

## 1. INTERPRETATION

### 1.1 Definitions. In these Conditions, the following definitions apply:

"**Business Day**" a day other than a Saturday, Sunday or public holiday in England when UK clearing banks in the city of London are open for general business.

"**Catering Unit**" means the Customer Unit following completion of the Services and incorporating the Equipment.

"**Commencement Date**" has the meaning set out in clause 2.2

"**Conditions**" these terms and conditions as amended from time to time in accordance with clause 16.7.

"**Consumables**" any commodity that by its nature is intended to be used up or to deteriorate relatively quickly including but not limited to batteries, upper tap assemblies, tyres & windscreens, used fridges & paintwork on Used Equipment.

"**Contract**" the contract between Wilkinson and the Customer for the supply of Products and/or Services in accordance with these Conditions.

"**Customer**" the person or firm who purchases the Products and/or Services from Wilkinson.

"**Customer Materials**" all documents (including, in addition to any document in writing, any drawing, plan, diagram, design, picture or other image), information and materials provided by the Customer relating to the Services which existed prior to the commencement of the Contract and had not been created, designed or developed by Wilkinson.

"**Customer Unit**" the van, trailer or vehicle including, where applicable any Sourced Unit, whether or not motorised, provided by the Customer and in respect of which Wilkinson has agreed to perform the Services.

"**Delivery Location**" has the meaning set out in clause 5.1.

"**Drawing**" the descriptions of the Services detailed by way of drawings, diagrams and other written or illustrated design proposals.

"**Estimated Delivery Date**" any estimated delivery date as set out in Wilkinson's quotation and/ or Order Confirmation.

"**Equipment**" means the New Equipment and Used Equipment.

"**Force Majeure Event**" has the meaning given to it in clause 15.1.

"**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.

"**New Equipment**" means new (and not for the avoidance of doubt, second hand, upcycled or otherwise used) units and equipment including any units and equipment installed into or affixed to, the Customer Unit by Wilkinson in performing the Services as set out in the Order.

"**Order**" the Customer's order for the supply of Products and Services, as set out the Customer's written acceptance of Wilkinson's quotation.

"**Order Confirmation**" has the meaning given in clause 2.2.

"**Products**" the products (or any part of them) set out in the Order which may include the Ready Made Unit, Equipment and/or the Trailer.

"**Ready Made Unit**" means a ready-made catering unit to be supplied by Wilkinson to the Customer as set out in the Order Confirmation.

"**Seller**" the person or firm from whom Wilkinson purchases the Sourced Unit as the Customer's agent.

"**Services**" the services comprising the installation of Equipment into Customer Units and/or the sourcing of a Sourced Unit agreed to be supplied by Wilkinson to the Customer as set out in the Order.

"**Sourced Unit**" has the meaning given in clause 4.1.

"**Trailer**" means the trailer to be supplied by Wilkinson and set out in the Order.

"**Used Equipment**" means second hand, upcycled or otherwise used (and not for the avoidance of doubt new) units and equipment including any units and equipment installed into or affixed to the Customer Unit by Wilkinson in performing the Services as set out in the Order.

"**Wilkinson**" Wilkinson Mobile Catering Systems Ltd registered in England and Wales with company number 02891106.

### 1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) 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;
- (d) any reference to the singular shall be deemed to apply equally to the plural unless otherwise stated;
- (e) 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
- (f) a reference to **writing** or **written** includes e-mails.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Wilkinson issues written acceptance of the Order ("**Order Confirmation**") at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 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 Wilkinson which is not set out in the Contract and any samples, drawings, descriptive matter or advertising issued by Wilkinson and any descriptions of the Products or illustrations or descriptions of the Services contained in Wilkinson's catalogues, brochures, website or otherwise are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products 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 Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Wilkinson shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.
- 2.7 The Customer warrants that in entering into the Contract it is acting in the course of business and is not a consumer within the meaning of the Consumer Rights Act 2015.

## 3. PRODUCTS

- 3.1 The Products are described in the Order Confirmation.
- 3.2 Wilkinson reserves the right to amend the Order Confirmation if required by any applicable statutory or regulatory requirements.

