

## BY DEGREES - GENERAL TERMS & CONDITIONS

### The Customer's Attention is Drawn to the Provision of Clause 15.6

#### 1. BACKGROUND & PRIORITY

1.1 These General Terms & Conditions together with each Order Form along with any relevant Service Guide or Equipment Guide entered into between By Degrees and any of its Customers shall constitute the terms and conditions upon which By Degrees shall deliver the Services and/or provide Equipment to such Customers (each term as defined below).

1.2 In the event of any conflict or inconsistency between the provisions of any of the documents relevant to a particular Service or piece of Equipment, then the order of precedence of the documents shall be: (1) each Service Guide relevant to a particular Service or each Equipment Guide relevant to a particular piece of Equipment; (2) each Order Form; (3) these General Terms & Conditions; (4) all other attachments to the relevant Services or Equipment Guide; (5) any other documents referred to in any of the Documents; and (6) any Documents between the Customer and H&B (each term as defined herein or in the relevant Document).

#### 2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions** - The following expressions shall have the meanings provided below and cognate expressions shall bear corresponding meanings herein and in any Order Form (as defined below):

**"Ancillary Services & Equipment"** means any air conditioning equipment and/or cooling equipment and/or gas separation equipment and/or dispensing equipment and/or any piping or fixtures or fittings and/or mobile beverage dispensing bars or caddies ("Caddies") and/or all servicing in relation thereto that is requested by the Customer for any of its Locations in connection with the storage, dispensing or otherwise sale of alcoholic and non-alcoholic drinks from such Locations - for the avoidance of doubt Services and Equipment described hereinafter shall comprise the Ancillary Services & Equipment requested by the Customer;

**"Applicable Rate"** means the base rate of interest quoted publicly from time to time by the Isle of Man Bank plus two per cent which for all purposes under these General Terms & Conditions shall be evidenced by a certificate signed by a manager of such bank whose appointment or designation it shall not be necessary to prove;

**"By Degrees"** means By Degrees that is the trading name of Trade Facilities Management Limited (Company number 115071C) and registered office at Old Castletown Road, Kewaigue, Douglas IM2 1QG;

**"Customer"** means the customer named in, and more details of which are set out in, the relevant Order Form;

**"Documentation"** means each Order Form, any Service Guide, any Equipment Guide and these General Terms & Conditions that together provide the terms and conditions upon which By Degrees will provide the Service and/or Equipment to the Customer and any agreement between the Customer and H&B, each such document shall be referred to individually as a **"Document"**;

**"Equipment"** means the equipment provided by By Degrees to the Customer as described in more detail in the relevant Equipment Documentation;

**"Equipment Documentation"** means each Order Form entered into by the Parties and these General Terms & Conditions that together provide the terms and conditions upon which By Degrees will provide Equipment to the Customer, which shall include any Equipment Guide and any other documents attached thereto;

**"Equipment Guide"** means any equipment description that provides additional information on particular Equipment that is attached to the relevant Equipment Documentation;

**"Equipment Order Form"** means each equipment order form entered into by the Parties that lists the Equipment that is to be provided to the Customer by By Degrees and the Price that the Customer is to pay for the Equipment (in accordance with the terms of all relevant Documentation) if the Customer does not comply with the terms of Clause 6.1 1 and/or if By Degrees provides that such Prices are payable on an Equipment Order Form;

**"Fault"** means when either Party (acting reasonably) has reason to suspect that any Equipment has developed a fault;

**"Fault Reporting Telephone Number"** means the following telephone number +44 (0) 1624 699477, which is the Customer fault reporting telephone number;

**"Fees"** means the fees as provided in more detail on each Services Order Form and that are payable by the Customer to By Degrees in consideration of the delivery of the Services in accordance with the terms hereof;

**"Fees List"** means the from time to time fees that By Degrees charges for the rental of Equipment and the provision of the Services to the Customer a copy of which can be obtained from or inspected at By Degrees Main Office;

**"General Terms & Conditions"** means these general terms & conditions;

**"Goods"** means all alcoholic and non-alcoholic drinks and/or component ingredients of such drinks that have been supplied to the Customer by H&B;

**"H&B"** means Heron and Brearley Limited with Company Number 218C and registered office at Old Castletown Road, Kewaigue, Douglas;

**"Intellectual Property Rights"** means any rights subsisting in any patent, petty patent, trade mark, service mark, design right, registered or unregistered design including any applications for the foregoing, present and future copyrights, moral rights, databases, know-how and other trade secret rights, rights of confidence, trade or business names and other industrial or intellectual property rights subsisting anywhere in the world;

**"Law of Incorporation"** means the law of incorporation of the Customer as provided in the definition of the Customer on the relevant Order Form;

**"Location"** means any location on the Isle of Man at which By Degrees either delivers any of the Services or at which Equipment is held either temporarily or permanently by the Customer;

**"normal working hours"** means from 08:30 hours until 17:00 hours (UK time), Monday to Friday, excluding UK and Isle of Man national holidays;

**"Order Form"** means each Services Order Form and/or each Equipment Order Form entered into by the Customer and By Degrees (as the case may be);

