

1. DEFINITIONS AND INTERPRETATION

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

“**BA-UK**”: Broetje-Automation UK Ltd registered in England and Wales with company number 08545014.

“**BA-UK Materials**”: any materials, equipment and tools, drawings, specifications and data supplied by BA-UK, its employees, agents, consultants and subcontractors to the Customer for the purposes of BA-UK providing the Goods and/or Services under this Contract.

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

“**Commencement Date**”: has the meaning set out in clause 2.2.

“**Contract**”: the contract between BA-UK and the Customer for the supply of Goods and/or Services in accordance with these Terms and Conditions as formed in accordance with clause 2.2.

“**Customer**”: the person or firm who purchases the Goods and/or Services from BA-UK.

“**Deliverables**”: the deliverables set out in the Order.

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

“**Force Majeure Event**”: any cause affecting the performance by a Party of its obligations under these Terms and Conditions arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster.

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

“**Goods Specification**”: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and BA-UK.

“**Insolvency Event**”: in relation to a Party, that a Party is (a) unable to pay its debts or becomes insolvent or bankrupt; (b) is the subject of an order made or a resolution passed for its administration, winding-up or dissolution; (c) is subject to any proceedings for the appointment of an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer over all or any substantial part of its assets; (d) proposes or enters into any composition or arrangement with its creditors generally (except for the purposes of a bona fide solvent amalgamation, reconstruction or re-organisation (provided that this does not materially reduce the assets of that Party)); or (e) is subject to an analogous event to the foregoing in any jurisdiction.

“**Intellectual Property Rights**”: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all 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, and rights to claim priority from, 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 order for the supply of Goods and/or Services, as set out the Customer’s purchase order form.

“**Party**”: BA-UK and/or the Customer, and “Parties” shall be construed accordingly.

“**Services**”: the services, including the Deliverables, to be provided by BA-UK to the Customer as set out in the Service Specification below.

“**Service Specification**”: the description or specification for the Services that is agreed in writing by BA-UK to the Customer.

“**Special Terms**”: any other specific agreement terms applicable to the Goods and/or Services in addition to these Terms and Conditions.

“**Terms and Conditions**”: these terms and conditions as amended from time to time in accordance with clause 14.7.

1.2 In these Terms and Conditions, the following rules apply :

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; and

1.2.5 a reference to writing or written includes faxes and e-mails.

1.3 The headings in these Terms and Conditions do not affect its interpretation.

1.4 If there is any conflict or inconsistency between a term in the main part of these Terms and Conditions and a term in any of the Special Terms or other documents attached to, incorporated or otherwise referred to in these Terms and Conditions, the term in these Terms and Conditions shall take precedence, unless the Special Terms or other document is expressly stated to take precedence over these Terms and Conditions.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from BA-UK in accordance with these Terms and Conditions and applies in addition to any other Special Terms applicable to the Goods and/or Services.

2.2 The Order shall only be deemed to be accepted when BA-UK issues written acceptance of the Order at which point and on which date the Contract shall come into existence (the “**Commencement Date**”).

2.3 Any amendment to an Order shall only be effective with BA-UK issuing written acceptance of such amendment to the Customer.

- 2.4 Save for any Special Terms which apply to the Order, these Terms and Conditions apply to the Contract to the exclusion of any terms that BA-UK seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Subject to clause 2.4, the Contract constitutes the entire agreement between the Parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of BA-UK which is not set out in the Contract.
- 2.6 Any quotation given by BA-UK shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7 All of these Terms and Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. SUPPLY OF GOODS

- 3.1 The Goods are described in the Goods Specification. BA-UK reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.
- 3.2 BA-UK warrants that on delivery, and for a period of 12 months from the date of delivery (the “**Warranty Period**”), the Goods shall:
 - 3.2.1 conform in all material respects with their description and any applicable Goods Specification, subject to clause 3.1;
 - 3.2.2 be free from material defects in design, materials and workmanship;
 - 3.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 3.2.4 be fit for any purpose held out by BA-UK.
- 3.3 Subject to clause 3.4, if:
 - 3.3.1 the Customer gives notice in writing during the Warranty Period, within a reasonable time of its discovery that some or all of the Goods do not comply with the warranty set out in clause 3.2;
 - 3.3.2 BA-UK is given a reasonable opportunity of examining such Goods; and
 - 3.3.3 the Customer (if asked to do so by BA-UK) returns such Goods to BA-UK’s place of business at the Customer’s cost,

