

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

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 IP Items**”: (a) the BA-UK Materials, and (b) any Deliverables, or other materials in any medium (including any Goods) which are specifically developed by the Supplier for the purposes of this Contract.

“**BA-UK Materials**”: any materials, equipment and tools, drawings, specifications and data supplied by BA-UK to the Supplier for the purposes of the Supplier providing the Goods and/or Services under the 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 Supplier for the supply of Goods and/or Services in accordance with these Terms and Conditions as formed in accordance with clause 2.2.

“**Deliverables**”: all documents, products and materials developed by the Supplier or its agents, contractors and employees, in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, methodologies, processes, specifications and reports (including drafts).

“**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 related plans and drawings, that is agreed in writing by BA-UK and the Supplier.

“**Local End-Customer**”: BA-UK’s own end customer which ultimately receives the benefit of the Goods and/or Services.

“**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”: BA-UK’s order for the supply of Goods and/or Services, as set out in BA-UK’s purchase order form.

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

“Services”: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

“Service Specification”: the description or specification for Services agreed in writing by BA-UK and the Supplier.

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

“Supplier”: the person or firm from whom BA-UK purchases the Goods and/or Services.

“Supplier IP Items”: any Deliverables, or other materials in any medium (including any Goods) used by or supplied by the Supplier in connection with the provision of the Goods and/or Services under this Contract, but in all cases excluding the BA-UK IP Items.

“Terms and Conditions”: these terms and conditions as amended from time to time in accordance with clause 17.7.

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 references 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 Parties agree that the Order constitutes an offer by BA-UK to purchase Goods and/or Services from the Supplier 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 Supplier shall have accepted the Order when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (“**Commencement Date**”).
- 2.3 Any amendment to an Order shall only be effective with the Supplier issuing written acceptance of such amendment to BA-UK.
- 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 other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 All of these Terms and Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

- 3.1 Without prejudice to any of its obligations under law or any applicable Special Terms, the Supplier shall ensure that the Goods shall:
 - 3.1.1 correspond with their description and any applicable Goods Specification;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by BA-UK, expressly or by implication, and in this respect BA-UK relies on the Supplier’s skill and judgment;
 - 3.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery or after BA-UK’s acceptance of any acceptance inspection report period (as set out in clause 4.8), whichever is the later date; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 Where the Supplier is required to manufacture any Goods which are specifically manufactured from any customised drawings provided as part of the BA-UK Materials, the Supplier shall:
 - 3.3.1 confirm any Goods Specifications prior to the manufacture of any such Goods with BA-UK; and
 - 3.3.2 only commence the manufacture of such Goods once BA-UK has provided its written approval.
- 3.4 BA-UK shall have the right to inspect and test the Goods at any time before delivery.
- 3.5 If following any such inspection or testing as set out in clause 3.4, BA-UK considers that the Goods do not conform or are unlikely to comply with the Supplier’s undertakings at clause 3.1, BA-UK may, in its absolute discretion:

- 3.5.1 require the Supplier to immediately take such remedial action (including reworking or replacing the Goods) as BA-UK determines necessary to ensure compliance; or
 - 3.5.2 take any remedial action that it considers necessary to rectify the defect in order to meet any requirements of its Local End-Customers, including appointing a third party to rectify the defect at the Supplier's cost.
- 3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract (including the obligation to ensure that the Goods are free from defects, material and workmanship), and BA-UK shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

- 4.1 The DAP, Riverside House, Brymau Three Estate, River Lane, Saltney, Chester CH48RQ, Cheshire, United Kingdom INCOTERMS® 2010 shall apply to this Contract.
- 4.2 The Supplier shall ensure that:
- 4.2.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.2.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.2.3 if the Supplier requires BA-UK or the Local End-Customer (as applicable) to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. The Supplier shall bear the costs of returns and any such packaging material to the Supplier.
- 4.3 The Supplier shall promptly notify BA-UK as soon as it is aware of any circumstances that will affect, or would reasonably likely to affect the delivery of the Goods.
- 4.4 The Supplier shall deliver the Goods:
- 4.4.1 on the date specified in the Order or, if no such date is specified, then within fourteen (14) days of the date of the Order;
 - 4.4.2 to BA-UK's premises at Chester, United Kingdom or such other location (including the Local End-Customer's premises) as is set out in the Order or as instructed by BA-UK before delivery (Delivery Location); and
 - 4.4.3 during BA-UK's or Local End-Customer's (as applicable) normal hours of business on a Business Day, or as instructed by BA-UK.
- 4.5 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.6 The Supplier shall not deliver the Goods in instalments without BA-UK's prior written consent. Where BA-UK consents to the Goods being delivered in instalments, they may be invoiced and paid for separately, provided that BA-UK shall be entitled to the benefit of the remedies in clause 6.1, if the Supplier fails to deliver any one instalment on time or at all or there is any defect in an instalment.

