

1. INTERPRETATION

1.1 In these Conditions:-

"**Background IPR**" means all Intellectual Property Rights existing at the date of the Contract owned or controlled by either of the parties and which are generated outside of the Contract but used in connection with the Contract.

"**Bribery Laws**" means any applicable law (including under statute, regulation, code or common law) relating to anti-bribery and corruption, including the *Criminal Code Act 1995* (Cth), any Commonwealth, state or territory law and any anti-bribery and corruption law of a country other than Australia in which the Customer conducts its business.

"**Business Days**" means a day other than a Saturday, Sunday or public holiday in England.

"**Code of Business Conduct**" means the Customer's code of business conduct available from time to time on the Customer's website (www.bindingsite.com/en/legal)

"**Conditions**" means the standard terms and conditions of purchase set out in this document and includes any special conditions agreed in writing between the Customer and the Supplier.

"**Contract**" means an Order for Products and/or Services which, once accepted by the Supplier, will together with these Conditions, form the contract.

"**Customer**" means The Binding Site Pty Limited (ACN 625 176 749).

"**Customer Data**" means the Personal Data of the Customer, where such Personal Data is being processed by either party under the Contract. "**Personal Data**", "**Controller**", "**Data Subject**", "**Personal Data Breach**" and "**Processing**" shall have the meaning given to those terms in the GDPR, and "**Process**" and "**Processed**" shall be construed accordingly.

"**Data Protection Laws**" means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including the Privacy Act 1988 (Cth).

"**Delivery**" means the delivery of the Products at the Delivery Location.

"**Delivery Date**" means the date of Delivery as specified in the Order.

"**Delivery Location**" means the place for delivery of the Products as specified in the Order.

"**Foreground IPR**" means all Intellectual Property Rights created by either or both of the parties arising from and during the course of the Contract.

"**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, specification rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any

part of the world. "**Intellectual Property Right**" means any one of the Intellectual Property Rights.

"**Modern Slavery Statement**" means the Customer's statement relating to anti-slavery and human trafficking available from time to time on the Customer's website.

"**Order**" means an order for Products and/or Services submitted by the Customer in accordance with Clause 3.

"**Prices**" means the prices of the Products and/or Services as determined in accordance with Clause 11.1.

"**Products**" means the products and/or deliverables which are the subject of an Order.

"**Services**" means the services which are the subject of an Order.

"**Slavery Laws**" means any applicable law (including under statute, regulation, code or common law) relating to slavery, forced labour or human trafficking, including the *Criminal Code Act 1995* (Cth), any Commonwealth, state or territory law and any slavery, forced labour or human trafficking law of a country other than Australia in which the Customer conducts its business.

"**Specification**" means the specification of the Products and/or Services.

"**Supplier**" means the company upon which an Order is placed and who supplies the Products and/or Services.

2. FORMATION OF CONTRACT

2.1 All Orders accepted by the Supplier are subject to these Conditions. For the avoidance of doubt, the parties acknowledge and agree that any conditions of sale submitted at any time by the Supplier shall not apply to this or any other Contract (and any terms of such shall be expressly excluded) and any failure by the Customer to challenge any such conditions of sale shall not imply acceptance by the Customer.

2.2 In the event of a conflict between any of these Conditions and any specific term or condition referred to on an Order, the latter shall prevail (to the extent inconsistent with these Conditions only).

3. ORDERS

3.1 The Customer shall place Orders with the Supplier and the Supplier shall supply Products and/or Services in accordance with the Customer's Orders.

3.2 Each Order shall:

3.2.1 be given in writing and shall specify the type, quantity and code numbers of the Products ordered and/or Services required together with any service levels and performance dates; and

3.2.2 contain an order number assigned by the Customer and each party shall use the relevant order number in all subsequent correspondence relating to the Order; and

3.2.3 specify the Delivery Date and the Delivery Location.

3.3 Within 48 hours of receipt of an Order, the Supplier shall acknowledge in writing receipt of the Order and shall confirm whether or not it is able to supply the Products and/or Services in accordance with the Order (including the specified Delivery Date and Delivery Location). If the Supplier fails to acknowledge the Order within 48 hours such Order shall be deemed as accepted by the Supplier.

3.4 The Customer may at any time prior to despatch of the Products or delivery of the

Services amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under the Contract the Customer shall have no liability to the Supplier in respect of it.

4. MANUFACTURE, QUALITY AND PACKING

4.1 The Supplier shall at all times maintain sufficient capacity, stocks of raw materials and packaging, and stocks of Products (as relevant) to enable it to meet the Customer's requirements for Products or Services as notified to the Supplier from time to time.