BA-UK shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 3.4 BA-UK shall not be liable for the Goods’ failure to comply with the warranty in clause 3.2 if:
 - 3.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 3.3;
 - 3.4.2 the defect arises because the Customer failed to follow BA-UK’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 3.4.3 the defect arises as a result of BA-UK following any drawing, design or Goods Specification supplied by the Customer;
 - 3.4.4 the Customer alters or repairs such Goods without the written consent of BA-UK;

- 3.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and
- 3.4.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 3.5 Except as provided in this clause 3, BA-UK shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.2.
- 3.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by BA-UK under clause 3.3.

4. DELIVERY OF GOODS

- 4.1 BA-UK shall ensure that:
 - 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier 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; and
 - 4.1.2 if BA-UK requires the Customer to return any packaging material to BA-UK, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as BA-UK shall reasonably request. Returns of packaging materials shall be at BA-UK's expense.
- 4.2 BA-UK shall deliver, or shall ensure the delivery of the Goods to the location set out in the Order or such other location as the Parties may agree (the "**Delivery Location**") at any time after BA-UK notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. BA-UK 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 BA-UK with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If BA-UK fails to deliver the Goods, its liability shall be limited to the difference in the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality from comparable supplier to BA-UK. BA-UK shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide BA-UK with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within five (5) Business Days of BA-UK notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by BA-UK's failure to comply with its obligations under the Contract in respect of the Goods:
 - 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the sixth Business Day following the day on which BA-UK notified the Customer that the Goods were ready; and

- 4.6.2 BA-UK shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 20 Business Days after BA-UK notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, BA-UK 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 BA-UK 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.
- 4.9 The risk in the Goods shall pass to the Customer on completion of delivery.
- 4.10 Title to the Goods shall not pass to the Customer until BA-UK receives payment in full (in cash or cleared funds) for the Goods and any other goods that BA-UK 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.
- 4.11 Until title to the Goods has passed to the Customer, the Customer shall:
- 4.11.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as BA-UK's property;
 - 4.11.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 4.11.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on BA-UK's behalf from the date of delivery;
 - 4.11.4 notify BA-UK immediately if it becomes subject to any of the events listed in clause 12.3.2 to clause 12.3.4; and
 - 4.11.5 give BA-UK such information relating to the Goods as BA-UK may require from time to time.
- 4.12 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 12.3.2 to clause 12.3.4, then, without limiting any other right or remedy BA-UK may have:
- 4.12.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 4.12.2 BA-UK may at any time:
 - (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) 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.

5. SUPPLY OF SERVICES

- 5.1 BA-UK shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

- 5.2 BA-UK 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.
- 5.3 BA-UK 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 BA-UK shall notify the Customer in any such event.
- 5.4 In providing the Services, BA-UK warrants to the Customer it shall:
- 5.4.1 use reasonable care and skill, having regard to the applicable industry standards to the Services, including the German VDE provisions from the Association for Electrical, Electronic and Information Technologies, codes of practices of safety engineering, DIN/ISO standards and any regulations or standards in respect of accident prevention regulations;
 - 5.4.2 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations; and
 - 5.4.3 observe all environment, information technology, health and safety policies, rules and regulations and any other security requirements that apply at the Customer's premises.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:
- 6.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - 6.1.2 co-operate with BA-UK, its employees, agents, consultants and subcontractors, in all matters relating to this Contract;
 - 6.1.3 provide BA-UK, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by BA-UK to provide the Goods and/or the Services;
 - 6.1.4 provide BA-UK, its employees, agents, consultants and subcontractors, with such information and materials as BA-UK, its employees, agents, consultants and subcontractors may reasonably require to supply the Goods and/or the Services, and ensure that such information is accurate in all material respects;
 - 6.1.5 prepare the Customer's premises as required for the supply of the Goods and/or the Services;
 - 6.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the receipt of the Goods and/or the Services before the date on which the Services are to start or which the Goods are to be delivered; and
 - 6.1.7 keep and maintain all BA-UK Materials at the Customer's premises in safe custody at its own risk and in good condition until returned to BA-UK, and not dispose of or use BA-UK Materials other than in accordance with BA-UK's written instructions or authorisation.
- 6.2 If BA-UK's performance of any of its obligations in respect of the Goods and/or the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- 6.2.1 BA-UK shall without limiting its other rights or remedies have the right to suspend delivery of the Goods and/or the 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 BA-UK's performance of any of its obligations;
- 6.2.2 BA-UK shall not be liable for any costs or losses sustained or incurred by the Customer arising in connection with BA-UK's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- 6.2.3 the Customer shall reimburse BA-UK on written demand for any costs or losses sustained or incurred by BA-UK arising in connection with the Customer Default.