- 4.7 Title and risk in the Goods shall pass to BA-UK on completion of delivery.
- 4.8 If requested by BA-UK, the Parties shall inspect the Goods after delivery and the Supplier shall prepare, at the Supplier's cost, an acceptance inspection report for the Goods on the completion of delivery which shall include any defects in the Goods, and any required action and time period to rectify such defects.

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to BA-UK, or the Local End-Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by BA-UK.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with BA-UK in all matters relating to the Services, and comply with all instructions of BA-UK;
 - 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade, 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;
 - 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - 5.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by BA-UK;
 - 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to BA-UK, will be free from defects in workmanship, installation and design;
 - 5.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - 5.3.8 observe all environment, information technology, health and safety policies, rules and regulations and any other security requirements that apply at any of BA-UK's or Local End-Customer's premises (as applicable), and ensure that any of its representatives, agents or personnel comply with any such environment, information technology, health and safety rules and regulations and other security requirements;
 - 5.3.9 where it performs any of its Services at any of BA-UK's premises, keep such sites and rooms at the premises clean, safe and without overloading, and shall keep or remove all redundant materials outside the premises, including removing any equipment as soon as it is not required for the performance of the work;

- 5.3.10 hold all the BA-UK Materials in safe custody at its own risk, maintain the BA-UK Materials in good condition until returned to BA-UK, and not dispose or use the BA-UK Materials other than in accordance with BA-UK's written instructions or authorisation; and
- 5.3.11 not do or omit to do anything which may cause BA-UK to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that BA-UK may rely or act on the Services.

6. BA-UK REMEDIES

6.1 If the Supplier:

- 6.1.1 fails to deliver the Goods and/or perform the Services by the applicable date; or
- 6.1.2 has delivered Goods that do not comply with the undertakings set out in clause 3.1, BA-UK shall, without limiting its other rights or remedies, have one or more of the following rights (including, in the case of clause 6.1.2, whether or not it has accepted the Goods):
 - 6.1.3 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.1.4 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 6.1.5 in the case of clause 6.1.2, to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.1.6 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 6.1.7 to recover from the Supplier any costs incurred by BA-UK in obtaining substitute goods and/or services from a third party;
 - 6.1.8 where BA-UK has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 6.1.9 to claim damages for any additional costs, loss or expenses incurred by BA-UK which are in any way attributable to the Supplier's failure to meet such dates or comply with the undertakings set out in clause 3.1 (as applicable).

6.2 The remedies in this clause 6 shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.3 BA-UK's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7. DEFECT RECTIFICATION WORK

7.1 If the Supplier is required to perform any defect rectification work in respect of any warranty or guarantee for the delivery of the Goods and/or Services at any site which is different to the initial delivery site for the Goods and/or Services, BA-UK shall be responsible for any additional cost reasonably incurred by the Supplier as a result of performing the defect rectification work at any other such site.

8. BA-UK'S TASKS

8.1 BA-UK shall:

- 8.1.1 provide the Supplier with reasonable access at reasonable times to BA-UK's premises for the purpose of providing the Services, or where the Services are provided at the Local End-Customer's premises, use reasonable endeavours to ensure that the Local End-Customer grants the Supplier with reasonable access at reasonable times; and
- 8.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and BA-UK considers reasonably necessary for the purpose of providing the Services.

9. CHARGES AND PAYMENT

9.1 The price for the Goods:

- 9.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- 9.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by BA-UK and subject to the DAP Incoterms 2010. No extra charges shall be effective unless agreed in writing and signed by BA-UK.

9.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by BA-UK, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 In respect of Goods, the Supplier shall invoice BA-UK on or at any time after completion of delivery, or for any agreed instalment periods. In respect of Services, the Supplier shall invoice BA-UK on completion of the Services, or for any agreed instalment periods. Each invoice shall include such supporting information required by BA-UK to verify the accuracy of the invoice, including but not limited to the date, relevant purchase order number and the address of BA-UK and/or the Local End-Customer.

9.4 All amounts payable by BA-UK under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to BA-UK, BA-UK shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

9.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services for a period of six (6) years, and the Supplier shall allow BA-UK to inspect such records at all reasonable times on request.

9.6 BA-UK may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to BA-UK against any liability of BA-UK to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 In respect of the Goods and any goods that are transferred to BA-UK as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the

Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to BA-UK, it will have full and unrestricted rights to sell and transfer all such items to BA-UK.