**"Parties"** means By Degrees and the Customer, and a Party shall mean either of them;

**"Prices"** means the prices (that are provided in more detail on each Equipment Order Form) payable by the Customer to By Degrees for the Equipment in accordance with the terms hereof;

**"Service Commencement Date"** means the date from which By Degrees is to commence providing the Services to the Customer, which shall either be the date of the relevant Services Order Form, or any other date that both By Degrees and the Customer may mutually agree in writing;

**"Services"** means the services as provided in more detail in each of the Services Order Forms that are to be delivered to the Customer by By Degrees in accordance with the terms of the Services Documentation;

**"Services Documentation"** means each services order form entered into by the Parties and these General Terms & Conditions that together provide the terms and conditions upon which By Degrees will provide the Services to the Customer, which shall include any Service Guides and any other documents attached thereto;

**"Services Guide"** means any services description that provides information on a particular Service or Services which is attached to any Services Order Form;

**"Services Order Form"** means each services order form entered into by the Parties that lists the Services that are to be provided to the Customer by By Degrees and the Fees that the Customer is to pay in consideration for the delivery of such Services (in accordance with the terms of all relevant Documentation) if the Customer does not comply with the terms of Clause 6.1 and/or if the Customer hires one or more Caddies and/or if By Degrees provides that such Fees are payable on a Services Order Form;

**"Term"** means the term specified on the relevant Services Order Form; and

**"Third Party Supplier"** means a third party supplier of services and/or goods and/or equipment to By Degrees or any of its associated companies.

2.2 **Interpretation** - These General Terms & Conditions shall be interpreted according to the following provisions, unless the context requires a different meaning:

(a) The clause headings in these General Terms & Conditions are for reference purposes only and shall not be used in the interpretation thereof.

(b) Expressions which denote any reference to one gender shall include the other and any reference to the singular includes the plural and vice versa.

(c) References to a **"person"** shall be construed as including references to an individual, firm, company, corporation, partnership, association, unincorporated body of persons, trust, a state or any governmental authority or any other entity whether acting in an individual, financing or other capacity and to such person's permitted successors.

(d) References to a **"business day"** shall mean any day which is not a Saturday or a Sunday or any public holiday or bank holiday recognised in the Isle of Man.

(e) References to Clause(s) or Schedule(s) shall refer to Clauses or Schedules of and to these General Terms & Conditions.

(f) All references to these General Terms & Conditions shall include references to all Schedules to these General Terms & Conditions

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which Schedules shall form an integral part of these General Terms & Conditions.

(g) An expression defined in these General Terms & Conditions shall bear the same meaning when used in all Documentation unless expressly provided for otherwise therein.

2.3 In all Documentation, any undertaking by either Party thereto not to do any act or thing shall be deemed to include an undertaking by such party not to permit or suffer the doing of that act or thing.

2.4 In any Order Form, the terms "Customer" and "By Degrees" shall include their respective successors and permitted assigns.

### 3. APPLICATION OF TERMS

3.1 Subject to any variation under Clause 3.3, the Services and/or Equipment shall be provided to the Customer by By Degrees on the terms and conditions provided by the relevant Documentation to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

3.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall modify any Documentation simply as a result of such document being referred to or included in the ordering and delivery of any Services and/or Equipment.

3.3 A specific Order Form will apply to all of By Degrees' Services or Equipment and any variation to the conditions provided therein and any representations about the relevant Services and/or Equipment listed therein shall have no effect unless expressly agreed in writing and signed by an authorised signatory of By Degrees. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of By Degrees which is not set out in the relevant Order Form. Nothing in this condition shall exclude or limit By Degrees' liability for fraudulent misrepresentation.

3.4 Each order or acceptance of a quotation for Services and/or Equipment by the Customer from By Degrees shall be deemed to be an offer by the Customer to receive Services and/or buy or rent Equipment from By Degrees subject to the terms of the relevant Documentation.

3.5 No order placed by the Customer shall be deemed to be accepted by By Degrees until a written acknowledgement of order is issued by By Degrees or (if earlier) By Degrees commences delivery of the Services or delivers the Equipment to the Customer.

3.6 The Customer shall ensure that each Order Form and any applicable specifications are complete and accurate.

3.7 Any By Degrees quotation is provided to the Customer on the basis that no binding agreement shall come into existence until both the Customer and By Degrees execute an Order Form or By Degrees commences delivery of the Services to the Customer. Any quotation is valid for a period of thirty (30) days only from its date, provided that By Degrees has not previously withdrawn it.

### 4. SERVICES

4.1 By Degrees shall make the Services (detailed in each Services Order Form) available to the Customer from the Service Commencement Date until the expiration of the Term, subject to termination and suspension rights as set forth in the Services Documentation.

4.2 By Degrees will use reasonable endeavours to provide the Services by the date and time agreed with the Customer but all dates and times are estimates and the Parties agree that By Degrees will have no liability for any failure to meet any date or time.

4.3 As By Degrees does not undertake to provide Equipment or Services that are fault free, By Degrees will endeavour to repair any Equipment faults or any faults in the Services that are reported to Fault Reporting Telephone Number.

