

**WSG INTERIOR SYSTEMS LTD**

**TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES**

## 1. INTERPRETATION

**THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE TERMS AND CONDITIONS.**

### **DEFINITIONS:**

**1.1 Add & Omit Schedule:** a supplement to the Terms and Conditions and Order Acknowledgement which details Variations and their costs, which are agreed between the Parties in accordance with Clause 9, a sample of which can be pended on request.

**Brexit:** means the United Kingdom ceasing to be a member state of the European Union and/or the European Economic Area on Exit Day, and the resulting Brexit Consequences.

**Brexit Consequences:** includes but is not limited to: changes in UK law, increase in costs of importing and exporting Goods, currency fluctuations, restrictions on freedom of movement, additional domestic or foreign taxes, duties, fees and other assessments, as well as increased cost of and supply of materials, and delays in delivery of materials, occurring as a result of Brexit.

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

**Commencement Date:** has the meaning given in Clause 2.3.

**Completion Date:** the date set out within the Order Acknowledgement subject to any changes thereto.

**Conditions:** these Terms and Conditions which are applicable to, and provided with, the Quotation, Design and Order Acknowledgement, as amended from time to time in accordance with Clause 15.

**Construction Products Regulations** the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

**Contract:** the contract that comes into operation between the Parties upon the signing of the Order Acknowledgement, on the basis of these Terms and Conditions in conjunction with the Order Acknowledgement and Add & Omit Schedule (if applicable).

**Contract Sum:** the sum payable by the Customer for the supply of Goods and/or Services by the Supplier, as set out in the Order Acknowledgement.

**Controller, processor, data subject, processing and appropriate technical and organisational measures** are as defined in the Data Protection Legislation.

**Completion:** the date at which the Works are complete, subject to a Snagging List, and following the issue of a Completion Certificate by the Supplier. This triggers payment of the Final Account by the Customer under Clause 10.1(c) and any sums set out in the Add & Omit Schedule, in accordance with Clause 9.3.

**Completion Certificate:** certificate to confirm that Completion has been achieved, which can still be issued subject to an agreed list of Snagging items (the Snagging List).

**Costs:** sums payable by the Customer for the Works, as set out at Clause 10.

**Covid-19:** the SARS-CoV-2 coronavirus, which has caused a pandemic of respiratory illness called COVID-19, and other related strains of coronaviruses, which have resulted in the imposition of Covid-19 Restrictions.

**Covid-19 Consequences:** includes but is not limited to, acts of government, restrictions on import and export, restrictions on travel including Quarantine, delays and required Covid-19 tests, purchase of Covid-19 Protective Equipment, delays and failure in the supply chain and currency fluctuations occurring as a result of Covid-19.

**Customer:** the person or firm who purchases the Goods or Services from the Supplier.

**Data Protection Legislation:** is the General Data Protection Regulation (EU 2016/679), the Data Protection Act 2018 (as amended) and any other laws or regulations relating to privacy or personal data applicable in England and Wales.

**Deleterious:** materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Goods or any part or component of the Goods; or reducing, or possibly reducing, the normal life expectancy of the Goods or any part or component of the Goods; or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or the guidelines contained in the edition of the publication “Good Practice in the Selection of Construction Materials” published by the British Council for Offices current at the date of this Contract” or having been supplied or placed on the market in breach of the Construction Products Regulations.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, Design, pictures, computer programs, data, specifications and reports (including drafts), during the course of the Works.

**Delivery Location:** has the meaning set out in Clause 4.2.

**Deposit:** 50% of the Contract Sum quoted to be paid by the Customer following signature of the Order Acknowledgement. This sum will be set off against the survey and design costs and remaining monies will be held on account. Payment of this fee

shall be a condition precedent to commencement of the delivery of the Goods and provision of Services.

**Design:** plan or specification for the construction of Goods and the procedure for the implementation of the Services by the Supplier.

**Documents:** all Design, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, schedules, Programme, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any Works, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Enquiry:** Customer's initial proposal and specification for the Goods and/or Services.

