



Technical Services Limited

Estimating & Procurement Specialists

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M&P TECHNICAL SERVICES LIMITED GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICE



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THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5 (Charges and payment).

Client: the person or firm who purchases Services from M&P.

Client Default: has the meaning set out in clause 4.2.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.5, and General Terms and Conditions shall be interpreted accordingly.

Contract: the contract between M&P and the Client for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Estimating Particular Clarifications: means the terms and conditions which may be notified by M&P to the Client from time to time which form part of the Contract and which apply to any Estimating Services provided by M&P to the Client.



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Estimating Services: means providing approximation of the costs of any project or operation, assisting Clients in their cost estimating processes, checking Client's work to ensure they're correct, or taking care of all estimating activities throughout the entire project; Estimating Services may incorporate quantification of labour, materials, sub-contractor, preliminaries costs as well as key risks and contingency's plus adding the required risk allowance and overhead and profit; Estimating Services form part of the Services.

M&P: M&P Technical Services Limited registered in England and Wales with company number 9285305.

M&P Materials: has the meaning set out in clause 4.1(g).

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Services and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Services.

Order: the Client's order for Services as set out in the Client's purchase order form, the Client's written acceptance of a quotation by M&P, or overleaf, as the case may be.

Quantity Surveying Particular Clarifications: means the terms and conditions which may be notified by M&P to the Client from time to time which form part of the Contract and which apply to any Quantity Surveying Services provided by M&P to the Client.

Quantity Surveying Services: include managing all aspects of the contractual and financial side of construction projects, managing the costs on a construction project, preparing tender documents, contracts, budgets, bills of quantities, variations and



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other documentation like supplier and sub-contract accounts and issuing of client application for payments and issuing of supply chain payment notices which form part of the Services.

Quotation: the description or specification of the Services provided in writing (including email) by M&P to the Client.

Services: the services, including the Materials, supplied by M&P to the Client as set out in the Quotation. For the avoidance of doubt the Services include the Estimating Services and the Quantity Surveying Services, as relevant.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when M&P issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).



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- 2.3** Any samples, drawings, descriptive matter or advertising issued by M&P, and any descriptions or illustrations contained in M&P's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5** Any Quotation given by M&P shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 3. Supply of Services**
- 3.1** M&P shall supply the Services to the Client in accordance with the Quotation in all material respects.
- 3.2** M&P shall use all reasonable endeavours to meet any performance dates specified in any Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3** M&P reserves the right to amend the Quotation if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and M&P shall notify the Client in any such event.
- 3.4** Unless expressly agreed M&P will not carry out any form of design as part of the Services.



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3.5 M&P warrants to the Client that the Services will be provided using reasonable skill, care and diligence to be expected of an appropriately qualified or experienced surveyor or estimator in each of the disciplines to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project.

3.6 M&P shall at all times comply with the Construction (Design and Management) Regulations 2015, any building regulations and other applicable statutory and regulatory requirements insofar as they apply to the Services and/or to the project or other works to which the Services relate.

3.7 M&P may subcontract the whole or any part of the Services without Client's prior consent.

4. Client's obligations

4.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in response to the Quotation are complete and accurate;
- (b) co-operate with M&P in all matters relating to the Services;
- (c) provide M&P, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by M&P (if relevant);
- (d) provide M&P with such information and materials as M&P may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;



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- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (f) comply with all applicable laws, including health and safety laws;
 - (g) keep all materials, equipment, documents and other property of M&P (**M&P Materials**) at the Client's premises in safe custody at its own risk, maintain M&P Materials in good condition until returned to M&P, and not dispose of or use M&P Materials other than in accordance with M&P's written instructions or authorisation;
 - (h) comply with any additional obligations as set out in the Quotation.
- 4.2** If M&P's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- (a) without limiting or affecting any other right or remedy available to it, M&P shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays M&P's performance of any of its obligations;
 - (b) M&P shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from M&P's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Client shall reimburse M&P on written demand for any costs or losses sustained or incurred by M&P arising directly or indirectly from the Client Default.



