for a period of twelve months from the date of delivery (**Warranty Period**), the Goods shall:
- 5.1.1 Subject to clause 3.2, conform in all material respects with their description and any applicable Specification;
- 5.1.2 be free from material defects in design, material and workmanship;
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

- 5.1.4 be fit for the purpose held out by Highway Care in the Specification.
- 5.2 In respect of defects that are patent or obvious, the Customer must give notify Highway Care of such defects within 15 days of delivery. Highway Care shall not be liable for such defects failure to comply with the warranty in clause 5.1 if the Customer fails to give such notice.
- 5.3 Subject to clause 5.4, Highway Care shall, at its option, repair or replace the defective Goods, if:
- 5.3.1 the Customer gives notice in writing during the Warranty Period within seven days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- 5.3.2 Highway Care is given a reasonable opportunity of examining such Goods and determines, acting reasonably, that the Goods are defective; and
- 5.3.3 the Customer (if asked to do so by Highway Care) returns such Goods to Highway Care's place of business at the Customer's cost.
- 5.4 Highway Care shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.4.2 the Customer makes further use of such Goods after a defect or failure became apparent, or ought to have become apparent, to the Customer.
- 5.4.3 the defect arises because the Customer failed to follow Highway Care's oral or written instructions as to the storage, installation, commissioning, use, operation or maintenance of the Goods or (if there are none) good trade practice;
- 5.4.4 the defect arises due to the placing of the Goods adopted by the Customer, or the effects of frost, heat or inclement weather;
- 5.4.5 the defect arises as a result of Highway Care following any drawing, design or Specification supplied by the Customer;
- 5.4.6 the Customer alters or repairs such Goods or combines them with any third party goods, without the prior written consent of Highway Care;
- 5.4.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.4.8 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 Except as provided in this clause 5, Highway Care shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Highway Care.
- 6 TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until Highway Care has received payment in full (in cash or cleared funds) for:
- 6.2.1 the Goods; and
- 6.2.2 any other goods that Highway Care has supplied to the Customer in respect of which payment has become due in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as Highway Care's bailee;
- 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Highway Care's property;
- 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Highway Care's behalf from the date of delivery;
- 6.3.5 notify Highway Care immediately if it becomes subject to any of the events listed in clause 14.1.3; and
- 6.3.6 give Highway Care such information relating to the Goods as Highway Care may require from time to time,
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Highway Care receives payment for the Goods. However, if the Customer resells the Goods before that time title to the Goods shall pass from Highway Care to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.3, or Highway Care reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy

Highway Care may have, Highway Care may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8.1.1 ensure that the Order is in the form attached to Highway Care's quotation and the information it provides is complete and accurate;

8.1.2 co-operate with Highway Care in all matters relating to the Services;

8.1.3 provide Highway Care, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, any relevant third party premises, utilities and other facilities as reasonably required by Highway Care to provide the Services;

8.1.4 provide and continue to provide Highway Care with all such information, including but not limited to the identification of all risks and hazards, and materials as Highway Care may reasonably need and/or require in order to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;

8.1.5 where indicated in the Specification, the Order or as otherwise requested by Highway Care, perform a survey to check for obstructions, cables, underground utilities and bridges ("**Survey**") and provide a written report of such survey to Highway Care at least 10 Business Days prior to the scheduled delivery date or commencement date of the Services specified in the Order and keep Highway Care updated in respect of such Survey throughout the duration of provision of the Services or Emergency Services;

8.1.6 where appropriate prepare the Customer's premises and/or the Delivery Location for the delivery of the Goods and/or the supply of the Services;

8.1.7 obtain and maintain all necessary licences, permissions, permits and consents which may be required for the performance of all or part of the Contract for the time at which such licences, permissions, permits and consents will be required;

8.1.8 keep and maintain all materials, equipment, documents and other property of Highway Care (**Highway Care Materials**) at the Customer's premises in safe custody at its own risk, maintain Highway Care Materials in good condition until returned to Highway Care, and not dispose of or use Highway Care Materials other than in accordance with Highway Care's written instructions or authorisation;

8.1.9 not alter or remove any name placements, patent markings, serial numbers of other identifying marks or warning from the Goods;

8.1.10 comply, and shall procure that the Customers personnel comply, with all applicable laws, regulations, codes and standards relevant to:

## 7 SUPPLY OF SERVICES

7.1 Highway Care shall supply the Services to the Customer in accordance with the Specification in all material respects.

