

Terms and Conditions of Optical Support

The Customer's attention is particularly drawn to the provisions of clause 23 (Limitation of liability).

1. Interpretation

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

1.1 Definitions:

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

Collection: means the collection of the Goods or Equipment (as the case may be) by the Customer, or by a third party appointed by the Customer (such as a courier) from the Collection Location. **Collected** shall be construed accordingly.

Collection Date: means the date (if any) when the Goods or Equipment (as the case may be), shall be made available for Collection, as set out in the Order Confirmation.

Collection Location: means the collection location set out in the Order Confirmation, or such other location agreed between the parties in writing.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 27.9.

Contract: the contract between Optical Support and the Customer for:

- (i) the supply of Goods and/or Services from Optical Support to the Customer; and/or
 - (ii) the hiring of Equipment from Optical Support to the Customer,
- in accordance with these Conditions.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer: the person or firm who has purchased the Goods and/or Services, or hired the Equipment, from Optical Support, as set out in the Order Confirmation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

Deliverables: the deliverables (if any) set out in the Order Confirmation.

Delivery: means the transfer of physical possession of the Goods or Equipment (as the case may be) by Optical Support, or by a third party appointed by Optical Support (such as a courier) to the Delivery Location. **Delivered** shall be construed accordingly.

Delivery Date: means the date (if any) set out in the Order Confirmation, when the Goods or Equipment (as the case may be) shall be delivered to the Customer at the Delivery Location.

Delivery Location: means the delivery location set out in the Order Confirmation, or such other location agreed between the parties in writing.

Domestic Law: means the law of the United Kingdom or a part of the United Kingdom.

Deposit: the deposit amount (if any) set out in the Order Confirmation.

Equipment: the items of equipment (if any) listed in the Order Confirmation, along with all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Force Majeure Event: has the meaning given to it in clause 26.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, set out in the Order Confirmation.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

Optical Support: Optical Support Limited registered in England and Wales with company number 03275605.

Order: the Customer's order for the supply of Goods and/or Services, or the hiring of Equipment, by returning a signed copy of a Quotation to Optical Support.

Order Confirmation: means confirmation of the Order, in writing, sent by Optical Support to the Customer in accordance with clause 2.2.

Payment Schedule: means the payment schedule (if any) set out in the Order Confirmation.

Quotation: means Optical Support's quotation for the supply of Goods and/or Services and/or the hiring of Equipment (as the case may be), issued to the Customer in writing by Optical Support.

Rental Payments: the payments to be made by the Customer for the hiring of the Equipment, as set out in the Order Confirmation.

Rental Period: the period of hire set out in the Order Confirmation.

Restocking Fee: means a fee of 25% of the price paid or payable by the Customer for the Goods, but excluding the costs and charges for packaging, insurance, delivery and transport.

Risk Period: the period during which the Equipment is at the sole risk of the Customer, as set out in clause 17.2.

Service Specification: the description or specification for the Services (if any) set out in the Order Confirmation.

Services: the services, including the Deliverables (if applicable), supplied by Optical Support to the Customer, as set out in the Order Confirmation.

Total Loss: means the Equipment is, in Optical Support's reasonable opinion, or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Interpretation:

- (a) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (b) Unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.
- (c) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (d) A reference to a party includes its successors and permitted assigns.
- (e) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (f) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (g) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (h) A reference to **writing** or **written** includes fax but not email.

2. Basis of contract

- 2.1 An Order constitutes an offer by the Customer to:
- (a) purchase Goods and/or Services from Optical Support; and/or
 - (b) hire Equipment from Optical Support,
in accordance with these Conditions.
- 2.2 An Order shall only be deemed to be accepted by Optical Support, when Optical Support issues an Order Confirmation, at which point and on which date, the Contract shall come into existence (**Commencement Date**).
- 2.3 Any Quotation given by Optical Support shall not constitute an offer, and is only valid for a period of 14 days from its date of issue.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Optical Support and any descriptions or illustrations of the Goods, Services or Equipment contained in Optical Support's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods, Services and/or Equipment described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 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 law, trade custom, practice or course of dealing.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services, and the hiring of Equipment, except:
- (a) Clauses 3 to 8 (inclusive), which shall apply to the supply of Goods only;
 - (b) Clauses 9 to 12 (inclusive), which shall apply to the supply of Services only; and
 - (c) Clauses 13 to 19 (inclusive), which shall apply to the hiring of Equipment only.