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5. Charges and payment

5.1 The Charges for the Services shall be calculated on a time and materials basis:

- (a) the Charges shall be calculated in accordance with M&P's daily fee rates, as set out in a Quotation, any written communication, including email, or an Order, as relevant;
- (b) M&P's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of:
 - (i) 50% of the daily fee rate Monday to Friday; and
 - (ii) 100% of the daily fee rate on Saturdays, Sundays and Bank Holidays, in each case calculated on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b); and
- (d) M&P shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom M&P engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by M&P for the performance of the Services, and for the cost of any materials.

5.2 The Charges shall be paid in instalments or in accordance with the Order, as accepted by M&P. If not set out in the Order, the Charges shall be paid in instalments at intervals of not less than 14 days, beginning one month after M&P begins performing the Services.



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- 5.3** M&P shall submit to the Client an invoice for each instalment of Charges, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that M&P considers will become due on the payment due date in respect of the instalment of the Charges, and the basis on which that sum is calculated.
- 5.4** Payment shall be due on the date of the invoice.
- 5.5** No later than five days after payment becomes due, the Client shall notify M&P of the sum that the Client considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.
- 5.6** The final date for payment shall be 14 days after the date on which payment becomes due and time for payment shall be of the essence of the Contract.
- 5.7** Subject to clause 5.10 and unless the Client has served a notice under clause 5.8, it shall pay M&P the sum referred to in the Client's notice under clause 5.5 (or, if the Client has not served notice under clause 5.5, the sum referred to in the invoice referred to in clause 5.3) (in this clause 5, the **notified sum**) on or before the final date for payment of each invoice.
- 5.8** Not less than seven days before the final date for payment (in this clause 5, the **prescribed period**), the Client may give M&P notice that it intends to pay less than the notified sum (in this clause 5, a **pay less notice**). Any pay less notice shall specify:
- (a) the sum that the payer considers to be due on the date the notice is served; and
 - (b) the basis on which that sum is calculated.



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Where a pay less notice is given in accordance with this clause 5.8, the obligation to pay the notified sum in clause 5.7 applies only in respect of the sum specified in that pay less notice.

- 5.9** If the Client fails to pay an amount due to M&P by the final date for payment and fails to give a pay less notice under clause 5.7, then the Client shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount, whether before or after judgment. The Client shall pay interest together with the overdue amount. The parties acknowledge that the Client's liability under this clause 5.9 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.10** Notwithstanding clause 5.6 and clause 5.7 and without prejudice to clause 12, if the Consultant becomes Insolvent after the prescribed period, the Client shall not be required to pay M&P the notified sum on or before the final date for payment.
- 5.11** M&P reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.12** The Charges shall be adjusted and M&P shall be entitled to an extension of time for delivering the Services (without affecting in any way or to any degree M&P's responsibility under these Conditions), if the performance of the Services is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the



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Services, provided that M&P shall not be entitled to any adjustment of the Charges or extension of time where the delay or disruption arises from M&P's default or negligence.

5.13 All amounts payable by the Client under the Contract are exclusive of any discounts and 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 M&P to the Client, the Client shall, on receipt of a valid VAT invoice from M&P, pay to M&P such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.14 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Additional Services and Variations

6.1 The Client shall notify M&P as soon as reasonably practicable if it becomes apparent that variations to the Services (**Variation**) or additional Services (**Additional Services**) are likely to be required, identifying the required Variation and/or Additional Service, as applicable.

6.2 M&P shall perform a Variation and/or Additional Service on receipt of a written instruction to do so by the Client.

6.3 As soon as reasonably practicable after receiving an instruction to perform a Variation and/or Additional Service, M&P shall provide the Client with a written estimate of cost of the Variation and/or Additional Service and its effect on the programme.



