



**NORDIC WIND**  
TECHNOLOGY

# Standard Terms and Conditions for Sale and Delivery

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## § 1 Scope

- 1) Nordic Wind Technology ApS (registration no. 38526162) ("NWT") will supply software and hardware and provide its expertise and services (such software, hardware, expertise and services are collectively referred to as "the Deliverables") to the customer ("Customer") in accordance with these terms and conditions ("Terms and Conditions") and as specified in any special terms and conditions agreed in writing between NWT and the Customer (collectively referred to as "the Contract"). NWT and the Customer are also individually referred to as a "Party" or collectively referred to as the "Parties".
- 2) Any quotation given by NWT shall not constitute an offer and is only valid for the period stated in the written quotation.
- 3) The Customer's written acceptance of NWT's quotation ("Order") constitutes an offer by the Customer to purchase the Deliverables on the terms set out in NWT's quotation.
- 4) The Order shall only be deemed to be accepted when NWT issues written acceptance of the Order at which point, and on which date the Contract shall come into existence ("Commencement Date").
- 5) The headings in these Terms and Conditions are for convenience only and shall have no other legal meaning.
- 6) These Terms and Conditions apply to the Contract to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing except in the event that NWT has acknowledged such other terms and conditions explicitly in writing.
- 7) Products supplied by third parties as part of the Deliverables supplied by NWT will be warranted and guaranteed by the third-party vendor, and any such warranties will be transferred to the Customer.

## § 2 Supply of the Deliverables

- 1) NWT shall in collaboration with the Customer carry out an assessment of the circumstances, in order to decide what is necessary to supply the Deliverables, such assessment for example to include the performance of all necessary studies, information gathering, investigations, and inspections as well as taking pictures and preparing maps at the Customer's reasonable cost and subject to the prior approval of the Customer.
- 2) NWT shall supply the Deliverables in all material respects in accordance with the description and/or specification (collectively referred to as "Specification") of the Deliverables provided to the Customer by NWT in its written quotation.
- 3) NWT reserves the right to amend the Specification, if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Deliverables, and NWT shall notify the Customer in any such event.
- 4) In case of force majeure, including without limitation any act of God, fire, flood, plant breakdown, malicious damage, theft, industrial action, act of government or other public authority, civil disturbance, terrorism or war ("Force Majeure"), all obligations of the Parties shall be suspended during the time this situation persists. In the event Force Majeure makes the fulfilment of the Contract impossible both Parties shall be released from their contractual obligations. Payments for Deliverables already supplied shall not be refunded.
- 5) Before NWT starts supplying the Deliverables, the Customer shall inform NWT about relevant safety issues and take all necessary safety-related measures to ensure a safe work environment for the persons carrying out work of any kind for NWT and shall comply with all legal and other safety regulations.
- 6) NWT may, at no cost to the Customer, and at any time without notifying the Customer make changes to the supply of the Deliverables which are necessary to comply with any applicable safety or other statutory requirements.
- 7) The Customer acknowledges and consents, provided that no existing conflict of interest is present, to the fact that NWT may subcontract any work and services, which form part of the supply of Deliverables made under this Contract to any third party. NWT is responsible for the work performed by its subcontractors in accordance with the provisions of this Contract.

## § 3 Software

- 1) In the Contract, software shall mean the computer programs listed in the Specification as Deliverables and any adjustments made by NWT to the software that correct faults or optimise performance during an acceptance test phase ("Software").