THE SALE OF GOODS

Clauses 3 to 8 (inclusive) shall apply to the supply of Goods only.

3. Goods

- 3.1 The Goods are described in the Order Confirmation (along with any Goods Specification).
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Optical Support against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Optical Support arising out of or in connection with any claim made

against Optical Support for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Optical Support's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Optical Support reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Optical Support shall notify the Customer in any such event.

4. Price

4.1 The price for the Goods:

- (a) shall be the price set out in the Order Confirmation; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

4.2 Optical Support reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before Delivery or Collection (as the case may be), to reflect any increase in the cost of the Goods to Optical Support that is due to:
 - (i) any factor beyond the control of Optical Support (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - (ii) any request by the Customer to change the Delivery Date, Delivery Location, Collection Date, Collection Location, quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Optical Support adequate or accurate information or instructions in respect of the Goods.

5. Delivery or Collection of Goods

5.1 The Order Confirmation will set out whether the Goods are to be:

- (a) Delivered by Optical Support to the Delivery Location; or
- (b) Collected by the Customer from the Collection Location.

5.2 Optical Support shall:

- (a) where the Goods are to be Delivered, arrange for delivery of the Goods to the Delivery Location, via a courier, and the cost of such delivery shall be paid by the Customer; or
- (b) where the Goods are to be Collected, make the Goods available for Collection on the Collection Date, from the Collection Location.

- 5.3 Any dates quoted for Delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- 5.4 The Customer shall procure that a duly authorised representative of the Customer shall be present on Collection or Delivery (as the case may be). Any discrepancies, issues, defects, or missing items must be notified to Optical Support within 24 hours of Collection or Delivery (as the case may be). Failure to notify Optical Support of any such discrepancies, issues, defects or missing items, within 24 hours of Collection or Delivery (as the case may be), shall constitute conclusive evidence that the Customer has examined the Goods and has found them to be in good condition, complete and fit in every way for the purpose for which they are intended. If required by Optical Support, the Customer's shall sign a receipt confirming such acceptance.
- 5.5 Optical Support shall have no liability for any failure to Deliver the Goods, or make the Goods available for Collection, to the extent that such failure is caused by any third party (including without limitation any courier of the Goods), any Force Majeure Event, or the Customer's failure to provide Optical Support with adequate Delivery or Collection instructions for the Goods, or any other relevant instructions related to the supply of the Goods.
- 5.6 If Optical Support fails to Deliver the Goods (or part of the Goods) on the Delivery Date, or fails to make the Goods (or part of the Goods) available for Collection on the Collection Date, as a result of its own failure to comply with its obligations under the Contract, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of a similar description and quality in the cheapest market available, less the price of the Goods. Except as set out in clause 5.5 and this clause 5.6, Optical Support shall have no liability for any loss or damage suffered by the Customer for late Delivery or Collection of the Goods. Late Delivery or Collection of the Goods shall not provide the Customer with any rights to cancel an Order or terminate the Contract.
- 5.7 If the Customer fails to accept Delivery of the Goods, or fails to Collect the Goods, within three Business Days of the Delivery Date or the Collection Date (as the case may be), then except where such failure or delay is caused by a Force Majeure Event or by Optical Support's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) Delivery or Collection of the Goods (as the case may be) shall be deemed to have been completed at 9.00am on the fifth Business Day following the Delivery Date or Collection Date (as the case may be); and
 - (b) Optical Support may seek to store the Goods until Delivery or Collection takes place, and may charge the Customer for all related costs and expenses (including insurance).
- 5.8 If after five Business Days from the Delivery Date or the Collection Date (as the case may be), the Customer has either failed to accept Delivery, or failed to Collect the Goods (as the case may be), Optical Support may resell or otherwise dispose of part or all of the Goods, and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

5.9 Optical Support may Deliver the Goods by instalments. Any delay in Delivery or defect in an instalment, shall not entitle the Customer to cancel any other instalment.

