



General Terms and Conditions for the Rental of XENTRY Diagnosis Hardware (hereinafter referred to as **GTC**)

1. Contracting Parties, Service Content and General Terms and Conditions

- 1.1 The ordering party (hereinafter "Lessee") rents from Mercedes-Benz UK Limited the XENTRY Diagnosis Hardware in accordance with Section 1.3, consisting of Hardware components and accessories as well as hardware-related software, without data content. The entirety of these elements is hereinafter referred to as "Hardware".
- 1.2 The subject of these GTC is all services provided by Mercedes-Benz UK Limited in connection with the provision of hardware, for example in the form of rental of Hardware in all its product variants, regardless of whether it is the one currently available to order in accordance with Section 1.3 or a predecessor model of the hardware. The terms and conditions apply mutatis mutandis to hardware provided free of charge.
- 1.3 Currently, the hardware offered includes, depending on the order by the lessee, among others: XENTRY Diagnosis Kit 5, XENTRY Diagnosis Kit 5 Scope, XENTRY Diagnosis Kit 4, XENTRY Diagnosis Kit 4 Scope and XENTRY Scope as well as Retail Data Storage 2
- 1.4 The accessories for the Hardware approved by Mercedes-Benz UK Limited must be purchased separately by the Lessee, unless they are included in the initial scope of delivery.
- 1.5 Lessee acknowledges that the XENTRY Diagnosis Hardware in all its product variants, can only be used in conjunction with the corresponding fee-based XENTRY software (in particular XENTRY Diagnosis Software). This XENTRY software is to be distinguished from hardware-related software, which is part of the hardware in accordance with Section 1.1. The provision of applications and data content (incl. XENTRY Software) as well as software and data updates are the subject of a separate contract and are regulated in the "General Terms and Conditions for the Use of Applications and Data Content Provided by Mercedes-Benz UK Limited for After-Sales". It is therefore solely the responsibility of the Lessee to obtain the necessary rights of use to the XENTRY software for a fee and by concluding a separate contract.
- 1.6 The Lessee's General Terms and Conditions shall not become part of the contract, even if they have not been explicitly contradicted.

2. Formation and Alteration of Contract

- 2.1 The contract is formed when Mercedes-Benz UK Limited has confirmed the acceptance of the order in writing within 14 days or the delivery has taken place. However, Mercedes-Benz UK Limited is obliged to inform the Lessee without undue delay in writing if it does not intend to accept the order. Mercedes-Benz UK Limited is not required to state a reason for not accepting the order.
- 2.2 All agreements must be documented in writing. This also applies to collateral agreements, warranties, as well as subsequent contractual amendments.
- 2.3 If there is a provision in a separate contract for the dynamic inclusion of the current version of these GTC, this shall take precedence.
- 2.4 In all other cases, Mercedes-Benz UK Limited will inform Lessee of the intended changes in writing (e.g. e-mail) with a minimum of six (6) weeks before the intended changes are to take effect. The Lessee shall provide any objections to the changes in writing within 2 weeks from the date noted on the respective change notice. If the Lessee does not object to the changes in writing within four (4) weeks after receipt from the date of the respective change notice, the changes shall be deemed accepted and mutually varied with expiration of the above-mentioned period of six (6) weeks and unopposed continuation of use of the Hardware and services. Should the Lessee object to the changes, both Mercedes-Benz UK Limited and Lessee shall have the right to terminate these GTC or the corresponding order with a notice period of four (4) weeks. Mercedes-Benz UK Limited will inform the Lessee of the effect of silence or non-objection within the change notice.

3. Scope of Performance

- 3.1 The scope of supply and services is specified in the respective orders. These list in detail the Hardware and services.
- 3.2 Mercedes-Benz UK Limited reserves the right to make constructive or technical modifications, as well as changes to the scope of supply and services, during the delivery period, provided that such changes or deviations are reasonable for the Lessee, in consideration of the interests of Mercedes-Benz UK Limited.
- 3.3 Upon request by Mercedes-Benz UK Limited, Lessee is obliged to replace the Hardware with new Hardware provided by Mercedes-Benz UK Limited. This will be contingent upon the need for exchange resulting from ongoing further development in vehicle diagnosis technology, IT technology, telematics, etc. Lessee who is entitled to sublease according to section 8.4 must



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ensure in the contractual agreements with Sub-lessees that the Hardware is exchangeable at all times.