**Exit Day:** 'Exit Day' occurred at 11pm on 31 January 2020 in accordance with the European Union (Withdrawal) Act 2018, s 20.

**Force Majeure Event:** includes any act, event or circumstances which are beyond a party's reasonable control, which include but are not limited to, acts of God, natural disasters, war and conflicts, and pandemics or epidemics including Covid- 19.

**Goods:** the goods (or any part of them) set out in the Order Acknowledgement and, if applicable, the Add & Omit Schedule.

**Intellectual Property Rights (or 'IPRs'):** 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 Design, rights in computer software, database rights, topography 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.

**Order Acknowledgement:** finalised document setting out the Specification, Costs, Programme and Documents, and the obligations of the Supplier and Customer. The Customer signs this document by way of approval and it becomes the presiding document combined with the Terms and Conditions (superseding the Quotation) and, if applicable, the Add & Omit Schedule. The Order Acknowledgement remains valid for 14 days after which costs are subject to increase and price will be re-calculated if the Customer fails to sign within this period.

**Parties:** reference to the Customer and Supplier jointly.

**Personal Data:** any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the applicable Data Protection Legislation.

**Programme:** Gant chart setting out the estimated timeline for the provision of Goods and/or Services by the Supplier, as contained in Order Acknowledgement, subject to any Variations thereto.

**Quotation:** initial estimate of the Goods and/or Services to be provided by the Supplier to the Customer based upon the information received from the Customer during the Enquiry and any revisions issued thereto. This document will be superseded by the Order Acknowledgement and Add & Omit Schedule.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification, and, if applicable, the Add & Omit Schedule.

**Snagging List:** the list of item/s yet to be fully completed as at the date of Completion, with the value of the same set out therein, which will take into account the market rate for the repair and/or replacement of such item/s at that time.

**Snagging Process:** as defined at Clause 6.4.

**Specification:** the description of the Goods and/or Services to be provided by the Supplier to the Customer, as contained in the Quotation. The finalised version of the Specification is contained in the Order Acknowledgement.

**Supplier:** WSG Interior Systems Ltd (registered in England and Wales with company number 07464399).

**Supplier Materials:** has the meaning given in Clause 8.1(h).

**Terms and Conditions:** this document which forms the Terms and Conditions of the Supplier, subject to as amended from time to time in accordance with Clause 15.

**Variations:** any amendment to the Specification as agreed between the Parties and set out in the Add & Omit Schedule.

**Works:** refers to the Goods and/or Services supplied by the Supplier in accordance with the Specification and, if applicable, the Add & Omit Schedule.

#### 1.1 **Interpretation:**

- (a) Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- (b) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

- (c) Unless the context otherwise requires, words in the singular shall include the plural and words in the plural include the singular.
- (d) This agreement shall be binding on, and enure to the benefit of, the Parties to this agreement and their respective personal representatives, successors and permitted assigns. A reference to any party shall include that party's personal representatives, successors and permitted assigns
- (e) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (f) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (g) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (h) Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs
- (i) A reference to **writing** or **written** includes email, but shall exclude text, Whatsapp, Instagram or other forms of communication via social media.

## 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing, unless otherwise agreed between the Parties.
- 2.2 The Order Acknowledgement and Add & Omit Schedule constitute an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Quotation, Order Acknowledgement, and Add & Omit Schedule are complete and accurate.
- 2.3 The Order Acknowledgement shall only be deemed to be accepted when the Customer signs the Order Acknowledgement via an electronic signature, at which point the Contract shall come into existence (**Commencement Date**).
- 2.4 The Supplier shall review and approve the appropriate Programme for the Works and will agree to enter into any reasonable Programme relating to the commencement, execution and completion of the Works. It shall be a condition precedent to such

obligation that the Customer shall have given reasonable notice to the Supplier as to the Programme requirements prior to the production of the Quotation by the Supplier, and that the Programme and Order Acknowledgement shall take reasonable account and cognisance of the Supplier's requirements of which the Customer has been made aware.