## 4. SOURCED UNIT

- 4.1 If Wilkinson agrees in writing, it shall use reasonable endeavours to source a van, unit, trailer or vehicle for the Customer on the basis of the Order Confirmation and in respect of which Wilkinson shall perform the Services ("**Sourced Unit**").
- 4.2 In the event that Wilkinson sources a van, trailer, unit or vehicle, the Customer shall be wholly responsible for inspecting it and assessing its suitability, fitness for the Customer's purpose, its roadworthiness (including but not limited to its safety, durability, reliability, whether it is taxed and insured and conforms with any other legal requirements in the United Kingdom and/or any other territory) and its correspondence with the Order Confirmation.
- 4.3 The Customer and Wilkinson acknowledge, accept and agree that Wilkinson shall act as the Customer's agent when purchasing any Sourced Unit, and Wilkinson shall not purchase a Sourced Unit without the Customer's consent.
- 4.4 Wilkinson does not give or make any representations, warranties or other promises concerning the Sourced Unit and assumes no liability in respect of the same. The Customer acknowledges, accepts and agrees it shall be the Seller's responsibility to deal with any claim, complaint, dispute or after-sales enquiry brought by the Customer.
- 4.5 Wilkinson shall not be liable for any delay in or failure to source a Sourced Unit or for any delay in supplying Products and/or Services which is as a result of or connected to any delays in Wilkinson sourcing a Sourced Unit. Wilkinson offers no guarantees that it shall be able to source an appropriate unit for the Customer.
- 4.6 **WILKINSON STRONGLY ADVISES THE CUSTOMER TO UNDERTAKE ITS OWN DUE DILIGENCE IN RESPECT OF ANY**

**UNIT PROPOSED BY WILKINSON INCLUDING INSPECTION BY A QUALIFIED MECHANIC.**

**5. DELIVERY OF PRODUCTS**

- 5.1 The Customer shall collect the Catering Unit and/or the Products (as applicable) from Wilkinson's premises at Unit 1, Global Way, Lower Eccleshill Road, Darwen, Lancashire, BB3 0RW or such other location as may be advised by Wilkinson before delivery ("**Delivery Location**") within five Business Days of Wilkinson notifying the Customer that the Catering Unit and/or the Products are ready.
- 5.2 Delivery of the Catering Unit and/or Products shall be completed on the notification by Wilkinson to the Customer of the arrival of the Catering Unit and/or Products at the Delivery Location.
- 5.3 Any dates quoted for delivery of the Catering Unit and/or Products including but not limited to any Estimated Delivery Date stated in Wilkinson's quotations and/or Order Confirmation are approximate only, and the time of delivery is not of the essence. Wilkinson shall not be liable for any delay in delivery of the Catering Unit and/or Products that is caused by a Force Majeure Event, the Customer's failure to provide Wilkinson with adequate delivery instructions or any other instructions that are relevant to the supply of the Catering Unit and/or Products including but not limited to any delays in sourcing a Sourced Unit.
- 5.4 If Wilkinson fails to deliver the Catering Unit and/or Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Catering Unit and/or Products. Wilkinson shall have no liability for any failure to deliver the Catering Unit and/or Products to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Wilkinson with any relevant instruction related to the supply of the Catering Unit and/or Products.
- 5.5 If the Customer fails to accept or take delivery of the Catering Unit and/or Products within five Business Days of Wilkinson notifying the Customer that the are ready, then except where such failure or delay is caused by a Force Majeure Event or by Wilkinson's failure to comply with its obligations under the Contract in respect of the Catering Unit and/or Products:
- delivery of the Catering Unit and/or Products shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which Wilkinson notified the Customer that the Catering Unit and/or Products were ready; and
  - Wilkinson shall store the Catering Unit and/or Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.6 Wilkinson shall be entitled to deliver the Catering Unit and/or Products to the Customer and charge the Customer for all associated delivery and other costs if 10 Business Days after Wilkinson notified the Customer that the Catering Unit and/or Products were ready for delivery the Customer has not collected them and if the Customer does not accept delivery of the Catering Unit and/or Products, Wilkinson may remove the Equipment from the Catering Unit and/or Products and resell or otherwise dispose of part or all of the Catering Unit and/or Products (including for the avoidance of doubt, the Customer Unit).