4. Delivery

- 4.1 Delivery dates and periods are binding if they have been designated as binding in writing by Lessee and Mercedes-Benz UK Limited in individual cases, otherwise all delivery dates and periods are non-binding.
- 4.2 If non-compliance with a delivery date or deadline is due to an unforeseen event beyond the control of Mercedes-Benz UK Limited, the delivery date or deadline shall be extended by an appropriate period of time. In the event of a delay in delivery, Lessee has the right to withdraw from the contract in question in accordance with the applicable legal provisions after the fruitless expiry of a reasonable grace period.
- 4.3 If Mercedes-Benz UK Limited is in default of delivery, Lessee can claim lump-sum compensation for its damage caused by default. The lump sum for damages amounts to 0.5% of the monthly rental price agreed for the delayed Hardware for each completed calendar week of default, but in total no more than 5% of the monthly rental price of the delayed Hardware.
- 4.4 The rights of Lessee pursuant to clause 12 of these GTC and the applicable statutory rights of Mercedes-Benz UK Limited, particularly in the event of an exclusion from its obligation to perform (for example where such performance and/or subsequent performance is impossible or unreasonable), remain unaffected.
- 4.5 Mercedes-Benz UK Limited is entitled to make delivery in instalments provided that this is acceptable to Lessee.
- 4.6 The costs for transporting the Hardware and other charges to the agreed place of delivery are at the expense of the Lessee. The risk of accidental loss and accidental deterioration of the hardware shall pass to the Lessee as soon as the Hardware has been handed over to the Lessee or a recipient commissioned by the Lessee at the agreed place of delivery.

5. Prices and Payments

- 5.1 The rental price is calculated in accordance with the applicable price lists and is to be paid electronically. Unless otherwise agreed, the rental price is invoiced monthly and is due and payable in advance on the first of each month. Payment is considered to have been made when it has been credited to the account indicated on the invoice. Lessee must promptly obtain and maintain on an ongoing basis all regulatory or other approvals necessary to make payments to Mercedes-Benz UK Limited and remit all necessary taxes and duties.

All banking charges and fees shall be borne by the Lessee.

- 5.2 The prices as indicated and agreed are net prices quoted without VAT, stated in British pound sterling and may in each case be increased by the amount of the VAT that is applicable or by any other indirect taxes, if neither a tax exemption nor a zero rate or reverse charge procedure is applicable. In respect thereof, the Lessee shall support Mercedes-Benz UK Limited in obtaining shipment and transport documentation in order to ensure its ability to invoice on a VAT-exempt basis for cross-border delivery of goods (e.g. DVD), provided that the other prerequisites thereto are met.

If an exemption from statutory VAT or other indirect taxes depends on further requirements, Mercedes-Benz UK Limited may charge a respective VAT amount or VAT-deposit amount as a security, which shall be refunded without interest upon proved fulfilment of the requirements, i.e. receipt of proper documentation and proofs.

A recipient of services resident in the EU, shall indicate the valid VAT identification number (VAT ID no.) issued to it in its country of residence or, in cases of procurement of services by the permanent branch office, the VAT ID no. of the EU Member State for the recipient's permanent branch office.

- 5.3 If the Lessee does not pay the rental price owed on time, it will be in default after the first reminder. In the event of default in payment, Mercedes-Benz UK Limited shall be entitled to claim damages by charging interest at the rate applicable under law. This amount can be increased if Mercedes-Benz UK Limited can prove greater damage, or it can be reduced if the Lessee can prove that the damage is less. A delay in payment of more than 60 days from the due date of the invoice constitutes a gross breach of contract.
- 5.4 Mercedes-Benz UK Limited reserves the right to restrict or block the use of the hardware until Lessee has paid the invoice and, if applicable, to terminate the contractual relationship.
- 5.5 If the Hardware is replaced by a new development or otherwise brought up to the latest technical standards and is also introduced in this form at Mercedes-Benz UK Limited, Mercedes-Benz UK Limited is entitled to adjust the rental price with a notice period of 2 months (the "Rent Adjustment Notification"). The rental price may be adjusted in the proportion in which the list rental prices have also changed compared to the last status. ~~If Mercedes-Benz UK Limited demands a rent increase, Lessee may terminate the lease~~



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within one month from the Rent Adjustment Notification.