6. Quality of Goods

6.1 Optical Support warrants that on Delivery or Collection (as the case may be), and throughout the manufacturer's warranty period, to the extent there is one (**warranty period**), the Goods shall conform in all material respects with the manufacturer's specification.

6.2 Where the Goods do not comply with the manufacturer's specification within the warranty period, then, subject to clause 6.4, the Customer shall have the remedies available to it under the manufacturer's warranty only, but provided that:

- (a) the Customer gives notice in writing during the warranty period and within 24 hours of discovery, that some or all of the Goods do not comply with the manufacturer's specification;
- (b) Optical Support is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Optical Support) returns such Goods to Optical Support's place of business at the Customer's cost, but the reasonable cost of returning such Goods to Optical Support, shall be reimbursed to the Customer, if the Customer can prove (to the satisfaction of Optical Support) that:
 - (i) the Goods failed to comply with the manufacturer's specification throughout the warranty period, in accordance with clause 6.1; and
 - (ii) the Customer has complied with clauses 6.2(a) and (b).

6.3 Where the Goods do not comply with the manufacturer's specification after the warranty period, then subject to clause 6.4, Optical Support may, at its option, repair or replace those Goods, or refund the price of those Goods in full if:

- (a) the Customer gives notice in writing within 24 hours of discovery, that some or all of the Goods do not comply with the manufacturer's specification;
- (b) Optical Support is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Optical Support) returns such Goods to Optical Support's place of business at the Customer's cost.

6.4 Optical Support shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow either Optical Support's, or the manufacturer's, oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

- (c) the defect arises as a result of Optical Support following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Optical Support;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from the Goods Specification or the manufacturer's specification, as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.5 Except as provided in this clause 6, Optical Support shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Optical Support.

7. Title and risk

7.1 The risk in the Goods shall pass to the Customer:

- (a) where the Goods are to be Delivered by Optical Support, upon collection by the courier; and
- (b) where the Goods are to be Collected by the Customer, upon Collection.

7.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) Optical Support receiving payment in full (in cash or cleared funds) for:
 - (i) the Goods;
 - (ii) any other supply of goods or services by Optical Support to the Customer; and
 - (iii) the hiring of any Equipment from Optical Support to the Customer,in which case, title to the Goods shall pass at the time of payment of all such sums; or
- (b) the Customer resells the Goods, in which case, title to the Goods shall pass to the Customer at the time specified in clause 7.4.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Optical Support's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Optical Support's behalf from Delivery or Collection (as the case may be);
- (d) notify Optical Support immediately if it becomes subject to any of the events listed in clause 24.1(d) to 24.1(p); and

- (e) give Optical Support such information as Optical Support may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Optical Support receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Optical Support's agent; and
- (b) title to the Goods shall pass from Optical Support to the Customer immediately before the time at which resale by the Customer occurs.

7.5 At any time before title to the Goods passes to the Customer, Optical Support:

- (a) may by notice in writing, terminate the Customer's right under clause 7.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that 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 Goods are stored in order to recover them.

8. Cancellations

8.1 The Customer may cancel its Order for the purchase of Goods within 14 days of the Order Confirmation, provided:

- (a) the Goods are returned to Optical Support (at the Customer's Cost), within 14 days of Delivery or Collection (as the case may be), unopened, in their original condition, with all original packaging; and
- (b) the Customer pays the Restocking Fee.

8.2 In the event that the Customer cancels its Order in accordance with clause 8.1, Optical Support shall, subject to clause 8.3, issue a full refund to the Customer, less any shipping or other costs and charges incurred by Optical Support in relation to such return.

8.3 The Customer's right to cancel its Order in accordance with clause 8.1, shall not apply to any bespoke or customised Goods, and any such rights shall be at the sole discretion of Optical Support.

