
MERIDIAN UPHOLSTERY LIMITED TERMS AND CONDITIONS OF SALE OF GOODS AND DESIGN & INSTALLATION SERVICES

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

These Terms and Conditions are the standard terms which apply when a customer places an order for goods and/or design & installation services and Meridian Upholstery Limited accepts the order.

1. INTERPRETATION

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

1.1 Definitions:

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.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.9.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier and 'you' and 'your' shall be interpreted accordingly.

Delivery Location: has the meaning given in clause 5.3.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Sales Literature: means any brochures, catalogues, leaflets, price lists and other documents providing details of Goods and Services available and pricing information;

Services: means the services we will provide which involve the design (**Design Services**) and installation (**Installation Services**) of the Goods you have purchased.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Meridian Upholstery Limited registered in England and Wales with company number 08723201 and references to 'we', 'us' and 'our' shall be interpreted accordingly.

Supplier Materials: has the meaning given in clause 9.1(h).

Third Party Design: has the meaning given in clause 8.1(a)(iv).

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its successors and permitted assigns.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

2.1 What these terms cover. These Conditions govern the sale of Goods and Services by us and will form the basis of the Contract between us and you. Before making your Order, please ensure that you have read these Conditions carefully. If you are unsure about any part of these Conditions, please ask us for clarification. These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 Your Order. Nothing provided by us including, but not limited to Sales Literature, constitutes a contractual offer capable of acceptance. Your Order constitutes an offer by you to purchase Goods or Services, or Goods and Services, from us in accordance with these Conditions.

2.3 Accepting your Order. Your Order shall only be deemed to be accepted when we issue written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.4 Marketing material. Any samples, drawings, designs, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Services provided by us or contained in our catalogues or brochures (excluding the Goods Specification and the Services Specification) are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.

2.5 Variation. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified. No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing between us and you and executed by a duly authorised signatory on behalf of each of us respectively.

3. DEPOSIT

At the time of accepting your Order (see clause 2.3) we may require you to pay a deposit to us. The deposit amount will be set out in our written acceptance of the Order. Where a deposit is payable, we will not commence work on your Order until we have received payment of the deposit from you and we will not be liable for any subsequent delay in delivery caused by your delay in paying the deposit to us.

4. GOODS

- 4.1 Non-bespoke Goods.** Non-bespoke Goods are those displayed on our website or described in our Sales Literature which are available for order by you without modification to design, customisation or personalisation. Whilst we make every reasonable effort to ensure that the non-bespoke Goods conform to illustrations, photographs and descriptions provided on our website, in our Sales Literature or descriptions provided by our salespeople, due to the manufacturing process we cannot, however, guarantee that all descriptions, illustration and/or photographs will be precisely accurate.
- 4.2 Bespoke Goods.** Bespoke Goods are available from us. If you order bespoke Goods from us, we will provide the Design Services as set out in clause 8.1(a) in order to produce those Goods to your specifications and requirements as agreed by us and you in a Goods Specification. Where the bespoke Goods are to be fitted or installed at your premises, we will provide the Installation Services as set out in clause 8.1(b). When placing an Order for bespoke Goods, please ensure that all information that you provide to us is correct, accurate and complete. We cannot accept any liability in respect of bespoke Goods if such liability arises due to incorrect information provided by you.
- 4.3 Goods Specification.** To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by you, you shall indemnify us 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 costs and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with our use of the Goods Specification. This clause 4.3 shall survive termination of the Contract.
- 4.4 Changing the Goods or amending the Goods Specification.** We reserve the right at our sole discretion to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and we shall notify you in any such event. For operational, technical or commercial reasons, we may from time to time change components, functionality or performance characteristics of the Goods to:
- (a) vary the design, specification or finish of the Goods; and / or
 - (b) substitute any materials or parts used in the Goods which are unavailable with alternative materials or parts
- provided that the alteration does not materially adversely affect the performance, quality or value of the Goods, and we shall notify you in any such event.
- 4.5 Tolerances.** Although we have made every effort to be as accurate as possible whilst manufacturing the Goods, all sizes, weights, capacities, dimensions and measurements of the Goods provided in our Sales Literature or in the Goods Specification have a 5% tolerance.

5. DELIVERY OF GOODS

- 5.1 Delivery dates.** When we accept your Order, we will provide an estimated delivery date and (if different) a date for performance of the Services. Please note that estimated delivery dates may vary according to the availability of Goods, your location and circumstances beyond our control.