- 5.6 Lessee may offset its claims against claims by Mercedes-Benz UK Limited only if Lessee's counterclaim is uncontested or if a legally binding title exists. This excludes counterclaims from the same rental agreement. The Lessee may only assert a right of retention if it relates to claims arising from the same contractual relationship.

6. Taxes

- 6.1 The Parties shall take all measures in accordance with their respective domestic law and — if existent — the Treaty on the Avoidance of Double Taxation in the field of taxes on income and property in force between the Federal Republic of Germany and the United Kingdom ('the Tax Treaty') to ensure a reduction of or exemption from, as the case may be, taxes which might become payable in connection with this Agreement.

- 6.2 All taxes or duties and surcharges of any kind whatsoever in connection with payments made by the Lessee and imposed on Mercedes-Benz UK Limited by the German tax authorities shall be borne by Mercedes-Benz UK Limited. All taxes or duties and surcharges of any kind whatsoever in connection with payments made by Lessee and imposed or to be paid in the United Kingdom shall be borne by the Lessee. The preceding sentence does not apply to income taxes imposed or withheld in accordance with the domestic law and the Tax Treaty.

- 6.3 To the extent that the Lessee is required to withhold taxes in accordance with the domestic law and the Tax Treaty, if any, from payments under this Agreement, the Lessee shall exercise its best efforts to attain that the payment to Mercedes-Benz UK Limited will be taxed at any reduced rate under the Tax Treaty, if any, or under domestic law at the time of payment.

- 6.4 To the extent that the Lessee is required to withhold and remit taxes on payments made under this Agreement, the Lessee shall, without undue delay, provide Mercedes-Benz UK Limited with the original withholding tax certificates issued by the national tax authority, as well as any other documentation evidencing Mercedes-Benz UK Limited as the taxpayer, the amount of tax withheld, the specific tax law and the legal regulation under which the withhold was made, the applicable tax rate or base, and the date of tax payment.

Lessee is obliged to send a copy of the documents to the following e-mail address: withholdingtax@mercedes-benz.com.

7. Small Repairs, Due Diligence and Lessee's Liability

- 7.1 Lessee is liable for damage caused by external sources at a repair cost of up to GBP 250.- per contractual year, even if it did not cause the damage. The liability of Lessee for damages it causes remains unaffected.

- 7.2 Lessee is obliged to handle the Hardware carefully. Damage through an act, omission, negligence or any improper handling of the Hardware shall be charged to Lessee in full, including transport and handling costs. Lessee's due diligence obligations include, but are not limited to, the following:

- Securing the Hardware against theft as well as unintentional or wilful damage.
- Sufficient protection of the Hardware from dirt, not tampering with the marking, adhesive labels and/or protective seals.
- Avoiding the exposure of the Hardware or the Hardware's batteries to heat or direct sunlight.
- Not operating the Hardware in the rain or on a wet surface - This will prevent short-circuits and Hardware damage.
- Never pouring fluids over the Hardware (water, solvents or cleaning agents, oil, etc.) or allowing foreign objects to remain in the Hardware.
- Securing the Hardware from falling, not removing the rubber bumpers.
- Always placing the Hardware on a level, non-slip surface.
- Avoiding all contact with flammable vapours.
- Adhering to the minimum distance of 46 cm (18 inches) from the Hardware to the floor.
- Never covering the fans of the Hardware.
- Never opening the Hardware or making structural modifications, unless there are instructions to do so from the Diagnosis User Help Desk (UHD).
- Paying attention to the instructions on using and replacing batteries in the Hardware.
- Operating the touchscreen of the XENTRY Pad only with the intended stylus or with a finger if need be.
- Avoiding unnecessary pressure, tensile and torsional influences on the Hardware.