7. CHARGES AND PAYMENT

- 7.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in BA-UK's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 7.2 The charges for Services shall be on a time and materials basis:
 - 7.2.1 the charges shall be calculated in accordance with BA-UK's standard daily fee rates, as set out in the quotation;
 - 7.2.2 BA-UK's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - 7.2.3 BA-UK shall be entitled to charge an overtime rate of:
 - (a) twenty-five (25) per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services on a Business Day outside the hours referred to in clause 7.2.2; and
 - (b) fifty (50) per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services on any day which is not a Business Day; and
 - 7.2.4 BA-UK shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom BA-UK 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 BA-UK for the performance of the Services, and for the cost of any materials.
- 7.3 BA-UK reserves the right to:
 - 7.3.1 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 BA-UK that is due to:
 - (a) any factor beyond the control of BA-UK (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give BA-UK adequate or accurate information or instructions in respect of the Goods.
- 7.4 In respect of Goods, BA-UK shall invoice the Customer on or at any time after completion of delivery. In respect of Services, BA-UK shall invoice the Customer monthly in arrears.
- 7.5 Unless otherwise agreed in writing, the Customer shall make any payment for the Goods and/or Services:
 - 7.5.1 by bank transfer (to a bank account nominated in writing by BA-UK);
 - 7.5.2 in full and in cleared funds within thirty (30) days after receipt of the invoice; and time for payment shall be of the essence of the Contract.
- 7.6 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 BA-UK to the Customer, the Customer shall, on receipt of a valid VAT invoice from BA-UK, pay to BA-UK 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.
- 7.7 If the Customer fails to make any payment due to BA-UK under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. BA-UK may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by BA-UK to the Customer.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Subject to clause 8.3, all Intellectual Property Rights in or arising out of or in connection with the provision of the Goods and/or the Services shall be retained by or vest in BA-UK (or its third party licensors).
- 8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on BA-UK obtaining a written licence from the relevant licensor on such terms as will entitle BA-UK to license such rights to the Customer.
- 8.3 To the extent that:
 - 8.3.1 any Goods supplied by BA-UK are manufactured in accordance with a Goods Specification supplied by the Customer; and
 - 8.3.2 such Goods Specification are the Intellectual Property Rights of the Customer, the Customer shall grant to BA-UK a worldwide, royalty-free, non-exclusive, transferable, sub-licensable licence of the Intellectual Property Rights in the Goods Specification in order for BA-UK to supply the Goods to the Customer as contemplated under this Contract.

8.4 The Customer shall indemnify BA-UK against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by BA-UK in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with BA-UK's use of the Goods Specification. This clause 8.5 shall survive termination of the Contract.

9. CONFIDENTIALITY

9.1 A Party ("**Receiving Party**") shall 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 to the receiving Party by the other Party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain.

9.2 For the avoidance of doubt, any drawings, specifications and data contained in the BA-UK Materials disclosed by BA-UK to the Customer under these Terms and Conditions is the confidential information of BA-UK.