- 2) NWT shall deliver, and install where relevant, the Software in accordance with the Specification.
- 3) The Software and all related rights including copyrights, trade secret rights and intellectual property rights belong exclusively to NWT. No rights to the Software shall be transferred by NWT to the Customer or any third party except as explicitly stated under these Terms and Conditions.
- 4) NWT hereby grants to the Customer a perpetual and non-exclusive licence to use the Software in object code form in the number of units and only at the sites specified in NWT's written quotation, and conditional always upon payment of the Contract sum in accordance with the payment terms agreed in the Contract.
- 5) Except as explicitly agreed in writing between the Parties, the Customer shall not sub-license, assign or novate the benefit or burden of the licence at clause 3.4 above in whole or in part.
- 6) The Software shall only be used in accordance with the use described and anticipated in NWT's written quotation.
- 7) The Customer has no right (and shall not permit any third party) to circumvent the key devices or authorization codes of the Software, copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part and the Customer acknowledges that where any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, NWT will carry out such action as a part of the supply of Deliverables and in accordance with the Specification.
- 8) If software products other than NWT's are included in the supply of Deliverables, the copyright holder's licensing terms shall apply.

## § 4 Acceptance test of Software

- 1) Site Acceptance Tests ("SAT") provided for in the Contract shall, unless otherwise agreed, be carried out at the relevant site during normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in Denmark.
- 2) NWT shall notify the Customer in writing of the SAT in sufficient time to permit the Customer to be represented at the SAT. If the Customer is not represented, the test report shall be sent to the Customer and shall be accepted as accurate.
- 3) If the initial SAT fails, NWT shall without delay remedy any deficiencies disclosed by the SAT. New SAT shall then be carried out at the Customer's request covering the affected parts, unless the deficiency was insignificant.
- 4) If the subsequent SAT fails, the Customer may require NWT to repeat the actions described in clause 4 (3) as often as the Customer wishes (subject to the limitation specified below). If subsequent SAT continue to fail, the Customer shall continue to have the same rights as described above until failure of the fifth SAT, or (if earlier) the date on which NWT reasonably determines that further SAT will not be successful within a reasonable period, whereupon the Customer shall be entitled to terminate the Contract by a month's written notice.
- 5) The Customer shall be deemed to have accepted the Software if:
  - a) The SAT is certified by NWT to be successful; or
  - b) The Customer commences operational use of the Software, and other associated Deliverables where relevant.
- 6) Each Party shall bear their own costs associated with its representatives attending and carrying out the SAT.

## § 5 Delivery. Passing of risk

- 1) Delivery of the Deliverables shall be made in accordance with the Contract. Any agreed delivery term shall be construed in accordance with INCOTERMS 2010 or the INCOTERMS in force at the Commencement Date. If no delivery term is specifically agreed, the delivery shall be Ex works (EXW). If, in the case of delivery Ex works, NWT, at the request of the Customer, undertakes to send any Deliverable to its destination, the Customer shall pay all costs associated with freight, post and insurance and the risk shall pass to the Customer when the Deliverable leaves NWT's or NWT's subcontractor's business address. Partial shipments shall be permitted unless otherwise agreed.
- 2) In cases where SAT are agreed in the Contract, the date of delivery shall be when the SAT has been conducted and/or the Software has been accepted by the Customer.

## § 6 Time for delivery. Delay

- 1) If the Parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall not start to run until all official formalities agreed as a condition of the Contract have been completed, payments due at the formation of the Contract have been received, any agreed securities have been given and any other preconditions of the Contract have been fulfilled.
- 2) If NWT anticipates that it will not be able to complete the supply of Deliverables at the time for delivery, it shall notify the Customer in writing without undue delay, stating the reason for the delay, and, if possible, the time when delivery can be expected.
- 3) If delay in delivery is caused by Force Majeure, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

## § 7 Customer's obligation to cooperate

- 1) The Customer shall cooperate with NWT in all matters relating to the supply of the Deliverables, and in particular shall at its own expense and in due time supply NWT with all necessary and requested documents and ensure that any information provided to NWT for the purposes of agreeing the Specification is complete and accurate.
- 2) The Customer shall support NWT and ensure that NWT or its representative is able to inspect the relevant site and assets on which the Software is being kept or used and provide access/connection including remote access and connection to the assets and the Software at the request of NWT.
- 3) The Customer shall immediately inform NWT if it wishes to make changes or modifications to the Specification, which are relevant for the supply of the Deliverables.
- 4) If NWT's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to cooperate or perform any relevant obligation ("Customer Default"):
  - a) without limiting or affecting any other right or remedy available to it, NWT shall have the right to suspend supply of the Deliverables 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 in each case to the extent the Customer Default prevents or delays NWT's performance of any of its obligations;
  - b) NWT shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from NWT's failure or delay to perform any of its obligations as set out in this clause 7 (5) and
  - c) the Customer shall reimburse NWT on written demand for any costs or losses sustained or incurred by NWT arising directly or indirectly from the Customer Default.