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- Unplugging the Hardware and cables after each use.
- Exclusively using appropriate power sources.
- Exclusively installing approved software and accessories on the Hardware.
- Generally, Lessee may not order repairs itself or have repairs performed by a repairer not authorized by Mercedes-Benz UK Limited.
- Only commercially available cleaning agents approved for IT devices may be used for cleaning.
- For the use of Hardware, the due diligence obligations of Lessee stated in the "Guidelines for XENTRY Diagnosis Hardware User" also apply.

8. Rights of use, restrictions on use and contractual penalty

- 8.1 The Hardware is intended exclusively for use by the Authorised Users. Authorised Users within the meaning of these T&Cs are employees or legal representatives of the Lessee.
- 8.2 Lessee undertakes to use the Hardware, accessories, operating manuals and other documentation supplied by Mercedes-Benz UK Limited in the initial scope of delivery exclusively for the purpose of diagnosing and repairing Mercedes-Benz vehicles and only in its company. Furthermore, the Lessee undertakes to ensure that the authorised User within the meaning of Section 8.1, the vehicle to be diagnosed or repaired and the Hardware on which the applications and data content are used is physically located at the same location. Use by third parties or for any other purpose is not permitted, unless otherwise agreed by the contracting parties. Section 8.3 remains unaffected.
- 8.3 The Hardware may only be used in the country in which it was originally rented.
- 8.4 If the Lessee is an authorised country sales company for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG, Lessee is entitled or obliged to make the Hardware available for rent to the authorised service partners for Mercedes-Benz and/or smart or other brands of Mercedes-Benz Group AG as well as to the independent operators in its contract territory. **In this context, the authorised country sales company hereby undertakes to conclude corresponding rental agreements for the Hardware with the aforementioned authorised service partners and independent operators in its contract territory. In this case, Mercedes-Benz UK Limited will not become a contractual partner of the aforementioned authorised service partners and independent operators.**
- 8.5 In the event that the Hardware falls into third-party hands, whether this is because Lessee or authorised User has intentionally or negligently disclosed it without authorisation or has intentionally or negligently failed to secure it from being accessed by third parties, the Lessee shall owe a contractual penalty of GBP 25,000.00 for each breach. The assertion of damages taking into account the contractual penalty remains unaffected.
- 8.6 The Lessee is granted a simple, free and unlimited right of use to accessories provided free of charge, including the associated documentation.

9. Warranty

- 9.1 Mercedes-Benz UK Limited warrants that the Hardware is free from defects at the time of risk transfer.
- 9.2 The warranty for the Hardware starts at the time of delivery. Lessee shall send defective Hardware or hardware components to Mercedes-Benz UK Limited upon request.
- 9.3 In the event of a replacement, the defective Hardware or Hardware component must be returned to Mercedes-Benz UK Limited immediately upon receipt of the replacement Hardware. Only the return documents and information provided by Mercedes-Benz UK Limited may be used for returns. The risk of accidental loss and accidental deterioration of the Hardware shall only pass upon handover by the freight forwarder, carrier or other person designated to carry out the shipment to the service provider designated by Mercedes-Benz UK Limited to take over the Hardware. If the Lessee fails to return the Hardware or makes a delayed return, the Lessee must compensate for the resulting damage. In particular, any customs and handling costs in the event of late return delivery will be borne by the Lessee.
- 9.4 The warranty shall not apply if a defect is caused by Lessee or a third party as a result of modification, improper use, or repair of the Hardware without the consent of Mercedes-Benz UK Limited or because the Hardware has not been used and maintained in accordance with the 'Guidelines for XENTRY Diagnosis Hardware User'.