4.2 The Supplier shall manufacture, pack and supply the Products in accordance with all generally accepted industry standards and practices that are applicable, including, without limitation ISO9001 standards. The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition and shall ensure that they comply in full with any temperature sensitive requirements relating to the Products.

4.3 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to manufacture, packing, packaging, marking, storage, handling, and delivery of the Products.

4.4 The Supplier agrees that it shall not make any changes to the Specification or its processes without obtaining the prior written consent of the Customer.

4.5 Any proposed changes to the Specification must be notified to the Customer 180 days prior to supply to enable the Customer to incorporate changes to its processes. Notification should be sent to quality.assurance@bindingsite.com

4.6 The Products supplied to the Customer by the Supplier under the Contract shall:

4.6.1 conform in full to the Specification;

4.6.2 conform in full to any pre-agreed samples that have been provided by the Supplier;

4.6.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer;

4.6.4 be free from defects in design, material and workmanship; and

4.6.5 comply with all applicable statutory and regulatory requirements.

4.7 The Supplier shall obtain and maintain all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products. The Supplier shall also ensure that it complies with all relevant export procedures and shall provide all necessary documentation relating to the Products including any certificates of origin, certificates of analysis, user manuals and warranty documentation.

5. SUPPLY OF THE SERVICES

5.1 The Supplier shall:

5.1.1 provide the Services in accordance with the terms of the Contract and shall comply with any requirements contained in the Order;

- 5.1.2 use all reasonable care and skill in the provision of the Services and shall ensure that the Services are provided in good faith to the standard of a reasonable and prudent operator in accordance with generally accepted industry standards and practices;
- 5.1.3 meet any performance dates specified by the Customer and time shall be of the essence for the performance of the Services;
- 5.1.4 comply with all applicable laws, enactments, orders, regulations and other instruments relating to the delivery of the Services;
- 5.1.5 obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to deliver the Services;
- 5.1.6 not make any changes to the Specification or its processes without obtaining the prior written consent of the Customer;
- 5.1.7 co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer; and
- 5.1.8 allow the Customer access to and use of the Supplier's equipment and other facilities as detailed in the Contract or agreed between the parties.
- 5.2 Where the Services are to be carried out at the Customer's premises:
- 5.2.1 the Customer shall allow the Supplier access to its premises as reasonably required for the performance of the Services; and
- 5.2.2 the Supplier shall comply with any safety instructions and any other documents, policies, procedures and reasonable requirements of the Customer in relation to the Services.
- 6. DELIVERY**
- 6.1 Unless otherwise stipulated in the Order, Delivery shall be DDP (Incoterms 2010) and the Supplier shall deliver each Order to the Delivery Location on the Delivery Date.
- 6.2 Delivery of an Order shall be complete on its arrival at the Delivery Location.
- 6.3 The Supplier shall not deliver Orders by instalments except with the prior written consent of the Customer.
- 6.4 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Customer may have, the Customer may:
- 6.4.1 refuse to take any subsequent attempted delivery of the Order;
- 6.4.2 terminate the Contract with immediate effect;
- 6.4.3 obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute products;
- 6.4.4 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date;
- provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under the Contract.
- 6.5 Each delivery of Products shall be accompanied by a delivery note from the Supplier showing the order number, the date of the Order, the type and quantity of Products included in the Order, including the
- code numbers and batch numbers of the Products, and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- 7. ACCEPTANCE NON-CONFORMITY AND DEFECTIVE PRODUCTS**
- 7.1 The Customer shall be entitled to reject any Products or Services which do not conform to the Contract, the Order or any Specifications.
- 7.2 The Customer shall not be deemed to have accepted any Products or Services until it has had a reasonable time to inspect them following Delivery or performance (as appropriate), or, in the case of a latent defect in the Products, until a reasonable time after the latent defect has become apparent.
- 7.3 If any Products or Services provided to the Customer do not comply with the terms of the Contract, then, without limiting any other right or remedy that the Customer may have, the Customer may reject those Products or Services and (to the extent permitted by law):
- 7.3.1 in the case of the Products, require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within the timeframes stipulated by the Customer; or
- 7.3.2 in the case of the Services, require the Supplier to re-perform the rejected Services at the Supplier's risk and expense within the timeframe stipulated by the Customer; or
- 7.3.3 require the Supplier to repay the price of the rejected Products or Services in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Products or re-perform the Services); and
- 7.3.4 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products or Services that are not in conformity with the terms of the Contract.
- 7.4 The Customer's rights and remedies under Clause 7.3 are in addition to the rights and remedies available to it in respect of any statutory conditions relating to description, quality, fitness for purpose, correspondence with sample, title and quiet possession implied into the Contract.
- 7.5 If the Supplier fails to promptly repair or replace rejected Products or re-perform the Services in accordance with Clause 7.3.1 or 7.3.2, the Customer may, without affecting its rights under Clause 7.3.4, obtain substitute products and/or services from a third party supplier, or have the rejected Products repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.
- 8. INTELLECTUAL PROPERTY**
- 8.1 Licence
- 8.1.1 The Customer grants to the Supplier only for the purpose of performing its obligations under the Contract, a personal, non transferable, non exclusive, royalty free licence to use the Customer's Intellectual Property Rights and, where applicable, to apply the Customer's trade marks to the Products in accordance with the Specification.
- 8.1.2 The Supplier shall only use the Customer's Intellectual Property Rights including any trade marks on or in relation to the Products or their labelling and packaging only in the
- form and manner specified in the Specification and/or by the Customer and not otherwise.
- 8.1.3 The Supplier shall not represent that it has any title in or any right of ownership to the Customer's Intellectual Property Rights (including the trade marks) or do or suffer to be done any act or thing which may in any way impair the rights of the Customer.
- 8.2 Each party shall retain ownership of all Intellectual Property Rights in or relating to the Products or the Specification that it owns as at the date of the Order including any Background IPR and nothing in the Contract shall transfer to or give the other party any right, title or interest in such Intellectual Property Rights unless otherwise agreed in writing between the parties.
- 8.3 Each party acknowledges that any Foreground IPR shall vest in the Customer on creation and the Supplier hereby assigns all such Intellectual Property Rights to the Customer. The Supplier further agrees not to use the Foreground IPR with any other third party without first obtaining the Customer's prior written consent.
- 8.4 Both parties will use all reasonable endeavours to ensure that both the Background IPR and the Foreground IPR do not infringe the rights of any third party and no third party has threatened or, so far as it is aware, is currently threatening proceedings in respect of such infringement.
- 8.5 Each party shall immediately give written notice to the other of any infringement or threatened infringement of, or any challenge to, the other party's Intellectual Property Rights by a third party which comes into its knowledge.
- 8.6 If requested by either party, the other party shall promptly do all such acts and execute all documents (including any assignment) as may reasonably be required by the other party to perfect its title to the Intellectual Property Rights assigned, or intended to be assigned, to it under this Clause 8.
- 8.7 The Supplier agrees to indemnify and keep indemnified the Customer against any claims of infringement of any Intellectual Property Rights as a result of the Customer's use of the Products or Services supplied by the Supplier and against all costs and damages which the Customer may incur or become liable for in any action for such infringement.
- 8.8 If any such claim occurs, the Supplier shall at its own expense use all reasonable efforts to procure for the Customer the right to continue to exercise its rights under the Contract to use the allegedly infringing Product(s), Service(s) or items, or to modify or replace the Product(s), Service(s) or items, without impairing their function so that they become non-infringing.
- 9. DATA PROTECTION**
- 9.1 The Supplier shall comply with the Data Protection Laws and any legislation or guidelines which amend or replace such legislation to the extent necessary to perform its obligations under the Contract.
- 10. TITLE AND RISK**
- 10.1 The risk in and title to the Products delivered to the Customer shall pass to the Customer on Delivery.
- 11. PRICES**
- 11.1 The Prices shall be the price agreed between the parties as stated on the Order.