7.2 Highway Care shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Highway Care shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Highway Care shall notify the Customer in any such event.

7.4 Where Highway Care is to perform Services at a site or premises which are not in the control of Highway Care, the Customer shall procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities, supplies, materials or equipment for the employees or agents of Highway Care as Highway Care shall reasonably require.

7.5 It will be the responsibility of the Customer in cases where construction or erection is to take place at the Customer's, site or at a site directed by the Customer (unless Highway Care agrees otherwise in writing), to ensure:

7.5.1 all necessary road works, traffic management, builders works, scaffolding and other works are provided;

7.5.2 the site is adequately prepared including removal of obstacles to allow the Services to be provided prior to Highway Care's arrival on site; and

7.5.3 the Customer will off load and store free of cost to Highway Care all Goods and materials if Highway Care has no servants or agents employed at the site at the time of delivery.

7.6 Highway Care warrants to the Customer that the Services will be provided using reasonable care and skill.

7.7 During the performance of the Services, Customer may request Highway Care provides additional Emergency Services in addition to those set out in the Order or the Specification without having to deliver another Order to Highway Care pursuant to clause 2.1 and Highway Care may agree to provide such Emergency Services at its sole discretion.

## 8 CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

health and safety; security; the environment; anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015, in respect of the Goods and/or Services; and

- 8.1.11 indemnify Highway Care against all losses, claims, damages, or expenses made against Highway Care by any third party and any costs and expenses arising in connection therewith which result from the Customer's failure to comply with its obligations under the terms of the Contract (whether negligent or otherwise).
- 8.2 If Highway Care's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 Highway Care shall, without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Highway Care's performance of any of its obligations;
- 8.2.2 Highway Care shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Highway Care's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse Highway Care on written demand for any costs or losses sustained or incurred by Highway Care arising directly or indirectly from the Customer Default.

## 9 CHARGES AND PAYMENT

- 9.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in Highway Care's published price list as at the date of delivery.
- 9.2 The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport (including unloading) of the Goods.
- 9.3 The charges for Services shall be as set out in the Order, or in Highway Care's schedule of rates from time to time. The charges for providing the Emergency Services shall be notified by Highway Care at the time of agreeing to provide the Emergency Services, or in the absence of such notification, as set out in Highway Care's schedule of rates from time to time.
- 9.4 Highway Care shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Highway Care engages in connection with the Services including, but not limited to, travelling expenses, hotel

costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Highway Care for the performance of the Services, and for the cost of any materials.

- 9.5 Highway Care reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Highway Care that is due to:
- 9.5.1 any factor beyond the control of Highway Care (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.5.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification in respect of the Goods;
- 9.5.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Highway Care adequate or accurate information or instructions in respect of the Goods; or
- 9.5.4 circumstances where (a) the Goods are manufactured outside of the UK, or (b) where any licences which relate to the Goods which are paid by Highway Care are paid in a currency other than GBP, there is a variance in the currency exchange rates beyond those stated in the Highway Care quotation.
- 9.6 In respect of Goods, Highway Care shall invoice the Customer on or at any time after completion of delivery.
- 9.7 In respect of Services, Highway Care shall invoice the Customer as provided for in the Contract or, in the absence of such provision, monthly in arrears.
- 9.8 The Customer shall pay each invoice submitted by Highway Care:
- 9.8.1 as provided for in the Contract or, in the absence of such provision within 30 days of the date of the invoice; and
- 9.8.2 in full and in cleared funds to a bank account nominated in writing by Highway Care, and
- time for payment shall be of the essence of the Contract.
- 9.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Highway Care to the Customer, the Customer shall, on receipt of a valid VAT invoice from Highway Care, pay to Highway Care such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.10 Without limiting any other right or remedy of Highway Care, if the Customer fails to make any payment due to Highway Care under the Contract by the due date for payment (**Due Date**), Highway Care shall have the right to charge interest on the overdue amount in accordance with the Late Payment of Commercial Debts Regulations 2013. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after the judgement. The Customer shall pay the interest together with the overdue amount.

9.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Highway Care in order to justify withholding payment of any such amount in whole or in part. Highway Care may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Highway Care to the Customer.

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## 10 INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the product installation manuals (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Highway Care.

10.2 Highway Care grants to the Customer, or subject to clause 10.3, shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the product installation manuals and the Deliverables in its business.