**6. QUALITY OF PRODUCTS**

- 6.1 Wilkinson warrants that on delivery or deemed delivery, and for a period of 12 months from the date of delivery in respect of the New Equipment and the Trailer only and 3 months in respect of Used Equipment and Ready Made Units only, ("**warranty period**"), the Products shall:
- conform in all material respects with their description and the Order Confirmation;
  - be free from material defects in design, material and workmanship;
  - be fit for any purpose expressly held out by Wilkinson.
- 6.2 Subject to clause 6.3, if:
- the Customer gives notice in writing during the relevant warranty period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 6.1;
  - Wilkinson or any third party authorised by Wilkinson is given a reasonable opportunity of examining such Products; and
  - the Customer (if asked to do so by Wilkinson) returns such Products to Wilkinson's place of business at the Customer's cost,
- Wilkinson shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.
- 6.3 Wilkinson shall not be liable for the Products' failure to comply with

the warranty in clause 6.1 if:

- the Customer makes any further use of such Products after giving a notice in accordance with clause 6.2;
  - the defect arises because the Customer failed to follow Wilkinson's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
  - the defect arises as a result of Wilkinson following any drawing, design or specification supplied by the Customer;
  - the Customer or any third party authorised by the Customer alters or repairs such Products without the written consent of Wilkinson;
  - the defect arises as a result of fair wear and tear (including but not limited to any Consumables provided by Wilkinson), wilful damage, negligence, or abnormal working conditions;
  - the defect or fault relates to any of the matters set out in clause 6.6;
  - the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this clause 6, Wilkinson shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 6.1.
- 6.5 The terms of these Conditions shall apply to any repaired or replacement Products supplied by Wilkinson under clause 6.2 and for the avoidance of doubt, where Wilkinson has repaired or replaced any Products, the warranty period on the repaired or replaced Products shall not start again, but shall continue to run until the end of the applicable warranty period granted on the initial Products supplied by Wilkinson under the original Order.
- 6.6 For the avoidance of doubt, the Customer and Wilkinson acknowledge, accept and agree that Wilkinson shall not be liable for any defect or fault in the Customer Unit, the Catering Unit or the Ready Made Unit (together the "**Units**") themselves, and Wilkinson does not warrant and assumes no responsibility or liability for the roadworthiness, state or condition of the Units (save insofar as the defect or fault relates directly to the Products or Services provided by Wilkinson), including but not limited to any of the following:
- verifying the mileage and history of the Units;
  - the safety, reliability and durability of the Unit;
  - whether the Unit is legally roadworthy, including but not limited to whether it:
    - has a valid MOT certificate;
    - is taxed;
    - is insured; and
    - conforms with any other legal requirements whether within the United Kingdom or any other territory.

**7. TITLE AND RISK**

- 7.1 The risk in the Products shall pass to the Customer on completion of delivery (or deemed delivery if earlier).
- 7.2 Title to the Products shall not pass to the Customer until Wilkinson receives payment in full (in cash or cleared funds) for the Products and Services.
- 7.3 Until title to the Products has passed to the Customer, the Customer shall:
- not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Wilkinson's behalf from the date of delivery;
  - notify Wilkinson immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(m); and
  - give Wilkinson such information relating to the Products as Wilkinson may require from time to time.
- 7.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(m), then, without limiting any other right or remedy Wilkinson may have:
- the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
  - Wilkinson may at any time:
    - require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
    - if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

**8. SUPPLY OF SERVICES**

- 8.1 Wilkinson shall provide the Services to the Customer in accordance

with the Drawing in all material respects.

8.2 Wilkinson shall use reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 Wilkinson 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 Wilkinson shall notify the Customer in any such event.

#### 9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Drawing are complete and accurate;
- (b) co-operate and liaise promptly with Wilkinson in all matters relating to the Services and confirm in writing or suggest any modifications to any design proposals in relation to the Services (including but not limited to the Drawing) within 3 Business Days of receipt from Wilkinson or as otherwise agreed;
- (c) provide Wilkinson with such information and materials as Wilkinson may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (d) prepare the Customer Unit for the supply of the Services as directed by Wilkinson; and
- (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.

9.2 If Wilkinson's performance of any of its obligations in respect of 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**"):

- (a) Wilkinson shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Wilkinson's performance of any of its obligations;
- (b) Wilkinson shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Wilkinson's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse Wilkinson on written demand for any costs or losses sustained or incurred by Wilkinson arising directly or indirectly from the Customer Default.

#### 10. CHARGES AND PAYMENT

10.1 The price for Products and Services shall be the price set out in Wilkinson's quotation or, if no price is quoted, the price set out in Wilkinson's published price list as at the date of delivery.

10.2 Wilkinson reserves the right to increase the price of the Products and Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to Wilkinson that is due to:

- (a) any factor beyond the control of Wilkinson (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 Products ordered;
- (c) Wilkinson being required to provide more than 2 further drafts of the initial Drawing proposed for the Services; or
- (d) any delay caused by any instructions of the Customer in respect of the Products including but not limited to any failure by the Customer to comply with clause 9.1(b) or failure of the Customer to give Wilkinson adequate or accurate information or instructions in respect of the Products.

