

## CONDITIONS

### 1. Interpretation

#### 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.

**Conditions:** these terms and conditions set out in clause 1 to 15(inclusive).

**Contract:** the contract between the Customer and the Supplier for the sale and purchase of the Goods and Services in accordance with the Contract Details and these Conditions.

**Delivery Date:** such date after the Commencement Date as specified by the Supplier for delivery of an Order.

**Delivery Location:** the Customer's address for delivery of the Goods, as set out in the Contract Details.

**Force Majeure Event:** has the meaning given to it in clause 14.

**Goods:** the goods (or any part of them), as set out in the Contract Details.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 supply of Goods and Services to the Customer by the Supplier from the Commencement Date as set out in the Contract Details.

**Price:** the price for Goods and Services, as set out in the Contract Details.

**VAT:** value added tax or any equivalent tax chargeable in the UK.

## **1.2 Interpretation:**

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any phrase introduced by the terms **including, include, in particular, for example** or any similar expression shall be interpreted 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** excludes fax but not email.

## **2. Basis of Contract**

- 2.1 This Contract commences on the Commencement Date and continues, unless terminated earlier in accordance with its terms, until the date the Supplier confirms the Goods have been delivered, the services performed and payment in respect of the same has been received by the Supplier in full, when it terminates automatically without notice.
- 2.2 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.3 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.
- 2.4 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

## **3. Goods**

The Supplier reserves the right to amend the Goods and should this apply the Supplier

shall notify the Customer.

#### **4. Delivery**

- 4.1 The Supplier shall ensure that delivery of the Goods shows the contract number.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready unless the Supplier states otherwise in which case the Customer shall collect the Goods from the Supplier's premises as detailed in the conditions or such other location as may be agreed with the Customer before delivery (**Delivery Location**) within 10 Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by 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.

#### **5. Supply of Services**

The Supplier shall supply the Services to the Customer with reasonable skill and care.

#### **6. Customer's obligations**

- 6.1 The Customer shall:
  - 6.1.1 ensure that the terms of the Order and any information it provides relating to the Services are complete and accurate;
  - 6.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 6.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to provide the Services; and
  - 6.1.4 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 complete and accurate in all material respects.

## **7. Title and risk**

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer.

## **8. Charges and payment**

- 8.1 The price for Goods:
  - (a) shall be the price set out in the Conditions or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order; and
  - (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 8.2 The Supplier reserves the right to increase the Price, by giving notice to the Customer at any time before delivery, to reflect any reasonable increase in costs to the Supplier that is due to:
  - 8.2.1 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);
  - 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Services; or
  - 8.2.3 any delay caused by any instructions of the Customer in respect of the Goods or Services; or
  - 8.2.4 any failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of Goods or Services.
- 8.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after the Commencement Date or at any time thereafter
- 8.4 The Customer shall pay each invoice submitted by the Supplier:
  - 8.4.1 immediately on receipt and prior to the Supplier being obliged to provide the Services and the Goods; and
  - 8.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier,

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

- 8.5 All amounts payable by the Customer 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 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 or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 8.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies, the Customer shall 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 8.6 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%.
- 8.7 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).

## **9 Intellectual property rights**

All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

## **10 Data protection**

- 10.1 The following definitions apply in this clause 10:
- 10.1.1 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*)
- 10.1.2 **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 10.1.3 **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's

obligations or rights under the Data Protection Legislation.

## **11 Limitation of liability**

- 11.1 The limits and exclusions in this clause reflect the liability the Supplier provisionally accepts and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 11.4 Nothing in the Contract limits any liability for:
  - 11.4.1 death or personal injury caused by negligence;
  - 11.4.2 fraud or fraudulent misrepresentation;
  - 11.4.3 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);
  - 11.4.4 defective products under the Consumer Protection Act 1987; or
  - 11.4.5 any liability that legally cannot be limited.
- 11.5 Subject to clause 11.3 and clause 11.4, the Supplier's total liability to the Customer shall not exceed the amount of the Order.
- 11.6 This clause 11.6 sets out specific heads of excluded loss and exceptions from them:
  - 11.6.1 Subject to clause 11.3 and clause 11.4, clause 11.6.2 excludes specified types of loss.
  - 11.6.2 The following types of loss are wholly excluded:
    - 11.6.2.1 loss of profits;
    - 11.6.2.2 loss of sales or business;
    - 11.6.2.3 loss of agreements or contracts;

- 11.6.2.4 loss of anticipated savings;
- 11.6.2.5 loss of use or corruption of software, data or information;
- 11.6.2.6 loss of or damage to goodwill; and
- 11.6.2.7 indirect or consequential loss.

11.7 This clause 11 shall survive termination of the Contract.

## **12 Termination**

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than one months' written notice.
- 12.2 The Supplier may dispose of unpaid or uncollected goods (including but not limited to ashes) 6 months from the Commencement Date.

## **13 Consequences of termination**

- 13.1 On termination of the Contract:
  - 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and 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;
  - 13.1.2 the Customer shall return all of the Supplier Materials and/or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises 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.
- 13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **14 Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay

in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract by giving 10 working day's written notice to the affected party.

## **15 General**

### **15.1 Assignment and other dealings**

15.1.1 The Supplier 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.

15.1.2 The Customer 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 the prior written consent of the Supplier].

15.2 **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 15.2, 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.

15.3 **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.

### **15.4 Entire agreement.**

15.4.1 The Contract constitutes the entire agreement between the parties.

15.4.2 Each party acknowledges that in entering into the Contract it does not rely on 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 misstatement based on any statement in the Contract.

### **15.5 Third party rights.**

15.5.1 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.

15.5.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 15.6 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).
- 15.7 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.
- 15.8 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.