

## LOGIC STREET & PARK FURNITURE LIMITED GENERAL TERMS AND CONDITIONS OF SALE AND PROVISION OF GOODS AND SERVICES

The Customer's attention is particularly drawn to the provisions of clause 12.

### **1. Interpretation**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Advice:** any advice or recommendation given by the Supplier or its employees contractors or agents to the Customer or its employees contractors or agents in connection with Goods and/or Services (as herein defined) including, without limitation, as to storage application use or suitability. **Authorised Officer:** an officer employee contractor or agent of the Supplier whose details are notified to the Customer by the Supplier in writing from time to time and in the absence of such notification shall be any of the Supplier's directors. **Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business. **Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8. **Confidential Information:** means any commercial, financial or technical information, information relating to the Goods and Services, plans, specifications, processes, know-how, trade secrets and any other information of a confidential nature or which has been identified as such, or which is developed by the Supplier in performing its obligations under, or otherwise pursuant to the Contract. **Confirmed Advice:** any Advice confirmed in writing by an Authorised Officer. **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, firm, company or organisation who purchases the Goods and/or Services from the Supplier. **Deliverables:** the deliverables (if any) set out in the Specification. **Delivery Location:** means the location for delivery of the Goods and performance of the Services as set out in the Order or such other location as the parties may agree. **Force Majeure Event:** has the meaning given to it in clause 15.1. **Goods:** the goods (or any part of them) set out in the Order and to be supplied by the Supplier to the Customer. **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, 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:** 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 or verbal acceptance of the Supplier's quotation, or overleaf, as the case may be. **Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification. **Specification:** any specification for the Goods and/or Services, including any relevant descriptions, designs, plans or drawings, that is agreed in writing by the Customer and the Supplier and confirmed in writing by the Supplier as being agreed. **Supplier:** Logic Street and Park Furniture Limited, a company incorporated in England and Wales with company number 07868399 whose registered office is at Royce House, Royce Avenue, Billingham, Cleveland, TS23 4BX. **Supplier Materials:** has the meaning set out in clause 8.1(g). **A person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its personal representatives, successors or permitted assigns. A reference to a statute or statutory provision is a reference to such statute or statutory provision 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. 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. A reference to **writing** or **written** includes faxes and e-mails.

### **2. Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence.

2.3 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.

2.4 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, website or other publications are included 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 Specification, the Contract, nor any other contract between the Customer and the Supplier for the supply of Goods and/or Services.

2.5 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 trade, custom, practice or course of dealing.

2.6 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.

2.7 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**

3.1 The Goods are described in the Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### **4. Delivery of Goods and services**

4.1 The Supplier shall deliver the Goods to the Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready.

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.3 The Customer shall be responsible for off-loading the Goods upon the Goods' arrival at the Delivery Location, including without limitation providing a forklift or other material handling equipment to off-load the Goods together with a forklift operator or other relevant qualified and experienced personnel to operate the machinery provided.

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 or provision of Services 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.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the 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 Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6<sup>th</sup> Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.7 If the Customer fails to provide the labour and equipment required to off-load the Goods upon delivery at the Delivery Location, then except where such failure is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- delivery of the Goods shall be deemed to have been completed; and
- the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.8 If 20 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.9 The Supplier 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 the Customer to cancel any other instalment.

### **5. Quality of Goods**

5.1 Without prejudice to the other provisions of these Conditions (including without limitation clauses 2.4 and 3.1), the Goods shall be manufactured using such materials, finishes and coatings as shall be at the discretion of the Supplier.

(a) The Supplier warrants that on delivery, and for such period as is equal to the period in which the Supplier has the benefit of a warranty in respect of the Goods from the Supplier's supplier or manufacturer (if any) provided always that such period is expressly notified by the Supplier to the Customer in writing and subject always to a maximum of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- conform in all material respects with their description and any applicable Specification;
- be free from material defects in design, material and workmanship; and
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if:

- the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- the Supplier is given a reasonable opportunity of examining such Goods; and
- the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

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

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1:

- if the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- if the defect arises because the Customer failed to follow the Supplier's or the relevant product manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- if the Customer has failed to comply with any product, operational or maintenance manual or Supplier, manufacturer or industry advice relating to the Goods;
- if the defect arises because the Customer put the Goods to use in a manner which if carried out by the Supplier would render void any warranty provided by any manufacturer or supplier of which the Supplier has the benefit;
- if the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- if the Customer alters or repairs such Goods without the written consent of the Supplier;
- if the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions, or extreme weather conditions;
- if the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
- as a result of any act or omission of any party other than the Supplier.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

### **6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

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

- the Goods;
- any Services supplied to the Customer in connection with those Goods; and
- other goods that the Supplier has supplied to the Customer.