THE SUPPLY OF SERVICES (INCLUDING REPAIRS)

Clauses 9 to 12 (inclusive) shall apply to the supply of Services only.

9. Supply of Services

- 9.1 Optical Support shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 9.2 Optical Support shall use all 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.
- 9.3 Optical Support reserves the right to amend the Service 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 Services, and Optical Support shall notify the Customer in any such event.
- 9.4 Optical Support warrants to the Customer that the Services will be provided using reasonable care and skill.

10. Charges

- 10.1 The charges for Services shall be as set out in the Order Confirmation, and shall be subject to the following:
- (a) where the charges are to be calculated on a time and materials basis:
 - (i) the charges shall be calculated in accordance with Optical Support's daily fee rates;
 - (ii) Optical Support's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days; and
 - (b) Optical Support shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Optical Support engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Optical Support for the performance of the Services, and for the cost of any materials; and
 - (c) Optical Support reserves the right to increase its charges for the Services, if it becomes apparent that materially more time is likely to be spent on delivering the Services, than originally anticipated by Optical Support when issuing the Order Confirmation.

11. Customer's obligations

- 11.1 The Customer shall:
- (a) ensure that the terms of the Order, and any information it provides in the Service Specification are complete and accurate;
 - (b) co-operate with Optical Support in all matters relating to the Services;

- (c) provide Optical Support with such information and materials as Optical Support may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) comply with all applicable laws, including health and safety laws; and
- (e) comply with any additional obligations as set out in the Service Specification.

11.2 If Optical Support's performance of any of its obligations under the Contract 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) without limiting or affecting any other right or remedy available to it, Optical Support shall 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 in each case to the extent the Customer Default prevents or delays Optical Support's performance of any of its obligations;
- (b) Optical Support shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Optical Support's failure or delay to perform any of its obligations as set out in this clause 11.2; and
- (c) the Customer shall reimburse Optical Support on written demand for any costs or losses sustained or incurred by Optical Support arising directly or indirectly from the Customer Default.

12. Intellectual property rights

12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Optical Support.

12.2 Optical Support grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

12.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 12.2.

12.4 The Customer grants Optical Support a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Optical Support for the term of the Contract for the purpose of providing the Services to the Customer.

EQUIPMENT HIRE

Clauses 13 to 19 (inclusive) shall apply to the hiring of Equipment only.

13. Equipment hire

- 13.1 Where the Customer has agreed to hire Equipment from Optical Support, Optical Support shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Equipment.

14. Rental Period

The Rental Period is set out in the Order Confirmation. Unless otherwise stated in the Order Confirmation, the Rental Period starts the day after the Delivery Date or the Collection Date (as the case may be) and shall continue for the Rental Period, unless the Contract is terminated earlier in accordance with these Conditions.

15. Rental Payments

- 15.1 The Customer shall pay the Rental Payments, in the currency set out in the Order Confirmation, to Optical Support in accordance with the Payment Schedule.
- 15.2 In the event that the Customer fails to return the Equipment on or before the end of the Rental Period, the Rental Payments shall continue up until the day on which the Customer returns the Equipment.
- 15.3 If the Customer cancels its Order for the hiring of Equipment at any point before the Equipment is returned to Optical Support, the Customer shall immediately return the Equipment to Optical Support, and pay to Optical Support any outstanding and/or unpaid Rental Payments in full, for the entire Rental Period, up to a maximum of 13 weeks from the date of cancellation.
- 15.4 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.

16. Delivery

- 16.1 Optical Support shall:
- (a) where the Equipment is being Delivered by Optical Support, use reasonable endeavours to deliver the Equipment by the Delivery Date; and
 - (b) where the Equipment is being Collected by the Customer, use reasonable endeavours to make the Equipment available for Collection on the Collection Date.
- 16.2 If Optical Support fails to Deliver the Equipment (or part of the Equipment) on the Delivery Date, or fails to make the Equipment (or part of the Equipment) available for Collection on the Collection Date, its liability

shall be limited to the costs and expenses incurred by the Customer in obtaining replacement equipment of a similar description and quality in the cheapest market available, less the price of the Rental Payments. Except as set out in this clause 16.2, Optical Support shall have no liability for any loss or damage suffered by the Customer for late Delivery or Collection of the Equipment. Late Delivery or Collection of the Equipment shall not provide the Customer with any rights to cancel an Order or terminate the Contract.