Any subsequent increases in the Prices must first be agreed between the parties.

- 11.2 Unless otherwise agreed in writing, the Prices are exclusive of GST (or such other applicable sales taxes) but inclusive of the costs of packaging, insurance and carriage of the Products and/or Services.

12. TERMS OF PAYMENT

- 12.1 The Supplier shall be entitled to invoice the Customer for each Order on or at any time after Delivery or performance of the Services. Each invoice shall quote the relevant order numbers.
- 12.2 The Customer shall pay invoices in full within 60 days of the date of invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 12.3 If a party fails to make any payment due to the other under the Contract by the due date for payment ("due date"), then, without limiting the other party's remedies under Clause 15.1, the defaulting party shall pay interest on the overdue amount at the rate of 2 % per annum. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 12.4 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. The Supplier's obligations to supply the Products and/or perform the Services shall not be affected by any payment dispute.

13. INDEMNITY

- 13.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- 13.1.1 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Products and/or Services;
- 13.1.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Products and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- 13.1.3 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Products or non-conformity of the Services, to the extent that the defect in the Products or non-conformity in the

Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

14. LIMITATION OF LIABILITY

- 14.1 Nothing in the Contract shall limit or exclude the liability of either party for death or personal injury resulting from negligence; or fraud or fraudulent misrepresentation; or the indemnities contained in Clause 13; or the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors; or any other liability which cannot be excluded under Australian law.
- 14.2 Without prejudice to Clause 14.1 (and to the extent permitted by law), the Customer shall not be liable to the Supplier, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential damage or loss suffered by the Supplier that arises under or in connection with the Contract.
- 14.3 Without prejudice to Clause 14.1 or Clause 14.2 (and to the extent permitted by law), the Customer's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the Prices paid during the year in which the breach occurred.