- 2.5 The Contract constitutes the entire agreement between the Parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations of the Goods or descriptions of the Services contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 The Order Acknowledgement may be cancelled by the Customer subject to the prior written consent of the Supplier or by the giving of 30 days written notice by the Customer to the Supplier. It shall be a further condition precedent to such termination, that following the notice or request issued by the Customer, the Customer assumes liability to pay any outstanding portion of the Contract Sum. In such event the date of cancellation shall be the later of the consent of the Supplier or receipt by the Supplier of the Customer's notice.
- 2.8 The Customer or his representative shall be responsible and pay for any Goods, Design, drawings, specifications, calculations, contract work or any expense whatsoever incurred or expended by the Supplier up to the date of cancellation including any orders or forward purchases already made by the Supplier even though not delivered or used. Any cancellation charge incurred in respect of the items covered by this clause shall also be a chargeable item.
- 2.9 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. GOODS AND SERVICES**

- 3.1 The Goods and Services are described in the Order Acknowledgment and Add & Omit Schedule.
- 3.2 To the extent that the Goods are to be manufactured in accordance with the Enquiry, the Customer shall indemnify the Supplier 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 professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Order Acknowledgement and Add & Omit Schedule. This Clause, 3.2, shall survive termination of the Contract.

- 3.3 Once the Customer has signed the Order Acknowledgement and, the Add & Omit Schedule, the Customer will assume all risks relating to the design of the Goods and will indemnify the Supplier 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 professional costs and expenses) suffered or incurred by the Supplier in relation to this.
- 3.4 The Customer will indemnify the Supplier for any additional costs incurred as a result of material price increase or delay in supply of materials for production of the Goods, occurring as a result of Brexit or a Force Majeure Event, as from the date of the Order Acknowledgement.
- 3.5 If the time or cost is changed as result of operation of Clause 3.4 then the Supplier can amend the Order Acknowledgement accordingly.
- 3.6 All CDM Regulations and building control requirements are the responsibility of the Customer. The Supplier has not been engaged to undertake the role of principal designer.
- 3.7 To the extent that the Services are to be provided in accordance with requirements or measurements supplied by the Customer, the Supplier is under no obligation to review or approve such requirements or measurements. The Supplier shall not be liable for any error in measurements and requirements provided by the Customer or design once the Customer has signed the Order Acknowledgement.
- 3.8 The Supplier shall use reasonable endeavours to supply the Services to the Customer by the date agreed set out in the Order Acknowledgement. The Supplier shall supply any Services before the end of the cancellation period, unless the Customer expressly requests in writing and acknowledges that their cancellation rights will be lost once the Services have been fully performed.
- 3.9 Where the Supplier is unable to provide the Customer with the Services, in whole or part, set out in the Order Acknowledgement and/or Add & Omit Schedule, for reasons beyond their reasonable control, the Supplier may perform those Services by engaging a third party (**Third Party Services**). The Supplier will inform the Customer in



advance where this is the case and shall require the Customer to place an order for Third Party Services, whereupon the Customer shall enter into a direct contractual relationship with the third party providing those Third Party Services.

- 3.10 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event and shall be entitled to recovery of the same from the Customer.
- 3.11 The Supplier agrees with the Customer that the Services will be provided using reasonable care and skill, providing services of a similar nature, quality and value, in a similar location.
- 3.12 All documentation will be issued electronically and the Supplier reserves the right to charge for the reasonable cost of delivery of any hard copies of documents.