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

- hold the Goods on a fiduciary basis as the Supplier's bailee;
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- not install or attach the Goods to any premises without the prior consent of the Supplier;
- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m); and
- give the Supplier such information relating to the Goods and allow the Supplier access to premises where the Goods are located as the Supplier may require from time to time.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, 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 located in order to recover them and such rights or remedies shall apply regardless of whether the Goods have been incorporated into or attached to or form part of any other goods, materials or structures.

### **7. Supply of Services**

7.1 The Supplier shall provide the Services to the Customer in accordance with the Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Specification or otherwise, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 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.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 Unless specifically agreed by the Supplier and Customer in writing, any price quoted or agreed for the Goods and Services:

- does not include delivery or the storage costs or expenses;
- does not include any provision for reinstatement (including without limitation any redecoration, sealing or trimming) of surrounding areas, which if required will be charged in addition;
- assumes structural, building and ground conditions appropriate for the installation of the Goods and provisions of the Services (including, without limitation, that the foundations are flat and level) and does not take into account any alteration or excavation work through unforeseen material, which if required will be charged in addition;
- does not include locating services situated within areas where works are to be carried out, which if required will be charged in addition;
- does not include the alteration or redirection of any services that may be present, which if required will be charged in addition;
- does not include any structural calculations, which if required will be charged in addition; and
- does not include any reinstatement or repositioning of equipment, machinery or chattels, which if required will be charged in addition.

7.6 Without prejudice to the other provisions of these Conditions (including without limitation clause 9.3), the Customer shall be liable for any and all costs and losses incurred by the Supplier (including, without limitation, sub-contractor fees, delivery costs, labour costs and equipment hire costs) and the Supplier shall be entitled to increase the price of the Goods and/or Services ordered and extend any agreed time period in the event that:

- any of the assumptions listed in clauses 7.5(a) to 7.5(g) of these Conditions prove to be false;
- the Customer fails to comply with any of its obligations set out in clause 8 of these Conditions; or
- the Services cannot be performed, or Goods delivered (as the case may be) for any other reason not previously made known to the Supplier.

7.7 For the avoidance of doubt, unless specifically agreed by the Supplier and Customer in writing, the following items are specifically excluded from the Contract:

- the off-loading of any Goods and the storage of such Goods following delivery;
- the provision of any equipment or tooling required to lift or transport the Goods or provide the personnel who are carrying out the Services with safe access to work at height, including, without limitation, forklift vehicles, powered access platforms, scaffolding, ladders, cranes, product carriers and/or frame jiggings;
- any service or utility alterations, redirections or connections including without limitation any electrical installation or field wiring required in connection with the installation or operation of the Goods;
- any building or roofing work of any nature whatsoever including without limitation any basic, civil, wall, boring, stemming and concrete works;
- any works of any nature whatsoever that are required to ensure the installation area and all other areas located in and around the Customer's premises comply with the law or any regulations thereunder including without limitation those associated with fire safety, hazardous materials and air purity;
- removal from site of packaging and waste generated at any time during the supply of the Goods and/or Services;
- the provision of any drains or bunds that are required to install or operate the Goods;
- the obtaining of any planning permission or other consent or approval required for the installation or operation of the Goods; and
- any works whatsoever required in connection with the supply or extraction of air from the installation area or any other part of the Customer's premises.

7.8 Where preparation works are to be carried out by third parties and on inspection by the Supplier are not satisfactory, the Supplier reserves the right to raise abortive charges and/or contra-charge the Customer for hire of equipment, materials and labour to rectify the area to make good and enable installation.

7.9 Where a lead time has been quoted for the provision of Services, this is indicative only.

7.10 Where advice has been given by a representative of the Supplier relating to planning permission or any other regulatory consent or approval (including without limitation in connection with hazardous materials, fire safety or air purity) it is given in good faith but without liability and the Customer is responsible for seeking its own professional advice in relation to planning or related matters.

7.11 Unless specifically agreed by the Supplier and Customer in writing, no guarantee is given that the Supplier's or sub-contractor staff on site will conform to any specific accreditation, training or industry standards.