4.4 If By Degrees is required to provide any Services, wholly or in part, by non-standard means in order to meet the Customer's requirements, then By Degrees will inform the Customer in writing of the proposed additional Fees that such non-standard delivery of the Services will incur.

### 5. EQUIPMENT

By Degrees shall provide the Equipment to the Customer in accordance with the terms of the Equipment Documentation.

### 6. CUSTOMER'S OBLIGATIONS

6.1 Provided that:

(a) the Customer complies with the terms of all Documentation (to the sole satisfaction of By Degrees) throughout the term of each Document; and

(b) By Degrees is satisfied that the Customer's requests for Ancillary Services & Equipment are commercially reasonable; and

(c) the Customer is not hiring one or more of the Caddies; and

(d) By Degrees has not specified that Fees shall be payable on a Services Order Form or that Prices shall be payable on an Equipment Order Form,

then By Degrees agrees to suspend the collection of any Fees and/or Prices or conditionally credit any Fees and/or Prices (in accordance with the terms of Clause 6.2) that the Customer has incurred in consideration of the delivery of such Services and/or the provision of such Equipment that comprise the Ancillary Services & Equipment. For the avoidance of doubt, if the Customer hires one of more of the Caddies or if By Degrees specifies on a Services Order Form or an Equipment Order Form that any Fees or Prices should be paid without suspension, then By Degrees will not suspend the collection of any Fees or Prices in relation thereto and the Customer agrees to pay all relevant Fees and/or Prices in relation thereto in accordance with the terms of the relevant Services Order Form or Equipment Order Form.

6.2 If at any time during the term of any Documentation the Customer does not (in the sole discretion of By Degrees) comply with the terms of all Documentation or if the Customer's requests for Ancillary Services & Equipment are deemed to be not commercially reasonable by By Degrees, then in consideration of the provision of:

(a) the Services to the Customer by By Degrees, the Customer shall:

(i) immediately pay, or pay as otherwise instructed in writing by By Degrees, all invoices that By Degrees may have issued to the Customer (if any) for the delivery of the Services, but in relation to which By Degrees had suspended collection in accordance with Clause 6.1 (the "Prior Fees"); and

(ii) pay all future invoices that by By Degrees may issue to the Customer in accordance with the terms of the relevant Services Documentation (which together with the Prior Fees shall be referred to as the "Outstanding Fees"); and/or

(b) the Equipment to the Customer by By Degrees, the Customer shall

(i) immediately pay, or pay as otherwise instructed in writing by By Degrees, all outstanding invoices that By Degrees may have issued to the Customer (if any) for the delivery of the Equipment, but in relation to which By Degrees had suspended collection in accordance with Clause 6.1 (the "Prior Equipment Prices"); and

(ii) pay all future Prices invoiced by By Degrees in accordance with the terms of the relevant Equipment Documentation (which together with the Prior Equipment Prices shall be referred to as the "Outstanding Equipment Prices").

6.3 The Customer undertakes:

(a) to use all Equipment in accordance with By Degrees' from time to time instructions and/or in accordance with any accompanying user guide;

(b) to use the Equipment for the sole purpose of dispensing the Goods and not to use such Equipment to dispense goods that have been supplied by any third party;

(c) to take adequate precautions to prevent damage to or theft of any Equipment;

(d) to be solely responsible for all Equipment (including insurance) and to remain liable for any costs that may arise as a result of any damage, theft or loss etc., in respect of any Equipment;

(e) not to sell, charge, hire or part with possession of any Equipment;

(f) not to assign the benefit of any Services to any third party or permit any third party to receive the benefit of the Services or to use the Equipment;

(g) to return any Equipment to By Degrees for maintenance, upgrade, repair or replacement (if By Degrees so requests) or at the expiry of any rental period that may have been specified by H&B in an Order Form;

(h) not to (nor to allow any third party to) carry out, or try to carry out, any repairs or alterations to the Equipment;

(i) to be responsible for all damages and expenses that may arise from any breach of the terms of Clause 6.3(h) that result either directly or indirectly from the Customer's acts or omissions;

(j) to inform By Degrees immediately on the Fault Reporting Telephone Number, or as advised by By Degrees from time to time, if any Equipment is lost, stolen, damaged, destroyed or likely to be used in an unauthorised manner;

(k) to promptly advise By Degrees, but in any event within 7 days, in writing of any change of the Customer's address or bank details;

(l) irrespective of the Customer complying with the provisions of Clause 6.1, to pay all additional fees that By Degrees may charge at any time in relation to (but not limited to) the matters provided below and otherwise referred to herein:

(i) if By Degrees responds to a Fault that is reported by the Customer, but no Fault is found or the Fault reported is not one covered by the scope of any Services or the Fault is on equipment that is not the subject of such Services; and/or

(ii) if By Degrees' delivery of the Services is made more difficult or costly by the Customer's breach of any of its obligations under the Documentation; and/or

(iii) where By Degrees is unable to get access to any Equipment in order to diagnose any Fault within a reasonable period; and/or

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(iv) where By Degrees works at the Customer's request outside normal working hours.

(m) not to connect any equipment to the Equipment that has not been approved in written by By Degrees prior to such connection.