#### **4. DELIVERY**

- 4.1 Delivery by the Supplier will be conditional on the payment of 30% of the Contract Sum, by the Customer, prior to the loading of the Goods by the Supplier.
- 4.2 The Supplier shall deliver the Goods (at any time after the Supplier notifies the Customer that the Goods are ready) and/or carry out the Services at the location set out in the Order Acknowledgement or such other location as the Parties may agree (**Delivery Location**).
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location, or collection from the Collection Point or as stated by Clause 4.10.
- 4.4 The Customer shall be responsible for all costs expenses and charges in respect of such carriage, packaging, insurance, transport, delivery and dispatch.
- 4.5 If the Customer varies the delivery requirements which results in increased delivery costs, the Customer is responsible for these additional costs.
- 4.6 The Customer shall be responsible for ensuring that the Supplier can gain access to any Delivery Location and that there is set aside a suitable area of hard standing, together with all lifting and other equipment and supervision necessary for the unloading of the Goods. The Customer shall be responsible for all costs expenses and charges in respect of such carriage, packaging, insurance, transport, delivery and dispatch.

- 4.7 The Supplier shall ensure that it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any packaging materials available for collection at such times as the Supplier shall reasonably request, otherwise the Customer shall be responsible for the disposal of packaging materials at their own expense. Returns of packaging materials to the Supplier shall be at the Customer's expense.
- 4.8 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Customer shall be liable for any costs incurred as a result of the delay in delivery of the Goods that is caused by or connected with, Brexit, a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.9 If the Supplier fails to deliver the Goods in accordance with Clause 4.3 its liability shall be limited to the reasonable costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Customer shall be liable for any costs incurred as a result of any failure to deliver the Goods to the extent that such failure is caused by or connected with, Brexit, a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.10 If the Customer fails to take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready in accordance with Clause 4.3, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place for a maximum of 1 month, and charge the Customer for all related costs and expenses (including insurance). Following the expiry of 1-month, notice will be given by the Supplier to the Customer, and all goods will be disposed of by the Supplier, with any income set against sums due, the balance of which shall be due to WSG as a debt.
- 4.11 Any claim by the Customer for non-delivery must be made to the Supplier within 3 days of the due date for delivery. It shall be a condition precedent to any claim by the Customer that he shall have given such notice in writing within this period.
- 4.12 The Customer shall be responsible for payment of any such import duties, fees, charges and taxes of whatsoever nature.

- 4.13 The customer must comply with all applicable laws and regulations of the country for which the Goods are destined. the supplier shall not be responsible if the customer breaches and/or contravenes any such laws or regulations.

## **5. INSTALLATION**

- 5.1 The Customer shall be responsible for ensuring that the Supplier can gain access to such location and that there is set aside a suitable area of hard standing, together with all lifting and other equipment and supervision necessary for the unloading and installation of the Goods, including lifts, hoists, cranes and trucks.

- 5.2 The Customer shall provide all necessary assistance to the Supplier, as the Supplier may determine is necessary, to ensure that the Supplier is able to install the Goods.

## **6. QUALITY**

- 6.1 The Supplier shall pass on to the Customer the benefit of any warranties and/or guarantees as the Company receives from its own supplier. No further warranties are provided.

- 6.2 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in Clause 6.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 6.4;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design, Enquiry or other documents supplied or approved by the Customer;
- (d) the Customer alters or repairs such Goods without the prior written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Enquiry, Order Acknowledgement or Add & Omit Schedule, as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 6.3 Except as provided in this Clause, 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in Clause 6.1.
- 6.4 Following Completion, an agent of the Supplier will attend the Delivery Location with the Customer to inspect the Goods installed to ensure they are free from defect or fault (the Snagging Process).
- 6.5 The Customer and Supplier will agree when the Snagging Process will take place and the Customer will allow the Supplier and its agents access to the Delivery Location in order to carry out this process.
- 6.6 The Supplier will endeavour to resolve any defects within 28 days of the date of its inspection (the "Resolution Period") unless faced with delays outside of its control.
- 6.7 During the Resolution Period, the Customer may only withhold that portion of the Final Account which is representative of the defect/s, taking into account the cost breakdowns set out in the Order Acknowledgement and Add & Omit Schedule as listed in the Snagging List
- 6.8 Following the resolution of the defect/s by the Supplier and at the end of the Resolution Period, the Customer shall pay the outstanding sum as detailed in the Snagging List.
- 6.9 Any claim relating to alleged damage to the Goods or discrepancy within the Goods delivered must be notified to the Supplier within 3 days of delivery of the Goods. It shall be a condition precedent to any claim by the Customer that he shall have given notice in writing within this period.
- 6.10 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.11 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **7. TITLE AND RISK**

- 7.1 The risk in the Goods shall pass to the Customer on Delivery.
- 7.2 Where the Supplier is required to install the Goods, risk shall pass to the Customer once the Goods have left the Supplier's premises.