7.12 The Customer will make available appropriate welfare facilities to the Supplier's or sub-contractor staff on site.

### **8. Customer's obligations**

8.1 The Customer shall at its own cost:

- ensure that the terms of the Order and the information it provides in the Specification are complete and accurate;
- co-operate with the Supplier in all matters relating to the Services;
- provide the Supplier, its employees, agents, consultants and subcontractors, with free and uninterrupted access to the Customer's premises, the installation area, office accommodation and other facilities as reasonably required by the Supplier to provide the Services and if such access is not provided then the Supplier shall be entitled to raise additional charges at a rate of £60 per hour per person until work can commence or £480 per day if a site visit is fully aborted plus any and all reasonable costs and expenses incurred including, without limitation, travel and accommodation until such a time that the Customer informs the Supplier that the site is ready;
- provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- prepare the Customer's premises for the supply of the Services by providing a flat and level installation area clear of obstruction;
- 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) ensure the installation area is serviced with electricity and provide the Supplier with access to electrical outlets and such other utilities as the Supplier shall require;

(h) ensure structural, building and ground conditions are appropriate for the installation of the Goods and provision of the Services (including, without limitation, that the foundations are flat and level) and that no alteration or excavation works are required or desirable to install the Goods or provide the Services;

(i) provide a working environment that complies with all relevant safety legislation, regulations and guidance and inform the Supplier in writing before the commencement of any Services of such safety requirements and potential risks in and around the installation area, including without limitation any risks associated with hazardous materials, exposed flames or fire (including the boundaries of ATEX zones) and provide all other information as would be required to prepare a risk assessment for carrying out the Services;

(j) provide at the installation area, at no cost to the Supplier, any and equipment reasonably requested by the Supplier for the installation of the Goods, including, without limitation, forklift vehicles, powered access platforms, scaffolding and ladders;

(k) where the Goods are to be stored for a period at the Delivery Location (or such other premises as the Customer requires) prior to commencement of the Services, the Customer shall be responsible at its own cost for providing appropriate storage facilities and ensuring that the conditions are secure and appropriate for the Goods;

(l) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises 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;

(m) indemnify the Supplier against all liabilities, costs or claims arising out of damage caused above, below, on or around the location where the Goods are to be installed or erected or Services provided, where such damage arises due to the failure of the Customer to inform the Supplier of the location of drains, pipes, cables or other services;

(n) indemnify the Supplier against all liabilities, costs or claims arising out of the improper or inappropriate use of the Goods; and

(o) provide the Supplier, its employees, agents, consultants and subcontractors, with first aid, welfare and toilet facilities.

8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(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 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. Charges and payment

9.1 The price for the Goods and Services shall be the price set out in the Specification or, if no price is set out in the Specification, the price set out in the Supplier's quotation for the Goods and Services or published price list as at the date of delivery.

9.2 Unless specifically agreed by the Supplier and Customer in writing, any price quoted or agreed for the Goods and Services is exclusive of all costs and charges of packaging, insurance and transport of the Goods.

9.3 The Supplier reserves the right to:

(i) increase the price of the Goods and Services, by giving notice to the Customer at any time before delivery of the Goods or performance of the Services, to reflect any increase in the cost of the Goods 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 delivery date(s), quantities or types of Goods ordered, services to be provided, or the Specification; or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods or Services;

(b) increase the price of the Goods and/or Services and/or extend any agreed time period(s) if the Supplier has to carry out any extra work as a result of any act or omission of any other party other than the Supplier;

(c) increase the price of the Goods and/or Services and/or extend any agreed time period(s) to comply with any change of instructions or any additional instruction(s) including without limitation arising out of or in connection with any risk assessment or method statement (including, without limitation, the preparation or change of the same) relating to the Goods and/or Services;

(d) postpone supply of the Goods and/or Services or increase the cost of the Goods and/or Services and/or extend any agreed time period(s) if any damage or disturbance is caused to the Goods and/or the area where Services are being provided at any time (including for the avoidance of doubt before or during installation of the Goods or provision of Services) by any party other than the Supplier.

9.4 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 at the same time as payment is due for the supply of the Services or Goods.

9.5 The Customer shall pay for the Goods and Services 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. Unless otherwise agreed in writing, the Customer shall pay for the Goods and Services 50% on Order & 50% prior to dispatch (including deemed delivery in accordance with these Conditions).

9.6 The supplier reserves the right to request a proforma payment for bespoke goods and services.

9.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the base lending rate from time to time of Bank of England or, if higher, the then current rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1988. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other

rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

#### 10. Intellectual property rights

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

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, 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.

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

10.4 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 reasonable 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 any instructions given by or on behalf of the Customer either in the Specification or otherwise. This clause 10.4 shall survive termination of the Contract.