**6.4** The Customer acknowledges and accepts that (irrespective of whether the Customer complies with the terms of Clause 6.1):

(a) all Equipment shall at all times remain the property of By Degrees;

(b) if any Equipment is lost, stolen, damaged or destroyed, then the Customer will be liable to By Degrees for any and all loss and/or damage that By Degrees incurs;

(c) the Customer shall be solely responsible (and shall bear all cost and expense):

(i) relating to the provision of all facilities necessary to install and operate the Equipment; and

(ii) for the replacement of filters, batteries or other consumables in any Equipment;

(iii) for cleaning all Equipment sufficiently regularly so as to comply with all relevant health and safety, hygiene and other relevant legislation, regulations and requirements that may apply to the Customer's provision of alcoholic and non-alcoholic drinks to its customers; and

(iv) for reporting to By Degrees any Fault within two days of such a Fault occurring.

**6.5** During the Term, the Customer shall be responsible for obtaining and maintaining, at its expense, appropriate levels of insurance coverage covering its interests under the Documentation (including but not limited to the value of the Equipment that it holds in its possession or at any Location from time-to-time).

**6.6** If the Customer does not comply with the terms of Clause 6.1(a), then without prejudice to any other remedies that may be available to By Degrees, By Degrees reserves the right to (and the Customer hereby agrees that By Degrees shall be entitled to and waives all rights to object in relation thereto):

(a) enter upon any premises owned occupied or controlled by the Customer (including but not limited to any Location) where any Equipment is situated and remove and repossess the Equipment and/or any Goods on behalf of H&B; and/or

(b) recover from the Customer (in accordance with By Degrees' then current Fees and Prices) all time and equipment-related costs that By Degrees may have incurred as a result of the provision of the Ancillary Services & Equipment from the date of the earliest Order Form between the Parties until the date of the Customer's non-compliance with Clause 6.1(a); and/or

(c) charge the Customer (at By Degrees' then current Fees) for the maintenance and repair of any Equipment.

### 7. PAYMENT & TAXES

**7.1** All sums payable under any Documentation are exclusive of any Value Added Tax ("VAT") or other taxes or duties levied on such sums and, subject to receipt of a valid VAT invoice, the Customer undertakes to pay and indemnify By Degrees in respect of any such VAT or other tax or duty properly chargeable to the Customer by By Degrees.

**7.2** Each Price shall be exclusive of all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Equipment.

**7.3** By Degrees will issue invoices to the Customer, and the Customer will pay the sums due, in accordance with the terms of any relevant Documentation.

**7.4** Unless otherwise set out in a Document or in the terms of payment of a specific invoice, all invoices shall be payable within thirty (30) days of receipt.

**7.5** By Degrees may claim interest on any amount overdue at the Applicable Rate from the due date until date of payment, both days inclusive, which interest shall be equal to the Applicable Rate and calculated on a daily basis.

**7.6** The Customer's use of the Services shall be calculated by applying the Fees List to the Customer's record of usage of the Services that has been made by or on behalf of the Customer.

**7.7** When By Degrees issues a new Fees List, By Degrees will publish such new fee rates on the By Degrees website (including the operative date) and notify the Customer by email as soon as possible and in any event not less than fourteen (14) days before the change is due to take effect.

**7.8** The Customer shall be independently responsible for directly paying all Taxes that may arise in respect of any Services and/or Equipment.

**7.9** Requests for invoice adjustments must be submitted to By Degrees in writing within twenty five (25) days from receipt of an invoice by the Customer. Any disputed amounts which are determined by By Degrees to be in error or not in compliance with the relevant Order Form shall be adjusted appropriately. Any disputed amounts which are reasonably

deemed by By Degrees to be correct as invoiced shall remain due and payable by the Customer along with any accrued late payment charges which By Degrees may impose pursuant to Clause 7.5, however, such late payment charges will not be payable by the Customer if the Customer's dispute is upheld. In either event, By Degrees shall notify the Customer of its determination. The Customer may not delay payment to By Degrees of any amounts not disputed in good faith.

**7.10** Payment of all sums due under each Order Form shall be made by wire, BACS, cheque or such other method as By Degrees may reasonably specify from time to time, and payment of all such sums shall be made in full (without any set-off, deduction or withholding whatsoever).

**7.11** If the Customer is required by law to make any deduction or withholding from any payment due under any Order Form, then, notwithstanding any indication to the contrary in the relevant Order Form, the gross amount payable by the Customer will be increased so that, after any such deduction or withholding for any Taxes, the net amount received by By Degrees will not be less than the amount that By Degrees would have received had such deduction or withholding not been required.

**7.12** The Customer acknowledges that the Customer may be subject to By Degrees' credit vetting procedures and that By Degrees may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills as provided in this Clause 7.

**7.13** By Degrees may, from time to time, either before or after the Service Commencement Date and on more than one occasion, require the Customer to deposit funds with By Degrees (in such amount as By Degrees thinks fit), by way of security for the payment of any charges payable or to become payable by the Customer.

**7.14** If the Customer provides By Degrees with a deposit in accordance with Clause 7.13, then By Degrees reserves the right to:

(a) retain the deposit until the Customer has discharged all liabilities due to By Degrees; and

(b) appropriate such deposit or any part of it in settlement of any sums due to By Degrees by the Customer.