- 16.3 The Customer shall procure that a duly authorised representative of the Customer shall be present on Collection or Delivery of the Equipment (as the case may be). Any discrepancies, issues, defects or missing items must be notified to Optical Support within 24 hours of Delivery or Collection (as the case may be). Failure to notify Optical Support of any such discrepancies, issues, defects or missing items, within 24 hours of Collection or Delivery (as the case may be) shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by Optical Support, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 16.4 To facilitate Delivery, the Customer shall at its own expense, provide all requisite materials, facilities, access and suitable working conditions to enable delivery to be carried out safely and expeditiously.
- 16.5 If the Customer fails to accept Delivery of the Equipment on the Delivery Date, or fails to Collect the Equipment on the Collection Date (as the case may be), then, except where such failure is caused by Optical Support's failure to comply with its obligations under the Contract:
- (a) the Equipment shall be deemed to have been Delivered or Collected (as the case may be) at 9.00am on the relevant Delivery Date or Collection Date (as the case may be), and the Rental Period shall commence from that date; and
 - (b) Optical Support may seek to store the Equipment until Delivery or Collection takes place, and may charge the Customer for all related costs and expenses (including insurance).

17. Title, risk and insurance

- 17.1 The Equipment shall at all times remain the property of Optical Support, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these Conditions).
- 17.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer:
- (a) where the Equipment is being Delivered, upon collection by the courier; and
 - (b) where the Equipment is being Collected, upon Collection.
- 17.3 The Equipment shall remain at the sole risk of the Customer (including without limitation in relation to theft and damage) from the point of collection by the courier (where the Equipment is being Delivered), and from the Collection Location (where the Equipment is being Collected) and shall continue throughout the Rental Period, and until such time as the Equipment is redelivered to Optical Support (**Risk Period**). During the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Optical Support may from time to time nominate in writing;
 - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as Optical Support may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as Optical Support may from time to time consider reasonably necessary.
- 17.4 All insurance policies procured by the Customer shall be endorsed to provide Optical Support with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on Optical Support's request, name Optical Support on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 17.5 The Customer shall give immediate written notice to Optical Support in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.
- 17.6 If the Customer fails to effect or maintain any of the insurances required under the Contract, Optical Support shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 17.7 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Optical Support and proof of premium payment to Optical Support to confirm the insurance arrangements.
- 17.8 For the avoidance of doubt, arranging for insurance will not affect the Customer's obligation to comply with the terms of the Contract, nor will it affect the Customer's liability under it.
- 18. Customer's responsibilities**
- 18.1 The Customer shall during the term of the Contract:
- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
 - (b) provide Optical Support, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Optical Support for the hiring of the Equipment to the Customer;

- (c) take such steps (including compliance with all safety and usage instructions provided by Optical Support) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (d) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Collection Date or Delivery Date, as the case may be (fair wear and tear only excepted), including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- (e) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment;
- (f) keep Optical Support fully informed of all material matters relating to the Equipment;
- (g) permit Optical Support or its duly authorised representative to inspect the Equipment at all reasonable times, and to enter any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- (h) maintain operating and maintenance records of the Equipment and make copies of such records readily available to Optical Support, together with such additional information as Optical Support may reasonably require;
- (i) not, without the prior written consent of Optical Support, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (j) not without the prior written consent of Optical Support, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify Optical Support against all losses, costs or expenses incurred as a result of such affixation or removal;
- (k) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of Optical Support in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that Optical Support may enter such land or building and recover the Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of Optical Support of any rights such person may have or acquire in the Equipment and a right for Optical Support to enter onto such land or building to remove the Equipment;
- (l) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall immediately notify Optical Support and the Customer shall at its sole expense use its best endeavours to procure an immediate release of

the Equipment and shall indemnify Optical Support on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