9.3 The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

9.4 The Customer shall not make any public announcement concerning the Contract or the activities in connection with the Contract, or refer to BA-UK in any publicity or marketing materials, except with the prior written permission of BA-UK, and the prior written approval by BA-UK of the content of such announcement or references.

9.5 This clause 9 shall survive termination of the Contract.

10. INSURANCE

10.1 During the term of the Contract, each Party shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the request of the other Party, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. LIMITATION OF LIABILITY

11.1 Notwithstanding any other provision of this Contract, no Party's liability under or in connection with the Contract, whether arising in tort (including negligence), contract or otherwise shall be limited or excluded to the extent that it arises in respect of the following matters:

11.1.1 death or personal injury resulting from a Party's negligence;

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

- 11.1.4 to the extent such exclusion or limitation is not otherwise permitted by law.
- 11.2 The Customer does not exclude or limit its liability to BA-UK in respect of any liability under the indemnity set out in clause 8.4.
- 11.3 Subject to clauses 11.1 and 11.2, the liability of either Party under or in connection with the Contract, whether arising in tort (including negligence), contract or otherwise, shall in no event exceed fifty (50) per cent of the aggregate charges paid and payable by the Customer under this Contract.
- 11.4 Subject to clauses 11.1 and 11.2, neither Party shall be liable under or in connection with the Contract, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss of profit, loss of reputation, or any indirect or consequential loss arising under or in connection with the Contract.
- 11.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.6 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies either Party may terminate the Contract by giving the other Party not less than two (2) months' written notice.
- 12.2 In any of the circumstances in these Terms and Conditions in which a Party may terminate the Contract, where both Goods and Services are supplied, that Party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply of those Goods and/or Services.
- 12.3 Without limiting its other rights or remedies, a Party ("**Non-Defaulting Party**") may terminate the Contract with immediate effect by giving written notice to the other Party ("**Defaulting Party**") if:
- 12.3.1 the Defaulting Party commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing to do so;
 - 12.3.2 the Defaulting Party is subject to an Insolvency Event;
 - 12.3.3 the Defaulting Party suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; and
 - 12.3.4 the Defaulting Party's financial position deteriorates to such an extent that in the Non-Defaulting Party's opinion the Defaulting Party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.4 Without limiting its other rights or remedies, BA-UK may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.5 Without limiting its other rights or remedies, BA-UK may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and BA-UK if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.3, or BA-UK reasonably believes that the Customer is about to become subject to any of them.

- 12.6 On termination of the Contract for any reason:
- 12.6.1 the Customer shall immediately pay to BA-UK all of BA-UK's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, BA-UK shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 12.6.2 the Customer shall return all of BA-UK Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then BA-UK 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;
 - 12.6.3 the accrued rights and remedies of the Parties as at termination 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
 - 12.6.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. FORCE MAJEURE

- 13.1 Neither Party shall be in breach of the Contract nor be liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from events, circumstances or causes beyond its reasonable control.
- 13.2 Each Party shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 13.3 If a Force Majeure Event prevents, hinders or delays either Party's performance of its obligations for a continuous period of more than 30 Business Days, BA-UK may terminate the Contract immediately by giving written notice to the Customer.

14. GENERAL

- 14.1 Assignment and other dealings.
 - 14.1.1 BA-UK may at any time assign, transfer, mortgage, 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.
 - 14.1.2 The Customer shall not, without the prior written consent of BA-UK, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 Notices.
 - 14.2.1 Any notice or other communication given to a Party under or in connection with this Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

- 14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; 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; 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 or e-mail, one Business Day after transmission.
- 14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.3 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.
- 14.4 Waiver. A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, nor constitute either Party the agent of another Party for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.
- 14.6 Third Parties. A person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. Notwithstanding the foregoing, it is expressly agreed that the Parties may by agreement rescind or vary this Contract or any term of this Contract without the consent of any person who has the right to enforce this Contract or the term in question.
- 14.7 Variation. Except as set out in these Terms and Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by BA-UK.
- 14.8 Governing law. The 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 the law of England and Wales.
- 14.9 Jurisdiction. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).