**7.15** In addition to, or instead of, requiring the Customer to pay a deposit in accordance with Clause 7.14, By Degrees may require the Customer to make an advance payment prior to the Service Commencement Date of an amount not exceeding a year's Fees and the price of the Equipment provided by By Degrees, such advance payment shall be credited to the Customer's account and applied to settle all Fees that the Customer subsequently incurs in using the Services during the course of the year.

**7.16** In addition to, or instead of, any other provision under this Clause 7, By Degrees reserves the right to apply a fee cap upon the Customer's use of the Services, so that if the Customer's usage of the Services results in the Fees exceeding such fee cap, then By Degrees reserves the right to suspend its delivery of the Services, in whole or part.

**7.17** The Customer hereby agrees that in any proceedings between By Degrees and the Customer, a certificate from By Degrees that Fees comprising a specified sum is due to By Degrees from the Customer for Services provided by By Degrees under any relevant Services Documentation shall, in the absence of manifest error, be conclusive evidence of that fact.

### 8. SUB-CONTRACTORS & ASSIGNMENT

**8.1** By Degrees may sub-contract the whole or part of its obligations in respect of the provision of any Services and/or any Equipment to a third party in accordance with the terms of this Clause 8.

**8.2** By Degrees shall procure that all sub-contractors appointed pursuant to this Clause 8 undertake in writing to comply, and do comply, with the provisions of the relevant Order Form and undertake in writing to carry out their duties with the same level of care and skill as By Degrees. Notwithstanding the appointment of any sub-contractor, By Degrees shall remain liable to the Customer for all acts or omissions of or loss directly or indirectly caused by any appointed sub-contractor as if such acts or omissions were those of or such loss was caused by By Degrees.

**8.3** By Degrees shall ensure that all sub-contractors are subject to the same duties of confidence in respect of all of the Customer's confidential information and Intellectual Property Rights as By Degrees is under the relevant Order Form, and no such confidential information or Intellectual Property Rights may be disclosed to such sub-contractors until they have agreed in writing to adhere to such duties. By Degrees shall be liable for any breach of confidentiality by its sub-contractors.

**8.4** Subject to Clause 8.5, neither Party shall assign or delegate all or any of its rights and obligations under the relevant Order Form without the other Party's prior written consent, such consent not to be unreasonably withheld. This Clause 8.4 shall not preclude By Degrees from assigning the right to receive monies hereunder.

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8.5 By Degrees shall have the right to assign or transfer all or any of its rights and obligations under any Documentation to an associated company.

#### 9. PERSONNEL

9.1 The Customer shall afford to the personnel of By Degrees or its permitted sub-contractors access to any Location within normal business hours (or such other time as may be agreed between the Parties) and shall provide adequate free working space and such other facilities as may be necessary for the supply or delivery or receipt of any Services and/or Equipment or fitting or installation or maintenance of any Equipment or otherwise.

9.2 The Customer agrees to comply with By Degrees' health and safety policy, security policy and any other policy (where such policies are notified to the Customer) and reasonable direction of By Degrees in relation to the security of each By Degrees' personnel, computer and communications system and premises.

#### 10. INTELLECTUAL PROPERTY RIGHTS

10.1 Neither Party may use the names, service marks, trademarks, logos or other corporate identifications of the other Party, without the prior consent of the other Party.

10.2 Intellectual Property Rights shall remain the property of the party devising, creating, first recording or owning the same and nothing in any Document shall be deemed to confer any assignment, right, title or licence of the Intellectual Property Rights of one party to another party and nothing in any Document shall be deemed to restrict the rights of any party to own, use, enjoy, licence, assign or transfer its own Intellectual Property Rights.

10.3 As between the Customer and By Degrees, all Intellectual Property Rights and all other rights in the Services and Equipment shall be owned by By Degrees to the extent that they are not already owned by a third party.

#### 11. USE OF THE SERVICES

11.1 The Customer is responsible for the acts and omissions of any of its customers and/or any users in connection with any of the Services and is liable for any failure by any of its customers to perform or observe the terms and conditions of each Document.

11.2 If the provision by By Degrees of any Services is adversely affected by the Customer's acts or omissions, then By Degrees shall not be held to be in breach of any obligation under the relevant Services Documentation to the extent that the Customer's acts or omissions directly affects By Degrees' performance of such obligation.

11.3 If the Customer or any other party, with or without the Customer's knowledge or approval, uses the Services in any way which, in By Degrees' opinion (acting reasonably), is, or is likely to be, detrimental to the provision of the Services to the Customer or any other By Degrees customer and the Customer fails to take corrective action within a reasonable period of receiving written notice from By Degrees, then By Degrees may treat any such breach as a material breach of the relevant Documents which cannot be remedied for the purposes of Clause 16.1(b).

#### 12. INFORMATION

12.1 The Customer will promptly provide to By Degrees (without charge) all commercially reasonable information and co-operation which By Degrees or H&B or any Third Party Supplier may reasonably require from time to time to enable By Degrees to proceed uninterrupted with the performance of its obligations under any Service Guide and/or the associated Services Order Form and any other agreements that By Degrees have entered into with any Third Party Suppliers.

