

# TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES 2024

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The Customer's attention is particularly drawn to the provisions of clause 16 (Limitation of liability).

## 1. Interpretation

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

### 1.1 Definitions:

**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 21.8.

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

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

**Deposit:** 50% of the total price of the Goods and Services (inclusive of VAT) as set out in the Supplier's Quotation.

**Force Majeure Event:** has the meaning given to it in clause 20.

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

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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 Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's written acceptance of the Supplier's quotation.

**Services:** the services supplied by the Supplier to the Customer as set out in the Order.

**Supplier:** Five Star Fabrics Limited t/a Gilroy Interiors registered in England and Wales with company number 04794573.

**Supplier Materials:** has the meaning given in clause 13.1(h).

**Quotation:** the written specification issued by the Supplier for the provision of goods and services to the Customer.

**Warranty Period:** has the meaning given in clause 9.1.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) 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.
- (d) Any words following 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 preceding those terms.
- (e) A reference to **writing** or **written** excludes fax not email.

**2. Basis of contract**

- 2.1 The Quotation issued by the Supplier shall not constitute an offer, and is only valid for a period of 14 calendar days from its date of issue.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when the Customer pays the Deposit and the Supplier confirms in writing its acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 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 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.
- 2.5 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 law, trade custom, practice or course of dealing.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 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**

3.1 The Goods are described in the Quotation issued to the Customer.

3.2 The Supplier does not accept any responsibility for flaws or faults in fabric and/or other materials which are supplied by the Customer to the Supplier to have the Goods manufactured by the Supplier. The fabric and materials must be inspected by the Customer and approved by the Customer before the Supplier agrees to manufacture the Goods from the fabric and materials supplied by the Customer.

3.3 To the extent that the Goods are to be manufactured in accordance with a specification and/or materials supplied by the Customer, 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the specification and/or materials supplied by the Customer. This clause 3.2 shall survive termination of the Contract.

3.4 Any advice or recommendations supplied by the Supplier or its employees regarding the characteristics, application or use of the Goods are based on manufacturers guidelines and take into account the instructions and information supplied by the Customer regarding the intended use of the Goods. The Customer is responsible for ensuring that the information they provide to the Supplier is complete and accurate, and the Supplier shall have no liability for any loss or damage which may occur due to any inaccuracies or omissions in such information.

3.5 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### **4. Quotations**

4.1 Quotations are based either on the measurements provided by the Customer or on the measurements taken by a professional estimator employed by the Supplier on visiting the Customer's premises.

- 4.2 If measurements are provided by the Customer, the Customer shall have full responsibility for these measurements and the Order will not be refunded or exchanged if the Goods turn out to be not suitable for the Customer's needs by virtue of inaccurate or incorrect measurements. The Customer must check their dimensions to ensure their accuracy and contact the Supplier prior to acceptance of the Quotation should the Customer find any discrepancies. The Customer remains fully responsible for the measurements they provide to the Supplier.
- 4.3 Where the Supplier is providing a measuring service, the Supplier will arrange for a professional estimator employed by the Company to meet the Customer at the address given by the Customer at an agreed, mutually convenient, date and time for the purpose of taking measurements required for the Quotation.
- 4.4 Quotations issued by the Supplier are valid only for a period of 14 days from the date of the Quotation. If the Customer wishes to accept the Quotation after the 14 days' validity, the price may need to be revised and a new quotation issued. If the Customer wishes to accept the Quotation after 3 months of issue, the Supplier may need to re-take measurements.
- 4.5 Quotations are issued on the basis that all necessary building and other works are completed at the Customer's premises where installation of the Goods is to take place, in advance of the agreed fitting date.

## **5. Samples**

- 5.1 Samples may be provided on the Customer's request for the sole purpose of giving an approximate idea of the colour and finish of the Goods. Due to the inherent nature of fabric the Supplier cannot and will not guarantee that the colour shade, pattern and/or finish of any fabric supplied will exactly match the samples. Samples should be used as a guide only.
- 5.2 The Customer will have no right to reject the Goods or claim compensation for variations between the sample and the finished Goods.

## **6. Delivery of Goods**

- 6.1 The Customer shall collect the Goods from the Supplier's premises at either 11-13 Packhorse Road, Gerrards Cross, Buckinghamshire, SL9 7QA or 43 Hermitage Road, Hitchin, Hertfordshire, SG5 1BY (as agreed with the Customer in advance) or accept delivery/installation of the Goods at such other location as may be agreed with the Customer before delivery.

