

# Terms and Conditions for Provision of Services

The Customer's attention is particularly drawn to the provisions of clause 9 (Limitation of liability).

## 1 INTERPRETATION

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

### Definitions:

<b>AA Roadwatch</b>	means the motoring information resource maintained by the Automobile Association in the United Kingdom at <a href="https://www.theaa.com/driving-advice/driving-costs/fuel-prices">https://www.theaa.com/driving-advice/driving-costs/fuel-prices</a> .
<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
<b>Collection</b>	means the collection of waste and other materials for disposal, reprocessing, recycling or refurbishment by Recorra as part of the Services.
<b>Commencement Date</b>	has the meaning given in clause 2.2.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 13.8.
<b>Containers</b>	means Recorra's bins, drums, tanks, or any other type of container used by the Customer and/or Recorra pursuant to the Services.
<b>Contract</b>	the contract between Recorra and the Customer for the supply of Services in accordance with these Conditions and the Services Agreement.
<b>controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures</b>	as defined in the Data Protection Legislation.
<b>Customer</b>	the person or firm who purchases the Services from Recorra as set out in the Services Agreement.
<b>Customer Default</b>	has the meaning given in clause 4.2.
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party, relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>Deliverables</b>	deliverables set out in the Order, produced by Recorra for the Customer.
<b>Forbidden Items</b>	Means items including but not limited to special, hazardous and electronic waste, which are forbidden by Recorra for collection either at all times or in specified material streams , as notified to the Customer by Recorra in a list, as amended from time to time.
<b>Force Majeure Event</b>	has the meaning given to it in clause 12.
<b>Initial Term</b>	has the meaning in clause 2.3.
<b>Intellectual Property Rights</b>	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.

<b>Order</b>	the Customer's order for the supply of Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Recorra's quotation as the case may be.
<b>Services</b>	the Collection of materials from the Customer's premises and the performance of services including but not limited to waste management, recycling, confidential waste and document destruction, and the supply of any associated Deliverables, by Recorra to the Customer, as set out in the Service Specification.
<b>Services Agreement</b>	means the Order and either (i) the joiner form; or (ii) the services contract and container/machinery hire agreements if in place; agreed with the Customer setting out the Services Specification and other details of the Services.
<b>Service Specification</b>	the description or specification for the Services provided by Recorra to the Customer as set out in the Services Agreement.
<b>Subsequent Term</b>	has the meaning given in clause 2.3.
<b>Recorra</b>	Recorra Ltd a limited company registered in England and Wales, trading as "Recorra", with registered office address at 52 Lant Street, London, SE1 1RB, with the company number 03961507, and all subsidiary companies.
<b>Supplier Materials</b>	has the meaning given in clause 4.1.13.
<b>Tax</b>	means VAT and any other landfill tax, other waste disposal specific taxes and all other applicable taxes from time to time imposed.
<b>UK Data Protection Legislation</b>	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.
<b>VAT</b>	means value added tax chargeable from time to time.
<b>Websites</b>	means <a href="http://www.recorra.co.uk/">http://www.recorra.co.uk/</a> .

Interpretation:

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.3 A reference to a party includes its personal representatives, successors and permitted assigns.
  - 1.4 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.
  - 1.5 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.
  - 1.6 A reference to **writing** or **written** includes email.
  - 1.7 In the event of conflict between the terms of these Conditions and the terms set out in the Services Agreement, the terms of the Services Agreement shall prevail.
- 2 BASIS OF CONTRACT**
- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted once Recorra issues written acceptance of the Services Agreement or has made a first collection at which point and on which date the Contract shall come into existence (**Commencement Date**) or as otherwise set out in the [Agreement].
- 2.3 Unless otherwise set out in the Services Agreement, Contracts shall continue for an initial term of 12 months from the Commencement Date (**Initial Term**) and shall automatically renew for subsequent 12 month periods (**Subsequent Term**), unless terminated in accordance with clause 10.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Recorra and any illustrations or descriptions of the Services contained in Recorra's catalogues, brochures, or Websites are issued or published for the sole purpose of giving an approximate idea of the Services 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 Any quotation given by Recorra shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

### **3 SUPPLY OF SERVICES**

- 3.1 Recorra shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 3.2 Recorra shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 Recorra 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 Recorra shall notify the Customer in any such event.
- 3.4 Recorra warrants to the Customer that the Services will be provided using reasonable care and skill.

### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
  - 4.1.1 ensure that the terms of the Order and details in the Services Agreement are complete and accurate;
  - 4.1.2 co-operate with Recorra in all matters relating to the Services;
  - 4.1.3 provide Recorra, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and any other facilities as reasonably required by Recorra to provide the Services;
  - 4.1.4 provide Recorra with such information and materials as Recorra may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.5 prepare the Customer's premises for the supply of the Services ensuring that they are well-lit and clear of obstruction, spillages and other hazardous obstacles and ensure that any instructions for access to the Customer's premises have been clearly communicated to Recorra in writing in advance;
  - 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 4.1.7 comply with all applicable laws, including health and safety laws;
  - 4.1.8 not use the Services to dispose of any Forbidden Items;
  - 4.1.9 place and position all materials for Collection, and ensure that Recorra is able to access all materials for Collection, in accordance with any instructions provided by Recorra from time to time;

- 4.1.10 not exceed the maximum safe working capacity of the Containers presented for Collection in terms of weight or volume, as specified in the Services Agreement or as otherwise notified to the Customer in writing by Recorra from time to time;
  - 4.1.11 ensure that the Containers placed for Collection do not contain any liquid, unless agreed with Recorra in writing in advance;
  - 4.1.12 ensure that any material placed for Collection is not [contaminated](#) in any way and complies with the specifications for such material as set out in the Services Agreement, published on the Recorra website or as otherwise notified to the Customer by Recorra in writing from time to time;
  - 4.1.13 keep all materials, equipment, documents, Containers, waste disposal sacks and other property of Recorra (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain Recorra Materials in good condition until returned to Recorra, and not dispose of or use Recorra Materials other than in accordance with Recorra's written instructions or authorisation;
  - 4.1.14 comply with any additional obligations as set out in the Service Specification; and
  - 4.1.15 identify any materials for confidential destruction by Recorra in accordance with Recorra's instructions and the Customer shall pay such additional charges for such confidential destruction Services as set out in the Services Agreement or as otherwise notified by Recorra.
- 4.2 If Recorra'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**):
- 4.2.1 without limiting or affecting any other right or remedy available to it, Recorra 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 Recorra's performance of any of its obligations;
  - 4.2.2 Recorra shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Recorra's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - 4.2.3 the Customer shall indemnify Recorra on written demand against all liabilities, costs, expenses, damages and losses sustained or incurred by Recorra arising directly or indirectly from the Customer Default (including without limitation, Recorra's wasted travel costs where the Customer has not complied with the provisions of clause 4.1.9 above).

## 5 CHARGES AND PAYMENT

- 5.1 The charges for Services shall be as set out in the Services Agreement.
- 5.2 Recorra reserves the right to:
  - 5.2.1 apply, to the charges for the Services, a fuel surcharge of 2% of the value of the Services in every month that diesel prices are higher than £1.40 (incl VAT) per litre as listed by AA Roadwatch; and/or
  - 5.2.2 increase the charges for the Services with 30 days notice to reflect fluctuations in Recorra's costs as a result of factors including but not limited to increases in labour costs, changes in material disposal market prices and increases in transport costs. In all cases prices will be reviewed on an annual basis with increases coming into effect from 1 April each year.
  - 5.2.3 charge the full cost of the collection or waiting charges if a vehicle attends customer site but is unable to or delayed in making a collection due to a customer issue including but

not limited to blocked access or material not being left in specified location at the designated time.