12.2 In order for By Degrees or any Third Party Supplier to investigate unauthorised use of any Equipment (as provided in any Documentation), the Customer will co-operate by allowing By Degrees to examine, at reasonable times and location, any records relevant to the use of any element of the Equipment.

#### 13. CONFIDENTIALITY AND NON-DISCLOSURE

13.1 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 including the Documentation, except as permitted by Clause 13.2.

13.2 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 carrying out the Party's obligations under the Documentation. 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 13.2; and (b) as may be required by law, court order or any governmental or regulatory authority.

13.3 No Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Documentation.

#### 14. GENERAL INDEMNIFICATION

14.1 Each Party (the "Indemnifying Party") shall defend with counsel reasonably acceptable to the Indemnified Party, shall hold harmless and indemnify the other Party and its employees, officers, directors, agents, subcontractors, shareholders and affiliates (the "Indemnified Party") from and against and shall assume liability for all actual and direct damages, costs and expenses (including without limitation all interest, penalties and reasonable attorneys' fees and costs and other professional costs and expenses), proceedings whatsoever, howsoever arising, whether in contract, tort or otherwise, directly or indirectly, out of, or in the course of or in connection with any injury, loss or damage to any person, tangible property or facilities of any third person or entity arising under any Documentation due to the negligence or wilful misconduct of the Indemnifying Party, its employees, agents or contractors;

14.2 If any third party makes a claim against, or notifies an intention to make a claim against, the Indemnified Party or any of its associated companies which may reasonably be considered as likely to give rise to a liability under this indemnity ("a relevant claim"), the Indemnified Party shall and shall procure that any relevant associated company shall:

(a) as soon as reasonably practicable give written notice of that matter to the Indemnifying Party, specifying in reasonable detail the nature of the relevant claim;

(b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed);

(c) give the Indemnifying Party and its professional advisers reasonable access to the premises and personnel of the Indemnified Party and/or any of its associated companies (as the case may be) and to any relevant assets, accounts, documents and records within the power or control of the Indemnified Party and/or its associated companies so as to enable the Indemnifying Party and its professional advisers to examine such premises, assets, accounts, documents and records, and to take copies at their own expense for the purpose of assessing the merits of the relevant claim provided that all such information will be treated as confidential information and provided further that the indemnified party is not prohibited from providing such information due to applicable law or regulation; and

(d) subject to the Indemnifying Party indemnifying the Indemnified Party and its associated companies to the Indemnified Party's reasonable satisfaction against any liability, costs, damages or expenses which may be incurred, take such action as the Indemnifying Party may reasonably request to avoid, dispute, resist, compromise or defend the relevant claim.

14.3 This indemnity shall cover (but is not limited to) By Degrees' liability to third parties arising out of the use of any of the Services and/or any Equipment by the Customer and/or its customers and does not limit any further compensation rights of By Degrees.

14.4 If a payment is due from either Party under this Clause 14 that is subject to tax (whether by way of direct assessment or withholding at its source), then the other Party shall be entitled to receive from the such Party such amounts as will ensure that the net receipt, after tax, to the other Party in respect of the payment is the same as it would have been were the payment not subject to tax.

#### 15. LIMITATION OF LIABILITY

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 15.**

15.1 The liability of By Degrees in respect of the Services and the Equipment and in relation to any Documentation shall be as stated in these General Terms & Conditions.

15.2 This Clause 15 sets out the entire financial liability of By Degrees (including any liability for the acts or omissions of its employees, agents, sub-contractors and any associated companies) to the Customer and the Customer waives any right to claim against By Degrees other than in accordance with this Clause 15.

15.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from any Documentation.

15.4 Nothing in this Clause 15 limits or excludes the liability of By Degrees:

(a) for death or personal injury resulting from negligence; or

(b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by By Degrees; or

(c) for any liability incurred by the Customer as a result of any breach by By Degrees of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1986.

## BY DEGREES - GENERAL TERMS & CONDITIONS

### The Customer's Attention is Drawn to the Provision of Clause 15.6

#### 15.5 Subject to Clause 15.4:

(a) By Degrees shall not be liable to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by By Degrees of the Documentation; and  
(b) in the event of any breach of the Documentation by By Degrees the remedies of the Customer shall be limited to damages.

**15.6** The aggregate liability of By Degrees to the Customer for any and all claims, losses, damages or expenses under the Documentation from any cause whatsoever shall be limited to an amount equal to the value of the Fees incurred and the price of the Equipment delivered to the Customer by By Degrees in the twelve month period prior to any such claim being made by the Customer.

**15.7** By Degrees shall not be liable hereunder either in contract, tort (including negligence) or otherwise for the acts or omissions of any Third Party Suppliers.