- 5.2** Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by an event outside of our control (see clause 15) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.3 Delivery.** The Goods shall be delivered by our nominated carrier, to the location set out in the Order or such other location as the parties may agree (**Delivery Location**). The Goods shall be deemed delivered on arrival only of the Goods at the Delivery Location by our nominated carrier.
- 5.4 Instalments.** We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 5.5 If you fail to take delivery.** If for any reason we are unable to access the Delivery Location or you fail to take delivery of the Goods to the Delivery Location:
- (a) we will leave a note informing you that the Goods have been returned to our premises, requesting that you contact us to arrange re-delivery;
 - (b) if you fail to arrange re-delivery, take or accept delivery of the Goods within 3 Business Days of us notifying you that we were unable to deliver the Goods under (a), then we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance); and
 - (c) if, after 10 Business Days from the day on which we notified you that the Goods were ready for delivery, you have not taken or accepted actual delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge you for any shortfall below the price of the Goods.
- 5.6 If we fail to deliver.** If we fail to deliver the Goods, our liability shall be limited to providing replacement goods of similar description and quality. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event outside of our control (see clause 15) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6. QUALITY OF GOODS

6.1 Warranty. We warrant that on delivery the Goods shall:

- (a) conform in all material respects with their description and any applicable Goods Specification;
- (b) be free from material defects in design, material and workmanship
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by us.

6.2 Frame and Spring Guarantee. In addition to the Warranty in clause 6.1, a Frame and Spring Guarantee also applies to some of our Goods. If the Goods are subject to a Frame and Spring Guarantee, we guarantee to repair or replace any Goods (or any part of the Goods) where the frame and / or frame springs are subject to a manufacturing defect within ten years of purchase. The following terms apply to the Frame and Spring Guarantee:

- (a) the Frame and Spring Guarantee covers claims by the first owner of the Goods for normal use, purchased from our approved stockist / retailer only, beginning from the date of purchase. Otherwise the Frame and Spring Guarantee is non-transferable;
- (b) proof of purchase must be provided when any claim is made under the Frame and Spring Guarantee;
- (c) we must be given a reasonable opportunity of examining the alleged defective Goods to verify any fault; and
- (d) the Frame and Spring Guarantee does not cover:
 - (i) any defect which arises as a result of fair wear and tear, wilful damage, negligence, abuse or misuse of the Goods, or abnormal working conditions;
 - (ii) any defect which arises as a result of failing to follow our oral or written instructions as to the storage, installation, commissioning, use, care or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (iii) any alteration or repair of such Goods not performed by us; and
 - (iv) any loss or damage due to fire, smoke, explosion, water, weather conditions such as lightning or sunlight, theft, soiling, accidental damage or loss or damage caused by a third party.

6.3 Quality Control. Before the Goods are shipped to your Delivery Location, we may at our discretion invite you or a representative nominated by you to be present during our quality control checks of the Goods, to ensure you are satisfied with the Goods prior to shipment. If you or your representative acknowledges in writing to us during the quality control check process that you are satisfied with the Goods, the Goods shall conclusively be presumed to comply with the warranty set out in clause 6.1 and accordingly, we shall have no liability to you with respect to those Goods (except in relation to liability for any latent defects).

6.4 Notification of non-compliance with warranty. Subject to clause 6.7, you must, within 7 days of the arrival of each delivery of the Goods at the Delivery Location, give written notice of rejection to us on account of any defect by reason of which you allege that the Goods delivered do not comply with the warranty set out in clause 6.1 and which was apparent on reasonable inspection.

6.5 If you fail to give notice as set out in clause 6.4 then, except in respect of any defect which would not be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the warranty set out in clause 6.1 and accordingly, you will be deemed to have accepted the delivery of the Goods in question and we shall have no liability to you with respect to that delivery (except in relation to liability for any latent defects).

6.6 Subject to clause 6.7, if:

- (a) you give notice in writing to us within 7 days of the arrival of each delivery of the Goods at the delivery address that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- (b) we are given a reasonable opportunity of examining such Goods; and
- (c) you (if asked to do so by us) returns such Goods to our place of business at your cost,

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.7 Exceptions. We shall not be liable for any failure to comply with the warranty set out in clause 6.1 if:

- (a) you make any further use of such Goods after giving a notice in accordance with clause 6.4;
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of us following any drawing, design, Third Party Design or Goods Specification supplied by you;
- (d) you alter or repair such Goods without our written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description or the applicable Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.8 Except as provided in this clause 6, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.9 These Conditions shall apply to any repaired or replacement Goods supplied by us.