10.3 The Customer shall pay the non-refundable deposit detailed in Wilkinson's quotation upon placing its Order or in accordance with the payment terms set out in the quotation where different. Wilkinson shall not begin fulfilling the Order until the deposit has been received in full and cleared funds.

10.4 Wilkinson shall invoice the Customer for the balance of the price of the Products and/or Services on or at any time before delivery or deemed delivery.

10.5 The Customer shall pay the invoice submitted by Wilkinson:

- (a) prior to the estimated delivery date as communicated by Wilkinson in writing; and
- (b) in full and in cleared funds to a bank account nominated in writing by Wilkinson, and

time for payment shall be of the essence of the Contract.

10.6 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 Wilkinson to the Customer, the Customer shall, on receipt of a valid VAT invoice from Wilkinson, pay to Wilkinson such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.

10.7 If the Customer fails to make any payment due to Wilkinson 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'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.

10.8 Wilkinson reserves the right to claim from the Customer the appropriate fixed sum prescribed by The Late Payment of Commercial Debts (Interest) Act 1998 ("**Act**") plus its costs in recovering any debts from the Customer and all other sums, costs and fees to which Wilkinson shall be entitled by virtue of the Act or any related, modified or subsequent legislation, statute, enactments, directives or otherwise.

10.9 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. Wilkinson may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Wilkinson to the Customer.

#### 11. INTELLECTUAL PROPERTY RIGHTS

11.1 Unless otherwise agreed in writing all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Wilkinson.

11.2 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 Wilkinson obtaining a written licence from the relevant licensor on such terms as will entitle Wilkinson to license such rights to the Customer.

11.3 Wilkinson acknowledges that all Intellectual Property Rights in the Customer Materials shall be owned by the Customer.

#### 12. CONFIDENTIALITY

12.1 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. 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. This clause 12 shall survive termination of the Contract.

12.2 For the avoidance of doubt, Wilkinson shall be entitled to use the Customer's name and logo and photographs of the Catering Unit, the Customer Unit and other details and images relating to the Services carried out by Wilkinson for the Customer for Wilkinson's promotional and advertising purposes.

#### 13. LIMITATION OF LIABILITY

13.1 Nothing in these Conditions shall limit or exclude Wilkinson's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Products and Services Act 1982 (title and quiet possession); or
- (d) breach of the terms implied by section 12 of the Sale of Products Act 1979 (title and quiet possession).

13.2 Subject to clause 13.1:

- (a) Wilkinson shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in

- connection with the Contract ; and
- (b) Wilkinson's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the price paid or payable by the Customer under the Contract.
- 13.3 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 and the terms implied by sections 3 to 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.
- 14. TERMINATION**
- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(b) to clause 14.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in Wilkinson's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.2 Without limiting its other rights or remedies, Wilkinson 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.
- 14.3 Without limiting its other rights or remedies, Wilkinson may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Customer and Wilkinson 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 14.1(b) to clause 14.1(m), or Wilkinson reasonably believes that the Customer is

- about to become subject to any of them.
- 14.4 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to Wilkinson all of Wilkinson's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Wilkinson shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) 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
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15. FORCE MAJEURE**
- 15.1 For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of Wilkinson including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Wilkinson or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 Wilkinson shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents Wilkinson from providing any of the Services and/or Products for more than 6 weeks, Wilkinson shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 16. GENERAL**
- 16.1 **Assignment and other dealings.**
- (a) Wilkinson 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.
- (b) The Customer shall not, without the prior written consent of Wilkinson, 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.
- 16.2 **Notices.**
- (a) 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 recorded delivery or other next working day delivery service provided that the recipient must sign for the delivery, or by commercial courier, or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a) and signed by an authorised representative of the recipient; if sent by recorded delivery or other next working day delivery service, on the date that it is signed for by the recipient; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent or e-mail, one Business Day after transmission provided that the e-mail has been sent to the correct e-mail address and has not been recalled or a message of non-delivery received by the sender.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 16.3 **Severance.**
- (a) 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.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the

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- intended commercial result of the original provision.
- 16.4 **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.
- 16.5 **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.
- 16.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.7 **Variation.** Except as set out in these 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 Wilkinson.
- 16.8 **Governing law.** This agreement 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.
- 16.9 **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 Contract or its subject matter or formation (including non-contractual disputes or claims).