**15.8** Each provision of these General Terms & Conditions, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

**15.9 THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THE LIMITATION ON BY DEGREES' LIABILITY PROVIDED IN THIS CLAUSE 15 AS BEING A FAIR AND REASONABLE APPORTIONMENT OF THE POTENTIAL EXPOSURE THAT COULD ARISE IN RELATION TO THE LIABILITIES EXPECTED UNDER THE DOCUMENTATION; IF THE CUSTOMER VIEWS THE PROPOSED LIMITATION ON LIABILITY OF BY DEGREES HEREUNDER TO BE INSUFFICIENT FOR ITS POTENTIAL EXPOSURE SHOULD BY DEGREES BREACH THE TERMS OF ANY DOCUMENTATION, THEN THE CUSTOMER HEREBY AGREES TO OBTAIN RELEVANT INSURANCE COVER REGARDING SUCH POTENTIAL EXPOSURE.**

#### 16. TERMINATION

**16.1** All of the following shall be an "Event of Default":

(a) a wilful failure by the Customer to make timely payment to By Degrees of any amount due to it under the terms of any Order Form and which failure is not rectified within thirty (30) days of receipt of written notice by By Degrees so to do; or

(b) any material breach of any term of any Documentation which cannot be remedied or which is not remedied to By Degrees' reasonable satisfaction within thirty (30) days of receipt of written notice from By Degrees requiring the Customer to make such payment; or

(c) making by the Customer of an arrangement, composition with or a general assignment for the benefit of creditors; or

(d) the filing of an involuntary petition in bankruptcy or other insolvency protection against the Customer which is not dismissed within ninety (90) days of its filing or results in the issuance of an order for relief against the debtor; or

(e) the appointment of a receiver, liquidator or like person over the Customer or its undertaking or assets to wind up the Customer (other than for the purpose of reconstruction or amalgamation) or if the Customer is no longer able to pay its debts as and when they become due or if By Degrees (acting reasonably) believes that the Customer may not be able to pay its debts at some point in the future.

**16.2** If the Customer commits an Event of Default, then By Degrees may serve notice on the Customer terminating any Documentation immediately or within such further period, not exceeding sixty (60) days, as By Degrees provides for in the notice.

**16.3** For the avoidance of doubt, if the Customer does not comply with the provisions of Clause 6.1(a), then, in addition to becoming liable to pay all then Outstanding Fees and Outstanding Equipment Prices (in accordance with Clause 6.), it is agreed and acknowledged that the Customer shall have committed a material breach of these General Terms & Conditions that shall not be capable of being remedied in accordance with Clause 16.1(b) and By Degrees shall be entitled to immediately terminate these General Terms & Conditions and any other Documentation.

**16.4** The termination of any Documentation for any cause whatsoever shall be without prejudice to the antecedent rights and remedies of the Parties against one another.

**16.5** Any Services Documentation can be terminated by either Party by giving the other Party ninety (90) days written notice.

**16.6** If the Customer terminates any Order Form and the Customer has not complied with the terms of Clause 6.1 or if any Documentation is terminated by By Degrees following an Event of Default, then the Customer shall be required to pay By Degrees all then Outstanding Fees and all then Outstanding Equipment Prices that may then be payable by the Customer to By Degrees;

**16.7** Notwithstanding anything to the contrary in any Documentation, no termination or expiration of any Document shall affect the rights or obligations of any Party hereto with respect to any then-existing defaults or the obligation to make any payment hereunder for Services rendered or Equipment provided prior to the date of termination or expiration or any right or obligation that expressly survives termination

or expiration of any Document, all of which expressly survive termination or expiration of any Order Form or any other Documentation.

#### 17. SUSPENSION OF SERVICES

**17.1** By Degrees may, at its sole discretion, suspend immediately the provision of any Service until further notice on notifying the Customer in writing if By Degrees is entitled to terminate any Documentation.

**17.2** Any suspension of any Service by By Degrees shall not exclude By Degrees' right subsequently to terminate any Documentation, nor, if applicable, any other right or remedy to which By Degrees is entitled under the relevant Documentation.

**17.3** If By Degrees suspends any Services under the terms of this Clause 17 or otherwise, then the Customer shall remain liable to pay all then Outstanding Fees and then Outstanding Equipment Prices.

**17.4** Where required in order to provide operational and maintenance support, By Degrees may remove any Equipment, but shall use all reasonable efforts to minimise any disruption and shall agree such maintenance with the Customer in advance with as much notice as is practicable in the circumstances.

#### 18. EFFECT OF TERMINATION

**18.1** Once either Party has given notice of default or notice of termination and until the notice results in termination in accordance with these General Terms & Conditions, both Parties shall continue to perform their obligations under each Document up to the time that the relevant Document is terminated.

**18.2** Upon termination of any Documentation for any reason the Customer shall forthwith cease to use the Services and Equipment and the Customer shall:

(a) immediately permit or procure permission for By Degrees' employees or agents to gain reasonable and sufficient access to any relevant Location during its normal business hours for the purpose of removing any Equipment belonging to By Degrees or its Third Party Suppliers or H&B; and

(b) be liable for the cost of repair or replacement of any Equipment that is damaged as a result of any act or omission by the Customer.

**18.3** Save as otherwise expressly provided to the contrary (or agreed in writing between the Parties), upon termination of any Documentation, By Degrees shall be under no further obligation to supply any Services referred to in such Documentation.