- 10.2 On delivery of the Goods and/or the Services, all Intellectual Property Rights and other ownership rights in the:
- 10.2.1 BA-UK IP Items shall be retained by or vest in BA-UK (or its third party licensors); and
- 10.2.2 Supplier IP Items shall be retained by or vest in the Supplier (or its third party licensors).
- 10.3 The Supplier shall grant to the Customer a worldwide, royalty-free, non-exclusive, non-transferable, sub-licensable licence of Intellectual Property Rights in the Supplier IP Items for the Customer to receive the full benefit of the Goods and/or Services under this Contract.
- 10.4 The Supplier shall obtain waivers of all applicable moral rights in the BA-UK IP Items and the Supplier IP Items that are transferred to BA-UK as part of the provision of the Goods and/or Services under this Contract, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 10.5 The Supplier shall, promptly at BA-UK's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as BA-UK may from time to time require for the purpose of securing for BA-UK the full benefit of the Contract, including all rights, title and interest in and to the Intellectual Property Rights assigned to BA-UK in accordance with clauses 10.2 and 10.3.
- 10.6 All the BA-UK Materials are the exclusive property of BA-UK and BA-UK grants to the Supplier a limited, royalty-free, non-transferable, non-exclusive licence to the BA-UK Materials for the sole purpose of fulfilling its obligations under the Contract.

11. LIABILITY&INDEMNITY

- 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 Supplier does not exclude or limit its liability to BA-UK in respect of any liability under the indemnities set out in clause 11.5.
- 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 the greater of:
- 11.3.1 £[]; or
- 11.3.2 [] per cent of the aggregate charges paid and payable by BA-UK under this Contract.

- 11.4 Subject to clause 11.1 and 11.2, neither Party shall be liable under or in connection with the Contract, whether arising in tort (including negligence), contract or otherwise for any special, indirect or consequential loss.
- 11.5 The Supplier shall indemnify and hold harmless BA-UK against all liabilities, costs, expenses, damages and losses (including but not limited to any loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses, in each case whether direct, indirect or consequential) suffered or incurred by BA-UK as a result of or in connection with:
- 11.5.1 any breach by the Supplier of its obligations relating to confidentiality under clause 13, Intellectual Property Rights under clause 10 and compliance with any applicable laws and regulations in relation to the supply of Goods and/or the Services;
 - 11.5.2 any claim made against BA-UK for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Goods, or the Services;
 - 11.5.3 any claim made against BA-UK by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods; and
 - 11.5.4 any claim made against BA-UK arising out of or in connection with the supply of the Goods and/or the Services at the BA-UK sites or at the Local End-User Customer sites (as applicable), to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 11.6 This clause 11 shall survive termination of the Contract.

12. INSURANCE

- 12.1 During the term of the Contract and for a period of 6 (six) years thereafter, the Supplier 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 BA-UK's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. CONFIDENTIALITY

- 13.1 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.
- 13.2 For the avoidance of doubt, any drawings, specifications and data contained in the BA-UK Materials disclosed by BA-UK to the Supplier under these Terms and Conditions is the confidential information of BA-UK.
- 13.3 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.

- 13.4 The Supplier 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.
- 13.5 This clause 13 shall survive termination of the Contract.

14. TERMINATION

- 14.1 Without limiting its other rights or remedies, BA-UK may terminate the Contract:
- 14.1.1 in respect of the supply of Services, by giving the Supplier one (1) month written notice; and
- 14.1.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on those Goods. BA-UK shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.2 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.
- 14.3 Without limiting its other rights or remedies, BA-UK may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 14.3.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
- 14.3.2 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 14.3.3 the Supplier is subject to an Insolvency Event;
- 14.3.4 the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- 14.3.5 the Supplier's financial position deteriorates to such an extent that in BA-UK's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 14.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of any part of the Contract for any reason, the Supplier shall immediately deliver to BA-UK all Deliverables whether or not then complete, and return all the BA-UK Materials. If the Supplier fails to do so, then BA-UK may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16. FORCE MAJEURE

16.1 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.

16.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

16.3 If a Force Majeure Event prevents, hinders or delays the Supplier'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 Supplier.

17. GENERAL

17.1 Assignment and other dealings.

17.1.1 BA-UK may at any time assign, novate, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.1.2 The Supplier may not assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of BA-UK.

17.2 Notices.

17.2.1 Any notice or other communication given to a Party under or in connection with the 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 pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; 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.

17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.3 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.

- 17.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- 17.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either Party the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.
- 17.6 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.
- 17.7 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.
- 17.8 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.
- 17.9 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).