## § 8 Confidentiality

- 1) Either Party agrees to keep strictly confidential all information provided by or on behalf of the disclosing Party (the "Disclosing Party") to the other Party (the "Recipient") in connection with the Contract including, without limitation, any and all technical information and information about the commercial, business and financial activities of either Party whether disclosed on, before or after the Commencement Date of the Contract or disclosed in writing, orally or otherwise (collectively the "Confidential Information"). The Recipient shall not either during the period of the Contract or at any subsequent time:
  - a) disclose Confidential Information provided by the Disclosing Party to any person other than the Recipient's affiliates and representatives in confidence; or
  - b) use or permit its representatives or affiliates to use Confidential Information provided by the Disclosing Party for any purpose other than for fulfilling its obligations under the Contract or the implementation of the Contract; without the prior written consent of the Disclosing Party.
- 2) Any Party disclosing Confidential Information in accordance with clause 8 (1) (a) shall procure that the person to whom such information is disclosed is made aware of the obligations of confidentiality in this clause 8 of the Terms and Conditions and complies with those obligations as if it were a Party to the Contract.
- 3) Clause 8 (1) and (2) do not apply to Confidential Information:
  - a) which is in or comes into the public domain other than through a breach of the Contract;

- b) insofar as it comes lawfully into the possession of the Recipient from a third Party;
  - c) which the Recipient can prove was already known to it before its receipt from the Disclosing Party;
  - d) which has been independently developed by the Recipient otherwise than in the course of exercise of that Party's rights under the Contract or the implementation of the Contract;
  - e) to the extent that it is required to be disclosed by law or the requirements of any recognized stock exchange, or authority of competent jurisdiction to whose rules the Party making the disclosure is subject
- 4) NWT is permitted to make and/or retain a copy of any Confidential Information that is disclosed to NWT by the Customer, if the making and retention of such a copy is required for the purpose of satisfying NWT's insurance requirements or where NWT is legally required to retain Confidential Information.
  - 5) All obligations in this clause 8 relating to the use and disclosure of Confidential Information shall survive any termination or expiry of the Contract and shall apply for a period of 3 years from the earlier of the date of termination of the Contract or the date of the final invoice.
  - 6) Except for the provisions of clause 8 (4), upon termination or expiry of the Contract for any reason and upon request, all Confidential Information, documentation, catalogues, samples and price lists issued by the Disclosing Party are to be promptly returned or destroyed by the Recipient.

## § 9 Ownership and licensing of expertise results and intellectual property rights

- 1) NWT retains full ownership and copyright to all offers, quotations, drawings, calculations, data and any other materials made available to the Customer.
- 2) Furthermore, NWT retains full ownership to all of its intellectual property rights including without limitation any and all rights to patents, trademarks, trade names, domain names, copyrights, design, know-how and rights in computer software (including in the Software) and database rights created, acquired or otherwise obtained by NWT prior to the date of execution of this Contract. Furthermore, all intellectual property rights developed, during the course of the supply of the Deliverables shall belong to NWT.
- 3) The Customer hereby grants to NWT a limited, non-exclusive, non-transferable, without any right to sub-license, fully paid-up royalty-free license to exploit Customer's intellectual property rights as provided to NWT by the Customer to the extent necessary for NWT to perform NWT's obligations specifically and exclusively under the Contract including performance and supply of the Deliverables.
- 4) The Customer hereby grants to NWT, for the benefit of continuous improvement of product software, the full rights to gather, store and use anonymized data collected as a part of the Contract.