7. TITLE AND RISK

7.1 Risk. The risk in the Goods shall pass to you when the Goods are deposited with our nominated carrier for delivery to the Delivery Location.

7.2 Title. Title to the Goods shall not pass to you until the earlier of:

- (a) we receive payment in full (in cash or cleared funds) for the Goods; and
- (b) you resell the Goods, in which case title to the Goods shall pass to you at the time specified in clause 7.4.

7.3 Until title to the Goods has passed to you, you shall:

- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
- (d) notify us immediately if you become subject to any of the events listed in clause 13.1(c) to clause 13.1(e); and
- (e) give us such information as we may reasonably require from time to time relating to the Goods and / or your ongoing financial position.

7.4 Right to resell or use. Subject to clause 7.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:

- (a) you do so as principal and not as our agent; and
- (b) title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.

7.5 At any time before title to the Goods passes to you, we may:

- (a) by notice in writing, terminate your right under clause 7.4 to resell the Goods or use them in the ordinary course of your business; and
- (b) require you to deliver up all Goods in your possession that have not been resold, or irrevocably incorporated into another product and if you fail to do so promptly, enter any of your premises or the premises of any third party where the Goods are stored in order to recover them.

8. SUPPLY OF SERVICES

8.1 Nature of the Services. We will supply the Design Services and/or Installation Services to you in accordance with the Service Specification in all material respects. We warrant to you that the Services will be provided using reasonable care and skill, consistent with best practices and standards in the sector. In respect of the Services:

(a) Design Services: We will provide the Design Services as follows:

- (i) **Initial Consultation:** We will discuss with you your design requirements at an initial consultation either via email or at your premises. If you wish to factor any critical aspect into the design of the Goods, you should identify this to us at the consultation.
- (ii) **Provisional Design:** Following the initial consultation, we will produce a Provisional Design for the Goods and send this to you. The Provisional Design will be our interpretation of your requirements based on initial information and is intended to form the basis for further discussion with you and subject to subsequent changes to meet your requirements. The Provisional Design may include an approximate budget but this will be indicative only as the final price cannot be produced until you have approved a final design.

It is essential that all information you provide to us at the initial consultation is correct and complete in all material respects to enable us to produce an accurate Provisional Design. We will provide two revisions to the Provisional Design only within the agreed charges for the Design Services. Any further revisions required to reach the Services Specification stage (described below at (iii)) will be chargeable in excess of the agreed charges for the Design Services.

All versions of our Provisional Design and all designs, illustrations, descriptions or other items contained in either any Sales Literature or other material or on our website are only intended to be for general illustrative purposes and we do not represent, warrant or undertake that the final design will include or match anything in any such items.

- (iii) **Services Specification:** Once you have considered the Provisional Design, we will then develop it through further discussion with you if necessary. Only when we have confirmed in writing to you that a particular version of the Provisional Design that we have issued to you is final and you have also signed it to indicate your approval of it, will it become the Goods and/or Services Specification which can be implemented.
- (iv) **Third Party Design:** If you (or a third party on your behalf) produces a design for the Goods and you ask us to implement such design, you will need to provide us with a detailed plan of it with

your Order and we will then confirm in our discretion whether we are prepared to implement it. We may decide that we are not able to do so or that your plan lacks the necessary detail or is unsuitable. If we agree to the Third Party Design based on your detailed plan, we will treat it for the purposes of the Contract as the Goods and/or Services Specification. We will not be responsible for any defects of the Goods which arise as a result of Third Party Design supplied by you.

(b) Installation Services:

- (i) **Initial Consultation / Surveys and Measurements:** We will discuss the installation of the Goods with you at an initial consultation via email or at your premises. We may carry out a site survey and take measurements of your premises but we will not carry out any structural survey or offer or provide opinions or advice structural or other building related matters. You must give us all relevant information about the premises including any features which may affect the area in which the Goods will be fitted. In particular, you must notify us immediately in writing if there are any changes to area the Goods will be positioned at the premises since the initial consultation and/or site survey. We may need to alter the dimensions of the Goods to accommodate your changes to the premises. If you do not notify us of any changes within a reasonable period, we reserve the right to charge a reasonable amount for alternations to the Goods which are required as a result of your changes.
- (ii) **Fitting:** Subject to acceptance by us in writing, we will assemble, fit and install the Goods that we supply in accordance with the Services Specification. Unless otherwise agreed between us in writing, fitting costs are not included within our charges for the Installation Services and will be chargeable separately.
- (iii) **Care of the property and damage:** We will take all reasonable steps to protect your furniture, furnishings and wall and floor coverings at the premises (and that will include our placing covers over them if and as reasonably practicable) but we cannot take responsibility for any damage which is caused to those items if we have taken such steps. We will not take responsibility for any damage occurring to any items that you leave in place after we begin work where we have previously advised you that they are at risk and/or an obstacle to our work and we have reasonably asked you to move them. If we cause any damage to your property while providing the Services, we will make good that damage at no additional cost to you. We are not responsible for any pre-existing faults or damage in or to your property that we discover while providing the Services.

8.2 Marketing material. We may provide sketches, impressions, samples, plans or similar items in advance of performing the Services. Any such material is intended for illustrative purposes only and is not intended to provide an exact specification for the Services nor to guarantee specific results.

8.3 Amending the Service Specification. We reserve the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and we shall notify you in any such event.

8.4 Performance date(s). The Services shall be performed by us at the location specified in the Order. We shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The

Services shall be deemed delivered by us only on completion of the performance of the Services at the delivery location.

8.5 You must give us at least 24 hours' notice if we will be unable to provide the Services on a particular day or at a particular time. We will not invoice for cancelled visits provided such notice is given. If less than 24 hours' notice is given we shall invoice you at our normal rate.

8.6 Rectifications. Following completion of the Services, you shall have a period of 3 Business Days within which to inspect the completed work and to notify us of any defects. We shall correct such defects at no additional cost to you.

9. CUSTOMER'S OBLIGATIONS

9.1 Your obligations. You shall:

- (a) ensure that the terms of the Order and any information you provide in the Goods Specification and the Service Specification are complete and accurate;
- (b) co-operate with us in all matters relating to the Goods and/or Services;
- (c) provide us, our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us to provide the Services;
- (d) provide us with such information and materials as we may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare your premises for the supply of the Goods and/or Services;
- (f) 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;
- (g) comply with all applicable laws, including health and safety laws; and
- (h) keep all materials, equipment, documents and other property of ours (**Supplier Materials**) at your premises in safe custody at your own risk, maintain the Supplier Materials in good condition until returned to us, and not dispose of or use the Supplier Materials other than in accordance with our written instructions or authorisation.

9.2 Delays caused by you. If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent the Customer Default prevents or delays our performance of any of our obligations;
- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 9.2; and
- (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

A **Customer Default** includes, without limitation, any delay or failure by you in providing us with the fabric necessary to manufacture your Goods. Due to the volume of fabric we receive at any given time, it is your responsibility to arrange for the fabric to be delivered to our premises and to notify us in writing when you have provided the fabric. We will not be responsible for monitoring when your fabric arrives with us (or any subsequent delay caused) if you fail to provide us with a written notification.

10. CHANGING OR CANCELLING YOUR ORDER

10.1 Changing an Order. If you wish to make a change to the Goods and/or Services in your Order, please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Goods and/or Services, their timing or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change. Acceptance of any change to your Order will be at our absolute discretion.

10.2 If you need to cancel an Order. You may cancel your Order within 7 days of our acceptance of your Order. We will only accept an Order cancellation for non-bespoke Goods. Bespoke Goods cannot be cancelled once we have accepted your Order. If you cancel your Order under this clause 10.2 and you have already paid for the Goods under clause 11, we will refund the payment to you within 14 days but we may retain from refund, if applicable, a sum to cover any net financial loss that we suffer due to the cancellation.

10.3 If we need to cancel an Order. We may cancel your Order at any time before we despatch the Goods or before we commence performance of the Services in the following circumstances:

- (a) the Goods are no longer in stock and we are unable to re-stock (if, for example, the Goods are discontinued);
- (b) we cannot carry out the Services (this may be because, for example, we have a shortage of staff or materials); or
- (c) an event outside of our control continues for more than 60 days (please see clause 15 for events outside of our control).

If we cancel your Order under this clause 10.3 and you have already paid for the Goods and/or Services under clause 11, we will refund the payment to you within 14 days. If we cancel your Order, we will confirm the cancellation in writing.

11. CHARGES AND PAYMENT

11.1 Price. The price for Goods and/or Services:

- (a) shall be the price set out in our acceptance of your Order; and
- (b) in respect of Goods only, shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to you.