- 5.2.4 Apply charges for labour and additional material for waste or recyclables not left in designated containers that is cleared from site at the time of a scheduled collection.
- 5.2.5 Charge for 66% of the estimated number of containers bales or other items specified in the Service Agreement regardless of whether collections have taken place
- 5.3 The Customer accepts and acknowledges that Recorra may apply additional charges if the Customer has failed to comply with its obligations under clauses 4.1.7, 4.1.8, 4.1.9, 4.1.10, 4.1.11 and 4.1.12. For example, in the event the Customer has not complied with its obligations under clause 4.1.12, Recorra may dispose of such contaminated material as general waste and charge the Customer the higher of (a) the general waste disposal charge; and (b) the recyclable material charge (even though the material may not be recycled), for such unit of collection.
- 5.4 Recorra shall invoice the Customer in accordance with the details as set out in the Services Agreement.
- 5.5 The Customer shall pay each invoice submitted by Recorra:
  - 5.5.1 within 30 days of the date of the invoice; and
  - 5.5.2 in full and in cleared funds to a bank account nominated in writing by Recorra, and time for payment shall be of the essence of the Contract.
- 5.6 If the Customer terminates the Initial Term or any Subsequent Term without cause, and without giving the appropriate notice required by clause 10.1, then it shall remain liable for all charges that would be applied until the expiry of the Initial Term or Subsequent Term, as applicable.
- 5.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of Tax. The Customer shall, on receipt of a valid VAT invoice from Recorra, pay to Recorra such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 All invoices disputed by the Customer must be notified in writing by email to [accounts@recorra.co.uk](mailto:accounts@recorra.co.uk) within 30 days of the date of issue of the invoice. Disputes with a value of less than 5% of the value of the invoice must not delay payment of the full invoice. In such circumstances, the Customer must proceed with payment whilst the parties take steps to resolve the dispute. On resolution of the dispute any credits owed to the Customer shall be issued within 10 Business Days after resolution of the dispute.
- 5.9 If the Customer fails to make a payment due to Recorra under the Contract by the due date, then, without limiting Recorra's remedies under clause 10 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before
- 5.10 or after judgment. Interest under this clause 5.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.
- 5.11 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).

## **6 INTELLECTUAL PROPERTY RIGHTS**

- 6.1 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 Recorra.
- 6.2 Recorra 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 and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 6.2.

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

## 7 DATA PROTECTION

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 7, **Applicable Laws** means (for so long as and to the extent that they apply to Recorra) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Recorra is the processor.

7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Recorra for the duration and purposes of the Contract.

7.4 Without prejudice to the generality of clause 7.1, Recorra shall, in relation to any personal data processed in connection with the performance by Recorra of its obligations under the Contract:

7.4.1 process that personal data only on the documented written instructions of the Customer unless Recorra is required by Applicable Laws to otherwise process that personal data. Where Recorra is relying on Applicable Laws as the basis for processing personal data, Recorra shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Recorra from so notifying the Customer;

7.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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);

7.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

7.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

7.4.4.1 the Customer or Recorra has provided appropriate safeguards in relation to the transfer;

7.4.4.2 the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

7.4.4.3 Recorra complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

7.4.4.4 Recorra complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

- 7.4.5 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;
  - 7.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
  - 7.4.7 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 Applicable Law to store the personal data; and
  - 7.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and immediately inform the Customer if, in the opinion of Recorra, an instruction infringes the Data Protection Legislation.
- 7.5 The Customer consents to Recorra appointing third-party processors of personal data under the Contract. Recorra confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 and in either case which Recorra confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Recorra, Recorra shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 7.

## **8 CONFIDENTIALITY**

- 8.1 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 or of any member of the group of companies to which the other party belongs, except as permitted by clause 8.2.
- 8.2 Each party may disclose the other party's confidential information:
  - 8.2.1 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 this Agreement. 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 8; and
  - 8.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## **9 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 9.1 The limits and exclusions in this clause reflect the insurance cover Recorra has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 9.2 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 9.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
  - 9.4.1 death or personal injury caused by negligence;
  - 9.4.2 fraud or fraudulent misrepresentation; and