## § 10 Payment

- 1) The Contract sum is exclusive of any applicable Value Added Tax and of any other taxes, duties, tariffs, local charges or local taxes, which may be in force from time to time.
- 2) NWT shall be entitled to charge the Customer separately for any expenses, outlays or disbursements incurred by the individuals whom NWT engages in connection with the supply of the Deliverables, including reasonable travel and hotel expenses etc., and for the cost of services provided by third parties and required by NWT for the supply of the Deliverables.
- 3) If the Contract provides for the Contract sum to be paid in instalments, NWT may invoice the Customer in advance on a monthly basis at the 25<sup>th</sup> calendar day of each month.
- 4) Unless the fee is quoted to be a fixed price, the fee shall be calculated based on time spent by NWT to supply the Deliverables and based upon NWT's standard rates currently in force. These standard rates are subject to review from 1<sup>st</sup> January each year.
- 5) All invoices of NWT are due within 14 days of their invoice date. In the event of late payment, interest will be charged in accordance with the provisions of the Danish Interest Act.
- 6) All amounts due shall be paid in full without any set off, counterclaim, deduction or withholding.
- 7) Where the Contract contains milestones which are to be met by the Customer as a precondition for the time schedule and payment plan, and the Customer fails to comply with those milestones although NWT has fulfilled their obligations under the Contract, NWT shall be entitled to invoice for the full Contract sum and as though supply of the Deliverables had been completed.

- 8) In circumstances where the Customer is not able to comply with the planned SAT schedule, or in circumstances where the SAT schedule is postponed for other reasons out of NWTs control, for example, but not limited to weather conditions, but NWT has otherwise fulfilled their obligations under the Contract, notwithstanding that SAT has not been completed NWT shall be entitled to invoice for the full Contract sum and as though the supply of Deliverables had been completed one week after completing installation, delivery of the Software and any applicable hardware and associated services.

## § 11 NWT's warranties

- 1) NWT warrants that the Software will conform in all material respects to the Specification for a period of one year from the date of delivery of the Software ("Software Warranty Period"). If, within the Software Warranty Period, the Customer notifies NWT in writing without undue delay of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the conditions of operation provided for in the Contract, or for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by NWT, or it has not been loaded onto suitably configured equipment, NWT shall, at NWT's option, do one of the following:
- repair the Software;
  - replace the Software; or
  - terminate the Contract immediately by notice in writing to the Customer and refund any fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,
- 8) provided the Customer provides all the information that may be necessary to assist NWT in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable NWT to re-create the defect or fault.
- 2) NWT does not warrant that the use of the Software will be uninterrupted, error-free or compatible with other computer systems and their software or with new versions of software.
- 3) The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 4) NWT warrants that any hardware supplied under the Contract will conform in all material respects to the Specification for a period of one year from the date of delivery of the hardware ("Hardware Warranty Period").
- 5) If, within the Hardware Warranty Period, the Customer notifies NWT in writing without undue delay of any defect in the hardware in consequence of which the hardware fails to conform in all material respects to the Specification, and such defect results from faulty design, materials, parts, workmanship and does not result from the Customer, or anyone acting with the authority of the Customer, having used the hardware outside the conditions of operation provided for in the Contract for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software or hardware not provided by or approved by NWT, or it has not been integrated into suitable equipment, NWT shall, at NWT's option, do one of the following:
- repair the hardware;
  - replace the hardware; or
  - terminate the Contract immediately by notice in writing to the Customer and refund any of fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the hardware to the date of termination) on return of the hardware,
- 9) provided the Customer provides all the information that may be necessary to assist NWT in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable NWT to re-create the defect or fault.
- 6) If the daily use of the assets upon which either the Software and/or the Hardware are installed exceeds that which is agreed in the Contract, the Warranty Periods shall be reduced proportionately.
- 7) When a defect in hardware has been remedied, NWT shall be liable for defects in the repaired or replaced hardware under the same terms and conditions as those applicable to the original hardware for a period of one year. For the remaining parts of the hardware the Hardware Warranty Period shall be extended only by a period equal to the period during which any asset has been out of operation as a result of the defect.