7.3 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other Goods or Services that the Supplier has supplied to the Customer under this and all other contracts between the Supplier and the Customer.

7.4 The Supplier reserves the right to enter the Delivery Location to re-possess any Goods in which it retains title as a result of any non-payment by the Customer under 7.3(a) or 7.3(b).

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

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 6.2; and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 6.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been used and remain packaged, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

- (a) ensure that the terms of the Enquiry, Quotation, Order Acknowledgement, Add & Omit Schedule and any information it provides to the Supplier throughout the Works is complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Works;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, at no charge to the Supplier with access to the Delivery Location, Customer's office accommodation and other facilities, inter alia electricity and water, as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Delivery Location for the supply of the Goods and/or Services;
- (f) ensure the Delivery Location is clear of all other trades and/or activities which may delay, prevent or hinder the Supplier carrying out the Services;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (h) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Delivery Location in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (i) where the supplier is providing an initial consultation and or Survey, the customer must provide the Supplier with 24 hours' notice where they wish to cancel the initial consultation and /or Survey;
- (j) comply with the Conditions, any additional obligations as set out in the Specification; and obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start. Any such costs associated with obtaining and maintaining such licences, permissions and consents shall be met by the Customer.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**), or for any delays caused by trades or other contractors who precede the Works performed by the Supplier and/or the Supplier's agents:

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform, wholly or in part, any of its obligations as set out in this Clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **9. VARIATIONS TO THE SPECIFICATION**

- 9.1 Any Variations must be mutually agreed, and set out within the Add & Omit Schedule.
- 9.2 The Customer shall sign the Add & Omit Schedule each time new Variations are agreed, in order to evidence its approval to each of the Variations.
- 9.3 The Customer will be liable for any time and cost and overhead increases resulting from this variation
- 9.4 The Customer will make payment of any sums set out in the Add & Omit Schedule within 14 days of Completion.

## **10. PAYMENT**

- 10.1 The Contract Sum will be chargeable to the Customer in stage payments as set out below, unless otherwise agreed:
  - (a) A Deposit of 50% of the Contract Sum becomes payable following sign off of the Order Acknowledgement by the Customer and prior to the Survey and Design being carried out/drawn up;
  - (b) A further 30% of the Contract Sum becomes payable on the delivery of the Goods, before the goods are unloaded at the delivery location.
  - (c) The remaining 20% balance of the Contract Sum (the "Final Account") becomes due within 14 days of Completion, aside from any sums withheld in compliance with Clause 6.7 during the Resolution Period.

- 10.2 Where the Customer fails to give 24 hours notification before the date of the installation and / or Survey that they want to cancel the installation and / or Survey, the Supplier shall be entitled to charge its daily fee rate for the quoted Services.
- 10.3 The Supplier reserves the right to:
- (a) increase the Contract Sum, by giving notice to the Customer at any time, to reflect any increase in the cost of the Goods and/or Services that is due to:
    - i. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - ii. any request by the Customer to change the Commencement Date(s), Goods and/or the Service Specification; or
    - iii. any delay caused by any instructions of the Customer in respect of the Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Services.
    - iv. additional sums incurred due to any variation as referred to in Clause 9, or additional work which may be required for any reason whatsoever.
- 10.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services. The Supplier's VAT number is 447 568 313.
- 10.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.6 Not later than 5 days before the final date for payment the Customer may give a written Notice to the Supplier which shall specify any amount to be withheld from the amount to be paid under Clause 10, the ground(s) for such withholding and the amount attributable to each ground.