**18.4** If an Event of Default occurs, By Degrees shall be entitled, in addition to any other remedy to which By Degrees may be entitled, to immediately terminate any or all Documentation, to retain all Fees already paid by the Customer, to claim all Outstanding Equipment Costs and to claim compensation from the Customer for all and any loss and damage suffered by By Degrees, together with all reasonable legal costs incurred, as a result of the Event of Default.

**18.5** The termination of any Documentation shall not affect any obligations or rights of the Parties which arose or accrued prior to, or which expressly survive, termination of any Documentation.

**18.6** If By Degrees delays in acting upon a breach of any Documentation, then that delay will not be regarded as a waiver of that breach. If By Degrees waives a breach of any Documentation, then that waiver is limited to that particular breach.

**18.7** In the event of termination, the Customer shall return any confidential information to By Degrees forthwith.

#### 19. NON SOLICITATION AND NON-COMPETE

**19.1** Unless otherwise agreed, for the duration of any Documentation and for a period of twelve (12) months after the termination of each of them (for whatsoever reason) neither Party shall knowingly, directly or indirectly solicit or offer employment to any employee of the other Party who has been involved in working on the matters referred to in any Documentation, or who is or was employed or involved in the supply or receipt of any of the Services.

**19.2** Neither Party shall (except with the prior written consent of the other) during the term of any Documentation, and for a period of three months thereafter, solicit the services of any *senior or key employees* of the other Party who have been engaged in the provision of any of the Services or the receipt of the Services other than by means of a UK-wide (to include the Isle of Man) advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.

**19.3** For a period of twelve (12) months after the termination of any Documentation (for whatever reason) both Parties hereby undertake not to proactively seek the custom of any client or customer of the other Party.

**19.4** Each of the covenants in this Clause 19 is considered fair and reasonable by the Parties.

**BY DEGREES - GENERAL TERMS & CONDITIONS**  
**The Customer's Attention is Drawn to the Provision of Clause 15.6**

**20. SURVIVAL**

The following Clauses of these General Terms & Conditions shall survive the termination of any Documentation for whatsoever reason:

- (a) Clause 2 - Definitions and Interpretation;
- (b) Clause 8 - Sub-Contractors & Assignment;
- (c) Clause 10 - Intellectual Property Rights;
- (d) Clause 13 - Confidentiality and Non-Disclosure;
- (e) Clause 15 - Limitation of Liability;
- (f) Clause 19 - Non Solicitation and Non-Compete;
- (g) Clause 28 - Third Party Rights; and
- (h) Clause 29 - Governing Law and Jurisdiction.

**21. DISPUTE RESOLUTION**

21.1 Should any dispute, disagreement or claim arise between the Parties (hereinafter referred to as the "**dispute**") concerning the Services, the Equipment, any Documentation or the interpretation of these General Terms & Conditions, the Parties shall attempt to resolve the dispute by negotiation. In such event and as and when the dispute arises, one Party may invite the other in writing to meet and to attempt to resolve the dispute within seven (7) days from date of the written invitation.

21.2 Should the procedure as described in Clause 21.1 fail or should for any reason the dispute remain unresolved after the period of 21 days after the said written invitation, the Parties may agree to submit the dispute for determination to the Chartered Institute of Arbitrators. The determination shall be held in the Isle of Man and shall be subject to the Arbitration Act 1976 (as amended) save that the arbitrator shall act as an expert and not an arbitrator. Where the Parties do not agree to arbitration, the dispute shall be resolved in accordance with Clause 29.

21.3 Each Party shall bear its own costs in respect of dispute resolution and arbitration, save that, where arbitration takes place, the arbitrator may order otherwise.

21.4 The provisions of this Clause 21 are without prejudice to either Party's right to seek any form of injunctive relief from the courts where a Party deems it necessary to do so.

**22. FORCE MAJEURE**

Neither Party shall be liable to the other for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

**23. NOTICES**

Any notice or other communication to be given under any Documentation shall be in writing, in English and signed by the Party giving it (or its representative) and shall be delivered by hand or sent by registered post to the address provided on the relevant Order Form (or such other address as either Party shall provide to the other party from time-to-time) and shall be deemed to have been received on the date delivered.

**24. DISCLOSURE**

The Customer authorises By Degrees to disclose the Customer's use of the Services and purchase of the Equipment to third parties as part of By Degrees' marketing and promotion to such third parties.

**25. ENTIRE AGREEMENT**

The Documentation constitutes the whole and entire agreement between the Parties with regard to the terms upon which the Services and/or Equipment are to be delivered to the Customer by By Degrees and there are no agreements, representations or warranties between the Parties other than those specifically set forth in those documents.

**26. COUNTERPARTS**

Each Order Form may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart shall constitute an original of the respective Order Form, but together the counterparts shall constitute one document.

**27. SEVERABILITY**

If any provision of any Documentation shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of, the remaining provisions.

**28. THIRD PARTY RIGHTS**

A person who is not a party to the Documentation shall not have any rights under or in connection with it.

**29. GOVERNING LAW & JURISDICTION**

All Documentation shall be governed and construed in accordance with the laws of the Isle of Man and each Party irrevocably agrees to submit to the non-exclusive jurisdiction of the courts of the Isle of Man.