- 8) Notwithstanding the foregoing clauses, NWT shall not be liable for defects in any Deliverables after the expiry of a period of two years from the date of delivery.
- 9) Notice given by the Customer later than two weeks after the expiry of the relevant Warranty Period shall not be accepted by NWT. If the Customer fails to notify NWT in writing of a defect within the Warranty Periods specified above, the Customer loses the right to have the defect remedied. Where the defect is such that it may cause damage, the Customer shall immediately inform NWT in writing. The Customer shall bear the risk of damage resulting from his failure so to notify.
- 10) Unless otherwise agreed the Customer shall send any defective hardware to NWT for inspection.
- 11) If no defect is found for which NWT is liable, NWT shall be entitled to compensation for the costs it has incurred as a result of the Customer's notice.
- 12) The Customer shall at its own expense arrange for any dismantling and reassembly of the asset affected, to the extent that this is necessary to remedy the defect.
- 13) Unless otherwise agreed, necessary transport of any defective hardware and/or parts thereof to and from NWT in connection with the remedying of defects shall be at the risk and expense of the Customer. The Customer shall follow NWT's instructions regarding such transport.
- 14) Unless otherwise agreed, the Customer shall bear any additional costs which NWT incurs for repair, dismantling, installation, travelling and transport as a result of the asset in which the Software or hardware is installed being located in a place other than as agreed in the Contract.
- 15) Defective hardware which has been replaced shall be made available to NWT and shall be NWT's property.
- 16) If, within a reasonable time, NWT does not fulfil his obligations under this clause 11, the Customer may by notice in writing fix a final time for completion of NWT's obligations. If NWT fails to fulfil his obligations within such final time, the Customer may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of NWT. Where successful remedial works have been undertaken by the Customer or a third party, reimbursement by NWT of reasonable costs incurred by the Customer shall be in full settlement of NWT's liabilities for the said defect.
- 17) NWT is not liable for defects arising out of materials provided, or a design stipulated or specified by the Customer.
- 18) NWT is liable only for defects which appear under the conditions of operation provided for in the Contract. NWT's liability does not cover defects, which are caused by faulty maintenance, incorrect erection or faulty repair by the Customer, or by alterations carried out without NWT's consent in writing. Finally, NWT's liability does not cover normal wear and tear, deterioration, accident, corrosion, abnormal temperatures, vibrations, moisture/humidity or other external causes.

## § 12 Limitation of Liability

- 1) NWT's total aggregate liability whether in contract or tort (including negligence) or otherwise and arising out of or in connection with the Contract shall be limited to the Contract sum (exclusive of VAT, taxes and/or other duties) actually paid by the Customer for the supply of Deliverables which forms the basis of NWT's liability.
- 2) Except as stated in clause 12 (4), any claims for loss or damages arising out of or in connection with the Contract shall be time barred one year after delivery.
- 3) In no event shall NWT be liable for any losses or damages which may be suffered by the Customer arising out of or in connection with the Contract, whether such losses or damages are suffered directly, indirectly or consequentially and whether they arise in contract or tort (including negligence) or otherwise, which fall within any of the following categories:
  - a) special damages even if NWT was aware of the circumstances in which special damage could arise;
  - b) loss of profits;
  - c) loss of revenue;
  - d) loss or corruption of software or data;
  - e) loss of use/production/time;
  - f) loss of goodwill;
  - g) loss of business opportunity or contract; or



- h) power failures and cost of replacement power.
- 4) The exclusions in clauses 12 (1), (2) and (3) shall apply to the fullest extent permissible at law, but NWT does not exclude liability for:
  - a) death or personal injury caused by the negligence of NWT, its employees or contractors;
  - b) fraud or fraudulent misrepresentation;
  - c) any liability which may not be excluded by law.