- 6.2 Collection or acceptance of delivery/installation of the Goods must occur within 60 calendar days of the Supplier notifying the Customer that the Goods are ready for collection, delivery or installation (which notification can be in writing or by telephone).
- 6.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- 6.4 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.
- 6.5 The Supplier shall have no liability for any delay or failure to deliver the Goods to the extent that such delay or failure 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.
- 6.6 If the Customer fails to collect or accept delivery or installation of the Goods within 60 calendar days of the Supplier notifying the Customer that the Goods are ready for collection, delivery or installation, 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:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 61<sup>st</sup> day following the day on which the Supplier notified the Customer that the Goods were ready for collection, delivery or installation; and
  - (b) the Supplier can store the Goods until actual collection, delivery or installation takes place, and charge the Customer for all related costs and expenses (including insurance); and
  - (c) the Supplier can resell or dispose of part or all of the Goods as the Supplier, in its absolute discretion, sees fit and charge the Customer for any shortfall below the price of the Goods.
- 6.7 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.

## **7. Fitting**

- 7.1 After the Customer pays the Deposit, the Supplier will contact the Customer to schedule a mutually convenient fitting date.

- 7.2 The Customer must advise the Company of any parking restrictions or limited access for vehicles to the premises where fitting is to take place. If parking requires additional permits, the Customer must arrange this in advance of the fitting appointment.
- 7.3 The area to be fitted must be accessible and clear of prior window treatments.
- 7.4 If the Customer is not at the premises when the Supplier's fitter arrives, the Supplier has the right to levy a cancellation fee. The Customer will need to book another fitting date with the Supplier.
- 7.5 The Supplier reserves the right to refuse to carry out the fitting if the Customer behaves in an inappropriate, misleading or abusive manner.
- 7.6 The Supplier shall not be liable for any loss of earnings the Customer may suffer as a result of the fitter installing the Goods whilst the Customer is present.
- 7.7 The Supplier will not be liable for fitting-related damage to the Customer's property including but not limited to small drilling holes around the fitting area.
- 7.8 The Supplier's fitting service does not include making good any slightly damaged décor.

## **8. Goods specification**

- 8.1 When the Customer places the Order, the Supplier will ensure that for multiple windows the fabric will be from the same batch.
- 8.2 The Customer understands and accepts that some light may be visible around the edges of dim out blinds.
- 8.3 The Customer understands and accepts that creases may be visible in the folds of a roman blind when the roman blind is extended.
- 8.4 Standard fabric width is 140cm. Where the width of the curtain or blind is wider than the fabric, a seam will be visible in the finished product.
- 8.5 All chains and cords on blinds need to meet Child Safety Requirements (BS EN13120) and the Supplier will be unable to fit or provide a refund if the Customer refuses to accept this requirement.

## **9. Quality of Goods**

- 9.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) conform in all material respects with their specification in the Order;

- (b) be free from material defects in design and workmanship; and
- (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 the Supplier.

9.2 Any defect or fault in the Goods must be notified in writing to the Supplier within 30 days of collection, delivery or installation of the Goods.

9.3 Subject to clause 9.4, if:

- (a) the Customer gives notice in writing to the Supplier in accordance with clause 9.2;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) 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.

9.4 If the Supplier refunds the price of the defective Goods, the Supplier shall have no further liability to the Customer.

9.5 The Supplier shall not be liable to the Customer for any fault in the Goods or the Goods' unsuitability for the Customer's needs if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 9.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, 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 the Supplier following any drawing, design or specification supplied by the Customer or the fabric and/or materials supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (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 specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.6 Except as provided in this clause 9, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 9.1.



9.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **10. Amendments, Cancellation and Returns**

10.1 Once the Deposit has been paid by the Customer, the Supplier will order materials necessary to manufacture the Goods subject to the materials' availability.

10.2 If the Customer amends or cancels the Order (or any part of it) after the Supplier has taken steps to order necessary materials, the Supplier will be entitled to withhold all or part of the Deposit and charge the Customer the balance of the total price of the Goods to cover any costs, expenses or losses incurred by the Supplier as a result of the amendment or cancellation of the Order.

10.3 The Supplier shall be under no obligation to accept returns and/or give credit in respect of:-

- (a) All or part of the Goods which the Customer seeks to return by reason of ordering in error or if the Goods turn out to be surplus to the Customer's requirements;
- (b) Any made-to-measure Goods that the Customer seeks to return as faulty or unsatisfactory but which correspond to the details in the Order and which have been produced following accepted industry practices;
- (c) Goods which have been altered in any way by the Customer.