10.7 Where a sum due under the contract is not paid in full by the final date for payment and no effective notice to withhold payment has been given, the Supplier has a statutory right to suspend performance of his obligations in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, until paid in full.

**11. INTELLECTUAL PROPERTY RIGHTS**

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

11.2 The Customer acknowledges that, in respect of any third-party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

11.3 All Supplier Materials are the exclusive property of the Supplier.

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

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective Goods under the Consumer Protection Act 1987.

12.2 Subject to Clause 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort

(including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Contract Sum.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This Clause 12 shall survive termination of the Contract.

### **13. DATA PROTECTION**

13.1 For the purposes of the Terms and Conditions and the Data Protection Legislation

- the Customer is the controller and
- the Contractor is the processor.

### **14. TERMINATION**

14.1 The Supplier is entitled to terminate the Contract forthwith and without notice for any reason.

14.2 The Customer may terminate if the Supplier commits a material breach of any term of the Contract and fails to remedy that breach within 14 calendar days' of written notice from the Customer.

14.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) there is a Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 1 week, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer;
- (b) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such payment;
- (c) the Customer fails to provide access to the Delivery Location after 7 days' notice;
- (d) the Customer has failed or to provide information and or documents relating to the Works within 21 days of a written request from supplier;
- (e) there is a change of Control of the Customer, which has not been subject to the Supplier's prior written consent.

- 14.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Clause 14.3 or the Supplier reasonably believes that the Customer is about to become subject to any of them, if the Customer fails to comply with its obligations under Clause 8, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.5 The Customer may terminate the Contract in the following circumstances:
- (a) The Supplier fails to regularly and diligently supply the Goods and/or Services, which is ongoing 21 days after receipt of written notice from the Customer;
  - (b) The Supplier is found to be involved with fraudulent activities;
  - (c) The Supplier assigns the contract without the prior agreement of the Customer;
  - (d) The Supplier becomes insolvent.

## **15. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Delivery Location and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the Parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

**16. FORCE MAJEURE**

- 16.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, terrorism, Covid-19, Brexit, bereavement or default of suppliers or subcontractors.
- 16.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 16.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 28 days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

**17. ASSIGNMENT AND OTHER DEALINGS**

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

**17.2 Confidentiality**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 17.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to

whom it discloses the other party's confidential information comply with this Clause 17.2; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract, save for the exception set out at Clause 17.2(d).
- (d) The Supplier reserves the right to add the Customer's contact details to the Supplier's own mailing lists and to use the Customer's details for sales and marketing purposes, including contacting them for feedback in customer satisfaction surveys or for market research purposes, providing them with marketing literature on products and services, and notifying them of events.

### 17.3 **Entire agreement**

The Terms and Conditions constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Terms and Conditions it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

### 17.4 **Variation**

Except as set out in these Terms and Conditions, no variation of the Terms and Conditions shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

### 17.5 **Waiver**

A waiver of any right or remedy under the Terms and Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Terms and Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Terms and Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.6 **Severance**

If any provision or part-provision of the Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of these Terms and Conditions deleted under this Clause 17.6 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.7 **Notices**

- (a) Any notice or other communication given to a party under or in connection with the Terms and Conditions shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the respective addresses in the Order Acknowledgement; or sent by email to the address specified in the Order Acknowledgement.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause, 1.1(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This Clause, 17.7, does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17.8 **Third parties.** Unless it expressly states otherwise, the Terms and Conditions does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17.9 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

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

17.11 **Enforcement**

- (a) Each of the paragraphs of these Terms and Conditions of Supply operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- (b) If the Supplier fails to insist that the Customer performs any of its obligations under these Terms and Conditions of Supply, or if the Supplier does not enforce its rights against the Customer, or if it delays doing so, that will not mean that the Supplier has waived its rights against the Customer and it will not mean that the Customer does not have to comply with those obligations. If the Supplier does waive any default by you, it will only do so in writing, and that will not mean that it will automatically waive any later default by the Customer.

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