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- 9.5 The warranty requires that Lessee has complied with its statutory inspection and notification obligations (§ 536c BGB) in accordance with Section 12.1. If Lessee fails to properly inspect and/or report defects, Mercedes-Benz UK Limited shall be excluded from liability for the defect not reported in accordance with Section 12.1. The defect that was not reported is therefore not subject to the warranty
- 9.6 If no basis for a warranty claim exists, then the costs of diagnosing and, if applicable, repairing the fault will be borne by Lessee, provided a corresponding order has been placed.
- 10. Support and Service**
Support and other services will be provided only if Lessee adheres to the prescribed service processes. This means that the diagnosis user help desk must be contacted when support and services are required. The instructions of the diagnosis user help desk are binding.
- 11. Term and Termination and Return of the Hardware**
- 11.1 The term of the contract shall continue indefinitely, unless the contract has been terminated at the end of the minimum rental period. The minimum rental period is 42 months, after which termination can be given with a notice period of six months.
- 11.2 The rental agreement can be cancelled without notice for good cause. Mercedes-Benz UK Limited in particular can cancel the Agreement without notice if Lessee
- is no longer part of the authorised distribution network of Mercedes-Benz UK Limited, or
 - is in default of paying the rent or a considerable part of the rent for two successive due dates, or is in default of the payment of a part of the rent which amounts to the rent for two months, for a period which exceeds two due dates.
- 11.3 If Mercedes-Benz UK Limited cancels the rental agreement without notice for a good cause, Mercedes-Benz UK Limited has the following rights:
- Claim for the immediate return of all relinquished Hardware;
 - Entitlement to the payment of depreciation compensation as per section 11.6.
 - Entitlement to compensation amounting to the agreed rent for the duration of the withholding of the Hardware, including the total equipment if Lessee does not return the Hardware to Mercedes-Benz UK Limited after the end of this contract. In addition, any customs and handling costs in the event of the late return are to be borne by Lessee.
- 11.4 The Lessee who is entitled to sublease according to section 8.4 must provide information on termination by Mercedes-Benz UK Limited to the Sub-lessee in writing and in due time.
- 11.5 At the end of the rental agreement, the Hardware shall be returned in accordance with the scope stated in the agreement. Lessee shall return the Hardware delivered according to the prescribed return process, at the expense of Mercedes-Benz UK Limited. Any cables provided within the scope of the rental agreement are excluded from this regulation. Lessee shall bear the risk associated with the return of the Hardware to Mercedes-Benz UK Limited.
- If Hardware or Hardware components are not returned within 14 days for reasons Lessee is responsible for, Lessee shall continue to pay the rental price until Mercedes-Benz UK Limited has formally acknowledged receipt of the Hardware. If the Lessee confirms in writing that they are unable to return the Hardware, the Lessee shall pay for the costs of replacement and any resulting damage according to the applicable legal regulations.
- 11.6 If, at the end of the rental agreement, the Hardware is not in a good condition taking into account their age and contractual use, and thereby are of lower value, Lessee has to commission Mercedes-Benz UK Limited with establishing the proper condition and/or settle the reduced value plus VAT, if Lessee caused this as per section 7 due to a disregarding of its due diligence obligations or improper handling.
- 11.7 There shall be no obligation to accept the return of Hardware mistakenly ordered by Lessee. Notwithstanding the foregoing, Mercedes-Benz UK Limited may, as a gesture of goodwill, accept the return of Hardware mistakenly ordered by the Lessee, provided that such Hardware is in its original, unopened packaging and has not been used. Lessee shall have no right to claim such goodwill. Any request for a return based on goodwill must be submitted via a support ticket through the XENTRY Support System under "XENTRY Diagnosis Administrative Topics". The Hardware may only be returned after Mercedes-Benz UK Limited has given its approval in writing. In the event of a return based on goodwill, the Lessee shall bear all



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shipping and return shipping costs. In addition, the Lessee shall be charged a handling fee of £250.00 per Hardware.

12 Liability

Lessee shall comply with its statutory obligations to inspect the goods and give notice of defects (§ 536c BGB). Should a defect become apparent during inspection or at a later date, Mercedes-Benz UK Limited must be notified thereof in writing without undue delay; timely dispatch of the notice shall suffice for compliance with the deadline. If the Lessee fails to properly inspect the Hardware and/or give notice of defects, Mercedes-Benz UK Limited shall not be liable for any defect not so reported. Irrespective of the foregoing, in the event of externally apparent transport damage, the Lessee shall be obliged to notify the delivering carrier of such damage in writing upon receipt of the Hardware and to provide Mercedes-Benz UK Limited with a copy of the complaint within two working days.