#### 11. Confidentiality

11.1 The Customer shall keep confidential all Confidential Information of the Supplier and will only use the Supplier's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:

(a) any information which was in the public domain at the date of the Contract;

(b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any other duty of confidence; or

(c) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

11.2 This clause 11 shall survive termination of the Contract.

11.3 No part of any drawing, plan, design or anything similar supplied by the Supplier to the Customer at any stage prior to or during or after the Contract may be copied, reproduced, scanned or stored in any electronic database or made available to any third party whether in whole or in part by any form or by any means without the prior consent of the Supplier.

#### 12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 The following provisions set out the entire liability of the Supplier (including any liability for the acts or omissions of its employees, agents, sub-contractors and other representatives) to the Customer in respect of:

(a) The Supply of Goods and/or Services by the Supplier to the Customer (including without limitation any breach of these Conditions);

(b) any use made or resale by the Customer of any of the Goods, or any product incorporating the Goods;

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

12.2 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 products under the Consumer Protection Act 1987.

12.3 Subject to clause 12.2:

(a) the Supplier shall under no circumstances whatever be liable for any losses, costs, expenses or penalties to the extent that they arise from any delay outside of the Supplier's control or any delay the Supplier is entitled to bring about in accordance with these Conditions;

(b) 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

(c) 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 an amount equal to the price of the Goods and/or Services supplied (or to be supplied) under the Contract in question.

12.4 In the event that the limitation of liability set out in clause 12.3 is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable then subject to clause 12.2, the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract, the provision of Goods or the Services shall be limited an amount equal to 200% of the aggregate price of the Goods and/or Services supplied (or to be supplied) under the Contract in question.

12.5 In the event that the limitations of liability set out in clauses 12.3 and 12.4 are found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable then subject to clause 12.2, the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract, the provision of Goods or the Services shall be limited to the amount that the Supplier is able to recover from time to time under the Supplier's then current insurance policy, a copy of which policy shall be provided to the Customer on request.

12.6 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.

12.7 This clause 12 shall survive termination of the Contract.

#### 13. Termination

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing of the breach;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party (being an individual) is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);

(k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

(l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:

(a) the Customer fails to pay any amount due under this Contract on the due date for payment; or

(b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

#### 14. 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 or Goods supplied or costs incurred by the Supplier but for which no invoice has yet 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 Customer's premises and take possession of them and the Customer grants the Supplier, its agents and employees, an irrevocable licence at any time to enter any premises where the Supplier Materials or Deliverables are or may be stored in order to recover 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 and remedies of the parties as at termination shall not be affected, 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 have effect after termination shall continue in full force and effect.

#### 15. Force majeure

15.1 For the purposes of the Contract, **Force Majeure Event** means an event or sequence of events 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 party 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, inclement weather conditions or default of suppliers or subcontractors.

15.2 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.

15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 3 months, either party shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the other.

#### 16. Advice

16.1 Any Advice not confirmed in writing by an Authorised Officer is followed or acted on entirely at the Customer's own risk.

16.2 Subject to clause 12.2 of these Conditions the Supplier excludes all liability for all and any damage or loss whether direct or consequential which may arise from the Customer following or acting on any Advice not confirmed by an Authorised Officer of the Supplier in writing nor does the Supplier guarantee or warrant any such unconfirmed Advice.

16.3 In respect of any Confirmed Advice the Supplier warrants that the Authorised Officer has used reasonable care and skill in giving the Confirmed Advice and to a standard which conforms to generally accepted industry standards and practices.

16.4 Save as set out in clause 16.3 of these Conditions, the Supplier does not warrant any Confirmed Advice or that any result or objective, whether stated in the Confirmed Advice or not shall be achieved or attained by following or acting on any Confirmed Advice.

16.5 Subject to condition 12.2 the Supplier's total liability in contract tort (including negligence or breach of statutory duty) misrepresentation restitution or otherwise in connection with Confirmed Advice shall be limited as set out in clause 12 of these Conditions.

16.6 Where the Customer requires Advice it is strongly advised to obtain independent advice and/or make a request in writing to the Supplier for Confirmed Advice to be given provided always that the Supplier shall be entitled to adjust the Contract price to take into account any Confirmed Advice to be given to the Customer. Any Contract price quoted or agreed upon prior to the Supplier providing Confirmed Advice is quoted or agreed on the basis that no Confirmed Advice is required by the Customer.

#### 17. General

##### 17.1 Assignment and subcontracting.

(a) The Supplier may at any time assign, transfer, 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.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

##### 17.2 Notices.

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

(c) This clause 17.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

17.3 **Compliance with law.** The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time under or in connection with the Contract.

17.4 **Waiver.** A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.5 **Severance.**

(a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

17.7 **Third parties.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.8 **Variation.** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

17.9 **Governing law and jurisdiction.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.