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- 6.4** Unless the parties agree otherwise, the Charges shall be a reasonable amount calculated by reference to the time charges set out in clause 5.1, provided that no Charges shall be payable if the requirement for a Variation and/or Additional Service arises from M&P's default or negligence.
- 6.5** Any additional Charges payable by the Client in respect of Variation and/or Additional Service shall be included in the next invoice following performance of the Variation and/or Additional Service to which it relates.
- 6.6** The following shall be deemed Variations:
- (a) lost time due to access to the Client's work in order to provide the Services;
 - (b) changes to the programme of the Client's works;
 - (c) written instructions from the Client;
 - (d) any act of prevention by or on the part of the Client his sub-contractors, employees or agents.

7. Client's Insurance

- 7.1** If the Client is a contractor it shall ensure that in respect of loss or damage to the works or relevant section of works, work executed and site materials to which the Services relate, a contractor's all-risks insurance policy on industry standard terms shall be in place and maintained for the duration of the works. Such policy shall provide for recognition of M&P's as an insured under the policy or include a waiver by the relevant insurers of any right of subrogation which they may have against M&P and this recognition or waiver shall continue up to and including the date of issue of any certificate or other document which states that in relation to the works, M&P's Services



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are practically complete or, if earlier, the date of termination of M&P's employment under this Contract.

8. Intellectual property rights

- 8.1** M&P owns all intellectual property rights (including copyright) relating to the Material it produces.
- 8.2** M&P grants to the Client, from the Commencement Date, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, M&P for the purpose of receiving and using the Services.
- 8.3** The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 8.2.
- 8.4** The Client grants M&P a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to M&P for the term of the Contract for the purpose of providing the Services to the Client.

9. Data protection

- 9.1** Each Party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and



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privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

10. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

10.1 M&P has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2,000,000 for any one occurrence or series of occurrences arising out of any one event. The limits and exclusions in this clause reflect the insurance cover M&P has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

10.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence; and
- (b) fraud or fraudulent misrepresentation.

10.3 Subject to clause 10.2, M&P's total liability to the Client shall not exceed £2,000,000. M&P's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

10.4 This clause 10.4 sets out specific heads of excluded loss:

- (a) Subject to clause 10.2, the types of loss listed in clause 10.4(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded:
 - (i) Loss of profits



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- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

10.5 Unless the Client notifies M&P that it intends to make a claim in respect of an event within the notice period, M&P shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.6 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 14 days' written notice.

11.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;



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- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3** Without affecting any other right or remedy available to it, M&P may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the final date for payment.
- 11.4** Without affecting any other right or remedy available to it, M&P may suspend the supply of Services under the Contract or any other contract between the Client and M&P if the Client fails to pay any amount due under the Contract on the final date for payment, the Client becomes subject to any of the events listed in clause 11.2(b) to clause 11.2(d), or M&P reasonably believes that the Client is about to become subject to any of them.

12. Consequences of termination

- 12.1** On termination of the Contract:



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- (a) the Client shall immediately pay to M&P all of M&P's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, M&P shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - (b) the Client shall return all of M&P Materials which have not been fully paid for. If the Client fails to do so, then M&P may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 12.2** Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 13. General**
- 13.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. Force majeure includes, but is not limited to:
- (a) war, civil war, armed conflict or terrorism;



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- (b) nuclear, chemical or biological contamination, including epidemics and pandemics howsoever caused or arisen;
- (c) pressure waves caused by devices traveling at supersonic speeds.

13.2 Assignment and other dealings.

- (a) M&P may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of M&P acting reasonably.

13.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, Clients, clients or M&Ps of the other party, except as permitted by clause 13.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and



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- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

13.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it



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prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order or M&P's Quotation, as relevant.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt; and
 - (ii) if sent by pre-paid first-class post or other, next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.8(b)(iii), business hours means 9.00am to 5.00pm



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Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.9 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

13.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.