- 12.1 If as a result of negligence by Mercedes-Benz UK Limited, Mercedes-Benz UK Limited is required to compensate, Mercedes-Benz UK Limited's liability shall be limited as follows:

Liability will arise only when there has been a breach of material contractual duties, such as those that the contract seeks to impose on Mercedes-Benz UK Limited based on its content and purpose or the fulfilment of which cannot even arise unless or until the contract is duly performed and upon which the Lessee can and should be able to routinely rely. This liability is limited to typical damages that were foreseeable at the time the contract was formed.

The personal liability of the statutory representatives, vicarious agents and employees of Mercedes-Benz UK Limited for any damages that were caused by their simple negligence is excluded (disclaimed).

- 12.2 The aforementioned limitation of liability and the aforementioned liability disclaimer do not apply to damages that are attributable to the grossly negligent or intentional violation of duties on the part of Mercedes-Benz UK Limited, its statutory representative or its vicarious agent and do not apply to death, bodily injury and impairment of health. In these cases, Mercedes-Benz UK Limited shall be liable in accordance with the statutory provisions.
- 12.3 Irrespective of any fault on the part of Mercedes-Benz UK Limited, Mercedes-Benz UK Limited shall remain liable for any fraudulent concealment of a defect, for the issuance of a guarantee or for a procurement risk and shall remain liable as prescribed under the Consumer Protection Act 1987.
- 12.4 Lessee shall immediately report in writing or have Mercedes-Benz UK Limited record any damages and losses for which Mercedes-Benz UK Limited must provide compensation.
- 12.5 Claims for damages due to trivial negligence will be limited to one year from the date of when the negligence occurred.

13. Assignment

Lessee may assign or delegate its rights and obligations under this Agreement only with the prior consent of Mercedes-Benz UK Limited in writing.

14. Compliance with Applicable Law

- 14.1 Lessee is obliged to refrain and desist from all practices that could result in criminal charges against employees of Lessee or other third parties for fraud or breach of trust, insolvency crimes, anti-competition crimes, granting of advantages, or passive corruption. In the event of violation of the above, Mercedes-Benz UK Limited has the right to withdraw from or terminate all legal transactions existing with Lessee and to break off all negotiations with immediate effect. Notwithstanding the above, Lessee is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with Mercedes-Benz UK Limited.
- 14.2 Lessee shall not sell, supply, export or re-export, license or transfer, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with this Agreement. Lessee shall also not sell, supply, export, license or transfer, directly or indirectly, in any other way intellectual property rights or trade secrets as well as granting rights to access or re-use any material or information protected by intellectual property rights or protected as trade secret to the Russian Federation or Belarus or for use in the Russian Federation or in Belarus. Lessee is required to prohibit possible sublicensees of such intellectual property rights or trade secret, from using such intellectual property rights, trade secrets or other information in connection with common high priority items as listed in The Russia (Sanctions) (EU Exit) Regulations 2019 that are intended to prevent the sale, supply, transfer or export, directly or indirectly, to the Russian Federation or for use in the Russian Federation.
- 14.3 Lessee shall use its best endeavours to ensure that the purpose of Clause 14.2 is not frustrated by any third parties within its commercial chain, including by possible resellers and/or possible sublicensees of such intellectual property rights or trade



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- 14.4 Lessee shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties within its commercial chain, including by possible resellers, that would frustrate and breach Clause 14.2.
- 14.5 Any violation of Clauses 14.2, 14.3 and 14.4 shall constitute a material breach of this Agreement, and Mercedes-Benz UK Limited shall be entitled to seek appropriate remedies, including, but not limited to termination of this Agreement, and compensation of any costs, damage or liability incurred by Mercedes-Benz UK Limited resulting from the infringement, including the imposition of fines.
- 14.6 Lessee shall immediately inform Mercedes-Benz UK Limited about any problems in applying Clauses 14.2, 14.3 or 14.4, including any relevant activities by third parties that could frustrate the purpose of Clause 14.2. Lessee shall make available to Mercedes-Benz UK Limited information concerning compliance with the obligations under Clauses 14.2, 14.3 and 14.4 within two weeks of a request of such information.
- 15. Place of Performance, Place of Jurisdiction and Governing Law**
The place of performance is England and Wales, and jurisdiction and venue shall lie with the courts of England and Wales. The laws of the England and Wales shall apply to the exclusion of any conflict of law rules.