10.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or product installation manuals, the Customer's use of any such Intellectual Property Rights is conditional on Highway Care obtaining a licence from the relevant licensor on such terms as will entitle Highway Care to license such rights to the Customer.

10.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.5 The Customer grants Highway Care a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Highway Care for the term of the Contract for the purpose of providing the Services to the Customer.

10.6 All Highway Care Materials are the exclusive property of Highway Care.

## 11 DATA PROTECTION AND DATA PROCESSING

11.1 The Customer and Highway Care acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Highway Care is the Data Processor in respect of any Personal Data. Where, in respect of any Personal Data, the Customer is a Data Processor on behalf of a third party, the Customer warrants that the Customer's instructions and actions regarding such Personal Data (including the appointment of Highway Care as a Data Processor) have been authorised by such third party.

11.2 Both parties will comply with all applicable requirements of Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Legislation.

11.3 Without prejudice to the generality of clause 11.2, the Customer will ensure that it has all necessary consents and notices in place to enable lawful transfer of the Personal Data to Highway Care for the duration and purposes of the Contract, and that its instructions to Highway Care shall not infringe (or otherwise place Highway Care in breach of) Data Protection Legislation. The Order or Specification (as applicable) set out the subject-matter, nature and purpose of processing by Highway Care, the duration of the processing and the types of personal data and categories of data subject. The Customer acknowledges and agrees all such details as accurate and comprehensive.

11.4 Without prejudice to the generality of clause 11.2, Highway Care shall, where it acts as a Data Processor on behalf of the Customer:

11.4.1 process that Personal Data only on the documented instructions of the Customer (and the Customer hereby instructs Highway Care to Process that Personal Data as required to perform its obligations under the Contract) unless Highway Care is otherwise required by **Applicable Law** (being the laws of England and Wales or of any member of the European Union or the laws of the European Union applicable to Highway Care) to Process Personal Data (in which case Highway Care shall notify the Customer of this before performing the Processing required by Applicable Law unless Applicable Law prohibits Highway Care from so notifying the Customer on important grounds of public interest);

11.4.2 only appoint sub-processors as permitted under this clause 11;

11.4.3 ensure that it has in place appropriate technical and organisational measures as required by Data Protection Legislation;

11.4.4 ensure that all its personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;

- 11.4.5 not transfer any Personal Data outside of the **Permitted Territory** (being the European Union and the UK) unless it does so in accordance with Data Protection Legislation (and the Customer hereby authorises Highway Care to enter into any standard clauses required or provided for by Data Protection Legislation on its behalf and in its name as a data exporter and controller) and the prior written authorisation of the Customer has been obtained or such transfer is on the written instructions of the Customer (and the Customer hereby instructs and authorises Highway Care to transfer Personal Data outside the Permitted Territory where required for the provision of the Services or delivery of the Goods, including but not limited to where Personal Data is accessed by or on behalf of the Customer from outside the Permitted Territory, and where the Customer has been notified that an authorised sub-processor is located or stores or accesses Personal Data outside the Permitted Territory);
- 11.4.6 taking into account the nature of the Processing, assist the Customer, at the Customer's cost (to the extent not already included in the charges payable by the Customer), by appropriate technical and organisational measures in responding to any request from a Data Subject (insofar as this is possible) and in ensuring compliance with the Customer's obligations under Data Protection Legislation with respect to (taking into account the information available to Highway Care) security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 11.4.7 notify the Customer without undue delay on becoming aware of a Personal Data breach, and (with regard to its obligations under clause 11.4.9) immediately inform the Customer if (in Highway Care's opinion) an instruction of the Customer's infringes Data Protection Legislation;
- 11.4.8 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data; and
- 11.4.9 make available to the Customer all information necessary to demonstrate its compliance with this clause 11 and Data Protection Legislation (which shall remain Highway Care's confidential information and which the Customer shall not disclose or use other than to confirm Highway Care's compliance with Data Protection Legislation) and allow for and contribute to audits by the Customer or the Customer's designated auditor at the Customer's expense, on reasonable written notice during business hours and subject to such reasonable measures as Highway Care (or any sub-processor) requires in relation to its security and confidentiality requirements and not causing disruption to its business activities.
- 11.5 The Customer acknowledges that Highway Care is reliant on the Customer for direction as to the extent to which Highway Care is entitled to use and process the Personal Data. Consequently, Highway Care will not be liable for any claim brought by a Data Subject arising from any action or omission by Highway Care, to the extent that such action or omission resulted directly from the Customer's instructions.
- 11.6 The Customer specifically authorises the appointment of any sub-processor set out on in the Order, in the Specification or identified in the Contract or otherwise notified to the Customer and generally authorises Highway Care to appoint further or alternative sub-processors. Where Highway Care appoints or replaces a sub-processor it shall notify the Customer not less than 30 days in advance of any intended changes concerning the addition or replacement of such sub-processors.
- ## 12 CONFIDENTIALITY
- 12.1 Each party undertakes that it shall not at any time during this Contract, and for a period five years after termination, disclose to any person any confidential information concerning the business, affairs, finances, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 with the prior written consent of the other party;
- 12.2.2 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; or
- 12.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.
- ## 13 LIMITATION OF LIABILITY
- 13.1 Nothing in these Conditions shall limit or exclude Highway Care's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;