15. TERMINATION

- 15.1 A party shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the other party if:
- 15.1.1 the other party fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- 15.1.2 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 14 days after receipt of notice in writing requiring it to do so; or
- 15.1.3 the other party commits a series of persistent minor breaches which, when taken together, amount to a material breach; or
- 15.1.4 any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other party or if the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding up passed or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other party or if the other party ceases or threatens to cease to carry on business; or
- 15.1.5 any Force Majeure Event (as defined in Clause 16.3) prevents the other party from performing its obligations under the Contract for any continuous period of three months.
- 15.2 A breach of any of Clause 4 and/or Clause 5 shall be considered a material breach by the Supplier of its obligations for the purposes of this clause.

- 15.3 Termination of the Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

16. FORCE MAJEURE

- 16.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under the Contract so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.
- 16.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:
- 16.2.1 notify the other party of the nature and extent of such Force Majeure Event; and
- 16.2.2 use all reasonable endeavours to remove any such causes and resume performance under the Contract as soon as feasible.
- 16.3 For the purposes of this Clause 16, a "Force Majeure Event" means an event beyond the reasonable control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism.

17. ANTI-BRIBERY

- 17.1 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 17.1.1 all of that party's personnel;
- 17.1.2 that party's subcontractors and all others associated with that party; involved in performing the Contract so comply.
- 17.2 Without limitation to Clause 17.1, neither party shall contravene the applicable Bribery Laws or make or receive any bribe or other improper payment, or allow any such to be made or received on its behalf, either in Australia or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 17.3 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this Clause 17.

18. ANTI-SLAVERY

- 18.1 The Supplier undertakes, warrants and represents that:
- 18.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors:
- (a) has committed an offence under any applicable Slavery Laws (a Slavery Offence);
- (b) has been notified that it is subject to an investigation or prosecution relating to an alleged Slavery Offence; or

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- (c) is aware of any circumstances within its supply chain that could give rise to an investigation or prosecution relating to an alleged Slavery Offence; and
- 18.1.2 the Supplier and any of its officers, employees, agents and subcontractors:
- (a) shall comply with any applicable Slavery Laws, the Modern Slavery Statement and any reasonable directions from the Customer in relation to anti-slavery; and
- (b) shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Supplier's obligations under Clause 18.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.
- 18.2 Any breach of Clause 18.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Customer to terminate the Contract with immediate effect.
- 19. GENERAL**
- 19.1 The Customer shall have the right to enter the Supplier's premises to:
- 19.1.1 inspect and/or audit the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Products and/or delivery of the Services;
- 19.1.2 inspect and take samples of the raw materials, packaging and Products; and
- 19.1.3 inspect stock levels of the Products;
- to the extent relevant for the performance of the Contract.
- 19.2 Inspections or audits carried out pursuant to Clause 19.1 shall be carried out during business hours on reasonable notice to the Supplier, provided that, in the event of an emergency, the Supplier shall grant the Customer immediate access to its premises.
- 19.3 If following an inspection or audit the Customer reasonably considers that the Services or Products are not or are not likely to be as warranted under the Contract, the Customer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Services are or will be as warranted under the Contract. The Customer shall have the right to re-conduct inspections or audits after the Supplier has carried out its remedial actions.
- 19.4 If any provision of these Conditions shall be held to be invalid or unenforceable in whole or in part, the unaffected provision shall remain in full force and effect.
- 19.5 No waiver of or delay or failure by the Customer to exercise any rights or remedies shall prejudice any future or further exercise thereof.
- 19.6 All notices to be served on the Customer by the Supplier shall only be valid if addressed to the Purchasing Manager and Financial Director of the Customer at its registered address.
- 19.7 The Supplier shall comply with all applicable laws, enactments, regulations, regulatory policies, guidelines and industry codes.
- 19.8 The Supplier shall comply with the principles set out in the Code of Business Conduct.
- 19.9 The Supplier shall not without the prior written consent of the Customer sub-contract, assign or otherwise transfer all or any part of the Contract.
- 19.10 The Supplier shall keep confidential all information disclosed to it by or on behalf of the Customer which could reasonably be considered as confidential. This shall include, but not be limited to, all information disclosed by the Customer which comprises intellectual property or know-how belonging to the Customer and all information relating to the Customer's business which is not in the public domain. The Supplier shall not use any information provided to it other than to perform its obligations under the Contract.
- 19.11 A person who is not a party to the Contract shall have no rights to enforce any term of the Contract.
- 19.12 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with New South Wales law.
- 19.13 The parties irrevocably agree that the courts of New South Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).