## § 13 Product Liability

- 1) Clauses 12 (1) and (2) shall not limit or exclude NWT's liability for claims for loss of or damage to the Customer's tangible assets.
- 2) NWT's liabilities for claims for loss of or damage to the Customer's tangible assets or for other direct losses or damages incurred by the Customer in connection with loss of or damage to the Customer's tangible assets shall be limited to its insurance coverage sum of EUR 2.000.000 per occurrence and in the annual aggregated for product liability risks. The Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 3) The Customer shall indemnify and hold NWT harmless from all claims, actions, proceedings, liability, damages, loss, costs and expenses, including, but not limited to attorney fees, incurred by NWT in connection with any liability claim brought by a third party against NWT in connection with product liability for which NWT has no liability.

## § 14 Termination

- 1) Either Party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other Party if the other Party commits a material breach of the Contract and such Party (if capable of remedy) fails to remedy the breach within 30 days after being required by the other Party by written notice to do so, or if the other Party goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors, has a receiver or administrator appointed or becomes unable to substantially perform its obligations.
- 2) On termination of the Contract for any reason, including Force Majeure:
  - a) all rights of use granted to the Customer under the Contract shall cease;
  - b) the Customer shall cease all activities authorised by the rights of use contained in the Contract;
  - c) the Customer shall immediately pay to NWT all sums due under the Contract;
  - d) NWT shall submit an invoice in respect of any Deliverables supplied but not yet invoiced, which shall be payable by the Customer on receipt;
  - e) the Customer shall immediately destroy or return to NWT, at NWT's option, all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to NWT that it has done so.
- 3) If the Contract is terminated by NWT due to a material breach by the Customer, the Customer may not reclaim any payments made to NWT. Furthermore, the Customer is liable to NWT for all losses and damages NWT has incurred as a result of such termination by NWT of the Contract, including all profits and gains NWT would have realized if the Contract had remained in force.

## § 15 Governing Law and Venue

- 1) Danish law shall govern the interpretation, construction and validity of the Contract and any claims or disputes arising out of or in connection with the Contract. The Parties specifically exclude the application of the UN Convention on Contracts for the International Sale of Goods.
- 2) The Parties agree that any controversy, dispute, or claim arising out of or relating to the Contract, including any disputes regarding the existence, validity, breach, or termination thereof, shall be settled by arbitration according to the Rules of Arbitration of the Danish Institute of Arbitration. The language of arbitration shall be English, and the place of arbitration shall be Aarhus.

- 3) The arbitration tribunal shall consist of three (3) members if the disputed amount is above EUR 200.000. If the amount is below EUR 200.000, the arbitration tribunal shall consist of one (1) member elected by the Parties in accordance with the procedures of Copenhagen Arbitration. The ruling of the arbitration tribunal shall be final and binding for the Parties.
- 4) The obligation of the Parties to refer any dispute to arbitration shall not prevent a Party from seeking interim remedies from any court of competent jurisdiction over such matter.
- 5) Notwithstanding the above stated, NWT shall not be prevented from bringing monetary claims before the ordinary courts in Denmark, if such monetary claims are based on unpaid invoices for Deliverables supplied.

## § 16 General

- 1) The Contract contains the whole agreement between the Parties relating to the subject matter of the Contract and supersedes any previous agreement, contract or understanding between the Parties relating to that subject matter and may not be varied except if approved in writing between the Parties.
- 2) A notice required or permitted to be given by either Party to the other under the Contract shall be in writing addressed to the other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice and shall be delivered by a next working day registered delivery service.
- 3) No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same.
- 4) If any provision of the Contract is or becomes invalid, illegal or unenforceable in whole or in part, it shall be deemed deleted, but that shall not affect the validity of the other provisions of the Contract and the remainder of the provision in question. If any provision or part provision of the Contract is deemed deleted, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 5) The Parties agree that any transfer or assignment of the Contract or any rights or obligations contained in the Contract shall be approved in writing by the other non-transferring Party (such approval not to be unreasonably withheld).