- 9.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.5 Subject to clause 9.4, Recorra's total liability to the Customer shall not exceed 100% of the total charges in the contract year in which the breach(es) occurred. For the purpose of this clause 9.5, a contract year means a 12 month period commencing on the Commencement Date or any anniversary of it; and the total charges means all sums paid by the Customer and all sums payable under this agreement in respect of Services actually supplied by Recorra, whether or not invoiced to the Customer.
- 9.6 Recorra must be notified by the Customer in writing with photographic evidence within two Business Days of any claim in respect to damage to property alleged to have occurred during provision of the Services. Recorra must be given the opportunity to inspect the alleged damage and at its option to make good any damage. In the event that liability is admitted by Recorra, and the Customer arranges for repair two quotations must be obtained and Recorra's approval obtained before work is authorised.
- 9.7 Subject to clause 9.4 this clause 9.7 sets out the types of loss that are wholly excluded by Recorra:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 9.8 The Customer shall indemnify Recorra against all loss or damage suffered by Recorra arising from the Customer's failure to meet its obligations under clauses 4.1.7, 4.1.8, and 4.1.12.
- 9.9 Recorra has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.10 Recorra shall not have any responsibility or obligation in relation to Customer's recycling performance, or the achievement of any recycling targets imposed on the Customer.
- 9.11 Recorra shall not be liable for any non-conformance with its obligations in this Contract caused by the Customer's use of the Services other than in accordance with Recorra's instructions and in particular Recorra shall not have any responsibility and accepts no liability for maintaining the confidentiality or security of any materials incorporating confidential information or personal data placed for Collection other than where the Customer has identified such material in accordance with clause 4.1.15.
- 9.12 Recorra shall not be in breach of the Contract and the Customer shall not have any claim against Recorra to the extent the alleged breach, act, omission or infringement by Recorra arises as a result of Recorra complying with the Customer's instructions.
- 9.13 Unless the Customer notifies Recorra that it intends to make a claim in respect of an event within the notice period, Recorra shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.14 The Customer accepts full responsibility for all injury, loss or damage suffered by Recorra as a result of the Customer's breach of clause 4.1.8.
- 9.15 This clause 9 shall survive termination of the Contract.

## **10 TERMINATION**

- 10.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract by giving Recorra written notice no less than 90 days before the expiry of the applicable Initial Term or Subsequent Term.
- 10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within thirty days after receipt of notice in writing to do so;
  - 10.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 10.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 10.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3 Without affecting any other right or remedy available to it, Recorra may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 Without affecting any other right or remedy available to it, Recorra may suspend the supply of Services under the Contract or any other contract between the Customer and Recorra if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.2.2 to clause 10.2.4, or Recorra reasonably believes that the Customer is about to become subject to any of them.

## **11 CONSEQUENCES OF TERMINATION**

- 11.1 On termination of the Contract:
- 11.1.1 the Customer shall immediately pay to Recorra all of Recorra's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Recorra shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 11.1.2 the Customer shall return all of Recorra Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Recorra 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.
- 11.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 11.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 12 FORCE MAJEURE

12.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including but not limited to:

- 12.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 12.1.2 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;
- 12.1.3 nuclear, chemical or biological contamination or sonic boom;
- 12.1.4 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- 12.1.5 collapse of buildings, fire, explosion or accident;
- 12.1.6 any labour or trade dispute, strikes, industrial action or lockouts;
- 12.1.7 non-performance by suppliers or subcontractors; or
- 12.1.8 interruption or failure of utility service,

(each a **Force Majeure Event**).

12.2 In such circumstances as described in clause 12.1 the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

## 13 GENERAL

### 13.1 Assignment and other dealings

- 13.1.1 Recorra 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.
- 13.1.2 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 Recorra.

### 13.2 Notices.

- 13.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - 13.2.1.1 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); or
  - 13.2.1.2 sent by email to the addresses provided by each party to the other from time to time.
- 13.2.2 Any notice or communication shall be deemed to have been received:
  - 13.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
  - 13.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
  - 13.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- 13.2.3 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.
- 13.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 13.3 shall not affect the validity and enforceability of the rest of the Contract.
- 13.4 **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.
- 13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, 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.
- 13.6 **Entire agreement.**
- 13.6.1 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.
- 13.6.2 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.
- 13.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 13.7 **Third party rights.**
- 13.7.1 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.
- 13.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.8 **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).
- 13.9 **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.
- 13.10 **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.