- (m) not use the Equipment for any unlawful purpose;
- (n) ensure that at all times the Equipment remains identifiable as being Optical Support's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (o) deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract, at such address as Optical Support requires, or if necessary, allow and/or procure access for Optical Support or its representatives, to enter the premises where the Equipment is located for the purpose of removing the Equipment; and
- (p) not do or permit to be done anything which could invalidate the insurances referred to in clause 17.

18.2 The Customer acknowledges that Optical Support shall not be responsible for any loss of, or damage to, the Equipment, arising out of or in connection with any negligence, misuse, mishandling of the Equipment, or otherwise, caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify Optical Support in full, against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Optical Support arising out of, or in connection with any failure by the Customer to comply with the terms of the Contract.

19. Warranty

19.1 Optical Support warrants that on the Delivery Date or the Collection Date (as the case may be), and throughout the manufacturer's warranty period (to the extent there is one) the Equipment shall substantially conform to the manufacturer's specification.

19.2 Where the Equipment does not comply with the manufacturer's specification within the warranty period, then subject to clause 19.4, the Customer shall have the remedies available to it under the manufacturer's warranty only, but provided that:

- (a) the Customer gives notice to Optical Support in writing during the warranty period and within 24 hours of discovery, that some or all of the Equipment does not comply with the manufacturer's specification;
- (b) Optical Support is given a reasonable opportunity of examining such Equipment; and
- (c) the Customer (if asked to do so by Optical Support) returns such Equipment to Optical Support's place of business at the Customer's cost, but the reasonable cost of returning such Equipment to Optical Support, shall be reimbursed to the Customer, if the Customer can prove (to the satisfaction of Optical Support) that:
 - (i) the Equipment failed to comply with the manufacturer's specification during the warranty period; and

(ii) the Customer has complied with clauses 19.2(a) and (b).

19.3 Where the Equipment does not comply with the manufacturer's specification after the warranty period, then subject to clause 19.4, Optical Support may, at its option, repair or replace the Equipment, or refund the Rental Payments, in full, if:

- (a) the Customer gives notice in writing within 24 hours of discovery, that some or all of the Equipment does not comply with the manufacturer's specification;
- (b) Optical Support is given a reasonable opportunity of examining such Equipment; and
- (c) the Customer (if asked to do so by Optical Support) returns such Equipment to Optical Support's place of business at the Customer's cost.

19.4 Optical Support shall not be liable for the Equipment's failure to comply with the warranty in clause 19.1, if:

- (a) the Customer makes any further use of such Equipment after giving a notice in accordance with clause 19.2 or 19.3;
- (b) the defect arises because the Customer failed to follow either Optical Support's, or the manufacturer's, oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
- (c) the defect arises as a result of Optical Support following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Equipment without the written consent of Optical Support;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Equipment differs from the manufacturer's specification, as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

19.5 For the avoidance of doubt, insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by Optical Support, the Customer shall be entitled only to such warranty or other benefit as Optical Support has received from the manufacturer. Any other action taken by Optical Support shall be at its sole discretion.

GENERAL TERMS AND CONDITIONS

Clause 20 onwards shall apply to the sale of Goods and Services, and the hiring of Equipment.

20. Payment

20.1 Optical Support shall invoice the Customer in respect of the supply of Goods and/or Services, and/or the hiring of Equipment (as the case may be).

- 20.2 The Customer shall:
- (a) when purchasing Goods or Services, pay the price (or charges, as the case may be) for those Goods and/or Services, as set out in the Order Confirmation, and in accordance with any Payment Schedule;
 - (b) when hiring Equipment, pay the Rental Payments, in full, until the Equipment is returned to Optical Support;
 - (c) make payment of any Deposit set out in the Order Confirmation; and
 - (d) pay all other invoices submitted by Optical Support in accordance with the payment terms set out in the Order Confirmation;
- and all such payments shall be in full, and in cleared funds to a bank account nominated in writing by Optical Support. Time for payment shall be of the essence of the Contract.