11.2 Price Increases. We reserve the right to increase the price of the Goods and/or Services, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Goods and/or Services to us that is due to:

- (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- (b) any request by you to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Goods Specification or Services Specification; or
- (c) any delay caused by any instructions given by you in respect of the Goods and/or Services or failure by you to give us adequate or accurate information or instructions in respect of the Goods and/or Services.

11.3 Invoices.

- (a) In respect of Goods, we shall invoice you at any time following acceptance of an Order (subject to any Deposit payable under clause 3, if applicable).
- (b) In respect of Services, we shall invoice you on completion of the Services (subject to any Deposit payable under clause 3, if applicable).

11.4 Payment. You must pay each invoice submitted by us:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by us and confirmed in writing to you; and
- (b) in full and in cleared funds to a bank account nominated in writing by us, and

time for payment shall be of the essence of the Contract.

11.5 VAT. All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

11.6 Interest. If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 13, you must pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

11.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

- (d) defective products under the Consumer Protection Act 1987.

12.3 Subject to clause 12.2, our total liability to you shall not exceed the total charges payable under the Contract in respect of goods and services actually supplied by us, whether or not invoiced to you.

12.4 We shall not be liable for any losses arising from your subsequent use or misuse of the Goods including (without limitation):

- (a) fair wear and tear;
- (b) wilful damage;
- (c) your negligence, or that of your agents or employees, or any failure to follow our instructions as to use of the Goods; and
- (d) any alteration or repair of the Goods by any manufacturing process or otherwise, save for any latent defect which means that the Goods did not comply with the description.

12.5 The following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

12.6 We have given commitments as to compliance of the Goods and Services with relevant specifications in clause 6 and clause 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to you if:

- (a) you fail to pay any amount due under the Contract on the due date for payment; or
- (b) you commit a material breach of your obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (c) you take any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the

purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business;

- (d) you suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business; or
- (e) your financial position deteriorates so far as to reasonably justify the opinion that your ability to give effect to the terms of the Contract is in jeopardy.

13.2 Without affecting any other right or remedy available to us, we may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between you and us if you fail to pay any amount due under the Contract on the due date for payment, you become subject to any of the events listed in clause 13.1(c) to clause 13.1(e), or we reasonably believe that you are about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) you shall return all of the Supplier Materials and any Goods which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

15. EVENTS OUTSIDE OF OUR CONTROL (FORCE MAJEURE)

15.1 We will not be liable for any failure or delay in performing our obligations under these Conditions where the failure or delay results from any cause that is beyond our reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, strikes, lock-outs or other industrial action by third parties, riots and other civil unrest, fire, explosion, flood, storms, earthquakes, subsidence, acts of terrorism (threatened or actual), acts of war (declared, undeclared, threatened, actual or preparations for war), epidemic or other natural disaster, or any other event that is beyond our reasonable control.

15.2 If any event described under this clause 15 occurs that is likely to adversely affect our performance of any of our obligations under these Conditions:

- (a) we will inform you as soon as is reasonably possible;
- (b) our obligations under the Contract will be suspended and any time limits that we are bound by will be extended accordingly;

- (c) we will inform you when the event outside of our control is over and provide details of any new delivery dates or availability of Goods and/or Services as necessary;
- (d) if the event outside of our control continues for more than 60 days we may cancel the Contract and inform you of the cancellation. Any refunds due to you as a result of that cancellation will be paid to you as soon as is reasonably possible.

16. OTHER IMPORTANT TERMS

16.1 Assignment and other dealings. We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without our prior written consent.

16.2 Notices. Any notice given to a party under or in connection with the Contract 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 its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order or order confirmation.

Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) 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
- (c) 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 (c), 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.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 Confidentiality. We each undertake that we shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.3(a).

- (a) We each may disclose the other party's confidential information:
 - (i) to our employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising our rights or carrying out our obligations under or in connection with the Contract. We each shall ensure that our employees, officers, representatives or advisers to whom we disclose the other party's confidential information comply with this clause 16.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (b) Neither of us shall use the other party's confidential information for any purpose other than to exercise our rights and perform our obligations under or in connection with the Contract.

- 16.4 Severance.** If any provision or part-provision of the Contract 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 the Contract. If any provision or part provision of the Contract is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 16.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.6 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.7 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 16.8 Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.9 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.10 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.
- 16.11 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.