## **11. Title and risk**

11.1 The risk in the Goods shall pass to the Customer on completion of delivery, collection or installation whichever happens the earliest.

11.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's 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 the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 17.2(b) to clause 17.2(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:

- (i) the Goods; and
- (ii) the ongoing financial position of the Customer.

11.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **12. Supply of Services**

12.1 The Supplier shall use reasonable endeavours to meet mutually agreed measuring and fitting dates, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

12.2 The Supplier reserves 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 the Supplier shall notify the Customer in any such event.

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

## **13. Customer's obligations**

13.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) 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;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the 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;
- (h) keep 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.

- 13.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case 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 13.2; 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.

#### **14. Charges and payment**

- 14.1 The price for the Goods:
- (a) shall be the price set out in the Order 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) unless expressly agreed in writing otherwise, where delivery of the Goods is other than at the Supplier's premises, the Customer will be responsible for paying the costs of delivery in addition to the price of the Goods; and
  - (c) amounts payable by the Customer under the Contract will include VAT which shall be payable by the Customer as part of the price for the Goods.
- 14.2 The Customer shall pay the Deposit at the time of accepting the Quotation and placing the Order.
- 14.3 The Customer shall pay the balance of the total price of the Goods and Services on the date of the collection or delivery of the Goods.
- 14.4 The Supplier shall be under no obligation to transfer or install the Goods until payment for the Goods and Services has been received in full.
- 14.5 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier 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, or the Goods specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

14.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without prejudice to the other remedies available to the Supplier, 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 14.6 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%.

14.7 All amounts due from the Customer 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).

## **15. Intellectual property rights**

15.1 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of making the Goods and/or providing the Services to the Customer.

## **16. Limitation of liability**

16.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

16.2 References to liability in this clause 16 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

16.3 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.

16.4 Subject to clause 16.3, the Supplier's total liability to the Customer shall not exceed £1,000,000.

16.5 This clause 16.5 sets out specific heads of excluded loss and exceptions from them:

(a) Subject to clause 16.3, the following types of loss are wholly excluded:

- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill; and
- (vii) indirect or consequential loss.

(b) The following types of loss and specific loss are not excluded:

- (i) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
- (ii) wasted expenditure.

16.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 9 and clause 12. 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.

16.7 This clause 16 shall survive termination of the Contract.

## **17. Termination**

17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 4 weeks' written notice.

- 17.2 Without affecting any other right or remedy available to it, either 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 any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its 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 its assets or ceasing to carry on business;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 17.3 Without affecting any other right or remedy available to it, 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 for payment under the Contract on the due date.
- 17.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 17.2(b) to clause 17.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **18. Consequences of termination**

- 18.1 On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the 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;
  - (b) the Customer shall return all of the 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.

- 18.2 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.
- 18.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 19. Confidentiality

- 19.1 Each party undertakes that it shall not at any time during the Contract and for a minimum period of 12 months from the Commencement Date, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 19.2.
- 19.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 19; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 19.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 20. Force majeure

- 20.1 The Supplier reserves the right to defer the date of delivery, cancel or reduce the Goods and/or Services (without liability to the Customer) if the Supplier's performance is prevented or delayed due to circumstances beyond the reasonable control of the Supplier (a **Force Majeure Event**), which shall include (without limitation) acts of God, governmental actions, war or threat of war, acts of terrorism, fire, explosion, flood, strikes or other labour disputes, restraints or delays affecting carriers or inability or delay in obtaining suitable materials including discontinuation of material by suppliers of the Supplier. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 months or longer, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## **21. General**

### **21.1 Assignment and other dealings**

- (a) 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.
- (b) 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.

### **21.2 Notices**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at the address specified in the Quotation, the Order or such other address as may be notified by one party by the other from time to time or
  - (ii) sent by email to the email address provided by the party to be served.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls after 5.00pm, at 9.00am on the next business day.
- (c) 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.

### **21.3 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 21.3 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.

### **21.4 Waiver**



- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

#### **21.5 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.

#### **21.6 Entire agreement**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) 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.

#### **21.7 Third party rights.**

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.

#### **21.8 Variation**

- (a) 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).
- (b) The Supplier reserves the right to change these Conditions without notice to the Customer in relation to future orders.

#### **21.9 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.

#### **21.10 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.