- 13.1.2 fraud or fraudulent misrepresentation;
- 13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 13.2 Subject to clause 13.1:
- 13.2.1 Highway Care shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of customers, loss of anticipated savings, loss of opportunity, loss or damage to goodwill, or for any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate or negligent breach of the Contract by Highway Care, its employees, agents or subcontractors); and
- 13.2.2 in relation to any damage to physical property caused by the negligence of Highway Care exceed £50,000 in relation to any event or series of connected events;
- 13.2.3 Highway Care's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by Highway Care, its employees, agents or subcontractors shall not exceed the price paid or payable to Highway Care for the Goods and/or Services as applicable under the Contract.
- 13.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.
- 14 TERMINATION**
- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 14.1.2 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing of the breach; or
- 14.1.3 the other party has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or the other party enters into or proposes any composition or arrangement with its creditors generally, or is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent or bankrupt or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction).
- 14.2 Notwithstanding termination in accordance with clause 14.1, the Customer shall pay to Highway Care on a pro rata basis for all work done, materials used and Goods delivered up to and including the date of termination.
- 14.3 Without limiting its other rights or remedies, Highway Care may terminate the Contract:
- 14.3.1 by giving the Customer one months' written notice;
- 14.3.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 14.4 The Customer may terminate the Contract, provided such Contract relates solely to the provision of Services, for convenience at any time by giving written notice to Highway Care and always subject to clause 15.
- 14.5 Without limiting its other rights or remedies, Highway Care shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Highway Care if:
- 14.5.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- 14.5.2 the Customer becomes subject to any of the events listed in clause 14.1.3 or Highway Care reasonably believes that the Customer is about to become subject to any of them.
- 15 CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- 15.1.1 the Customer shall immediately pay to Highway Care: (a) all of Highway Care's outstanding unpaid invoices and interest; (b) in respect of Services supplied but for which no invoice has yet been submitted, Highway Care shall submit an invoice, which shall be payable by the Customer immediately on receipt; and (c) any sum which Highway Care is committed to pay as a consequence of entering into the Contract, which shall become immediately due and payable;

15.1.2 the parties acknowledge that in order to mitigate any potential loss (by reallocating resources) in circumstances where the Customer wishes to terminate for convenience, Highway Care requires certain minimum periods of notice. In recognition of this, in the event that the Customer gives notice to terminate which is: (a) less than 1 Business Day before the scheduled commencement of the Services, 100% of the charges shall be immediately due and payable to Highway Care; (b) less than 2 Business Days before the scheduled commencement of the Services, 50% of the Fees shall be immediately due and payable to Highway Care; or (c) less than 5 Business Days before the scheduled commencement of the Services, 25% of the charges shall be immediately due and payable to Highway Care;

15.1.3 the Customer shall return all of Highway Care Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Highway Care may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

15.1.4 the accrued rights and remedies of the parties as at termination or expiry shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

15.1.5 clauses which expressly or by implication have effect after termination or expiry shall continue in full force and effect.

## 16 GENERAL

16.1 **Force majeure:** Highway Care shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents Highway Care from providing any of the Services and/or Goods for more than 4 weeks, Highway Care shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 16.2 Assignment and subcontracting:

16.2.1 Highway Care may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

16.2.2 The Customer shall not, without the prior written consent of Highway Care, assign, transfer, charge, subcontract or deal in any other manner with all

or any of its rights or obligations under the Contract.

### 16.3 Notices:

16.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

16.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

16.3.3 This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

16.4 **Waiver and cumulative remedies:** A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### 16.5 Severance:

16.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

16.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.6 **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another

party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- 16.7 **Third parties rights:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Highway Care.
- 16.9 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.