20.3 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 Optical Support to the Customer, the Customer shall, on receipt of a valid VAT invoice from Optical Support, pay to Optical Support such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services, or the hiring of Equipment (as the case may be), at the same time as payment is due for the relevant Goods, Services or Equipment.

- 20.4 If the Customer fails to make a payment due to Optical Support under the Contract by the due date, then, without limiting Optical Support's remedies under clause 24 (Termination):
- (a) Optical Support shall have the ability to suspend (i) Delivery and/or Collection of the Goods and/or the Equipment, and (ii) performance of the Services, until such amounts are paid by the Customer, in full; and
 - (b) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 20.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

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

21. Data protection

21.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 21 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

21.2 The parties acknowledge that for the purposes of the Data Protection Legislation, Optical Support is the Processor and the Customer is the Controller. However, Optical Support may also fall under the definition

of Controller in certain circumstances where the Customer provides certain Personal Data for which Optical Support determines the purposes and means of processing (including without limitation where the Customer provides Optical Support with personal details of members of staff for the purposes of onboarding with Optical Support). The Customer should refer to Optical Support's privacy policy for details about how it processes Personal Data where it acts as a Controller.

21.3 Where Optical Support acts as a Processor, the scope, nature and purpose of processing by Optical Support, the duration of the processing and the types of Personal Data and categories of Data Subject are:

Scope of processing: To enable Optical Support to supply Goods or Services, or hire Equipment to, the Customer.

Nature of processing: Storing, amending and deleting.

Purpose of processing: To comply with the terms of the Contract.

Duration of processing: Until termination or expiry of the Contract.

Types of personal data: Name, email address, phone number, employment details.

Categories of Data Subject: Employees of the Customer.

21.4 Without prejudice to the generality of clause 21.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of Personal Data to Optical Support and/or lawful collection of the Personal Data by Optical Support on behalf of the Customer, for the duration and purposes of the Contract.

21.5 Without prejudice to the generality of clause 21.1, Optical Support shall, where acting as a Processor:

- (a) process that Personal Data only on the documented written instructions of the Customer unless Optical Support is required by Domestic Law to otherwise process that Personal Data. Where Optical Support is relying on Domestic Law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Optical Support from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and

services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) only transfer Personal Data outside of the UK if the following conditions are fulfilled:
 - (i) the Customer or Optical Support has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Optical Support complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Optical Support complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 21.5, and allow for audits by the Customer or the Customer's designated auditor, and immediately inform the Customer if, in the opinion of Optical Support, an instruction infringes the Data Protection Legislation.

21.6 The Customer consents to Optical Support appointing the following third parties as third party processors of Personal Data under the Contract:

- (a) Takepayments Limited;
- (b) Claris International Inc.;
- (c) We Know Data;
- (d) Cryptex Security;
- (e) Sproull & Co Limited;
- (f) Xero Limited;
- (g) Amazon Web Services;
- (h) HM Revenue & Customs; and

- (i) Other professional advisers such as lawyers, bankers, auditors and insurers,

and Optical Support confirms that it has entered or (as the case may be) will enter with each third-party processor into a written agreement incorporating terms which are substantially similar to those set out in clause 21.5, and in either case which Optical Support confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Optical Support, Optical Support shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 21.6.

- 21.7 Either party may, at any time on not less than 30 days' notice, revise this clause 21 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

22. Confidentiality

- 22.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 22.2.

- 22.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 22; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 22.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

23. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 23.1 The restrictions on liability in this clause 23 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 23.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

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

- (a) death or personal injury caused by negligence;

- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by:
 - (i) section 2 or section 7 of the Supply of Goods and Services Act 1982;
 - (ii) section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; and
- (e) any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.

23.4 Subject to clause 23.2 and clause 23.3, Optical Support's total liability to the Customer under or in connection with the Contract, shall not exceed the fees paid or payable by the Customer, to Optical Support, for the Goods and/or Services and/or the hiring of Equipment (as the case may be) pursuant to the Contract.

23.5 Subject to clause 23.2 and clause 23.3, Optical Support shall not be liable under the Contract for:

- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) losses caused by late Delivery or Collection of the Goods or Equipment;
- (vi) losses caused by delays in filming;
- (vii) wasted production costs;
- (viii) wasted staff costs;
- (ix) loss of use or corruption of software, data or information;
- (x) loss of or damage to goodwill; and
- (xi) indirect or consequential loss.

23.6 Subject to clause 23.2 and clause 23.3, all implied terms and conditions as to the quality or performance of the Goods, Services and/or Equipment are, to the fullest extent permitted by law, excluded from the Contract.

23.7 This clause 23 shall survive termination of the Contract.

24. Termination

24.1 Without affecting any other right or remedy available to it, Optical Support may terminate the Contract with immediate effect by giving notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified to make such payment;

- (b) the Customer commits a material breach of any other term of the Contract, and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;
- (c) the Customer 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;
- (d) the Customer 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 or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (e) the Customer 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;
- (f) the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) 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 Customer (being a company, limited liability partnership or partnership);
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company, partnership or limited liability partnership);
- (i) the holder of a qualifying floating charge over the assets of the Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- (k) the Customer (being an individual) is the subject of a bankruptcy petition, application or order;
- (l) a creditor or encumbrancer of the Customer 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 the Customer's assets and such attachment or process is not discharged within 14 days;
- (m) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 24.1(d) to clause 21.1(l) (inclusive);
- (n) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (o) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or

- (p) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

24.2 For the purposes of clause 24.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which Optical Support would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 11, 18, 21 or 22,

over the term of the Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

24.3 Where the Customer has hired Equipment from Optical Support, the Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.

25. Consequences of termination

25.1 On termination of the Contract:

- (a) the Customer shall immediately pay to Optical Support:
 - (i) all of Optical Support's outstanding unpaid invoices and interest and, in respect of Services, Goods or the hiring of Equipment for which no invoice has been submitted, Optical Support shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - (ii) any Restocking Fees;
- (b) the Customer shall return all of Optical Support Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Optical Support may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) where the Customer has hired Equipment from Optical Support:
 - (i) Optical Support's consent to the Customer's possession of the Equipment shall terminate;
 - (ii) Optical Support may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located; and
 - (iii) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to Optical Support, on demand:
 - (A) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 20.4; and

- (B) any costs and expenses incurred by Optical Support in recovering the Equipment, or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

- 25.2 On termination of the Contract pursuant to clause 24.1, 24.3, or any other repudiation of the Contract by the Customer which is accepted by Optical Support, without prejudice to any other rights or remedies of Optical Support, the Customer shall pay to Optical Support, on demand, a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand, to the end of the Rental Period.
- 25.3 The sums payable pursuant to clause 25.2 shall be agreed compensation for Optical Support's loss, and shall be payable in addition to the sums payable pursuant to clause 25.1(c)(iii). Such sums may be partly or wholly recovered from any Deposit.
- 25.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.
- 25.5 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

26. Force majeure

- 26.1 **Force Majeure Event** means any circumstance not within Optical Support's reasonable control, including, without *limitation*:
 - (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) any labour or trade dispute, strikes, industrial action or lockouts;
 - (h) non-performance or delays by suppliers or subcontractors, including without limitation any couriers;
 - (i) any epidemic or pandemic; and
 - (j) interruption or failure of utility service.

26.2 Provided it has complied with clause 26.3, if a party (the **Affected Party**) is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event, the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

26.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

26.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, either party may terminate this agreement by giving 1 weeks' written notice to the other.

27. General

27.1 Assignment and other dealings

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

27.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting, or at the time recorded by the delivery service.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by email.

- 27.3 **Rights and remedies.** Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 27.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 27.3, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 27.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 27.6 **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, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 27.7 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 27.8 **Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 27.9 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

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

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