

AIR CONTROL & DEVELOPMENT LIMITED TERMS OF SALE:

December 2019

IMPORTANT NOTICE: PLEASE READ CAREFULLY

These conditions together with our quotation and your order form a legal agreement between us and you. Please read these conditions carefully and make sure that you understand them before ordering anything from us. You should understand that by ordering anything from us you agree to be bound by these conditions.

Your attention is particularly drawn to the provisions of condition 14 which limits what we will be liable to you for if we breach these conditions and in other circumstances.

1. DEFINITIONS

1.1 The following definitions and rules of interpretation apply in these conditions:

Additional Work: Works and/or Goods requested by you not included in our quotation.

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

Contract: any contract between you and us for the supply of the Goods and/or Works in accordance with these conditions.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation

CDM Regulations: the Construction (Design and Management) Regulations 2015 as amended from time to time.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Due Date: shall have the meaning given to it in condition 12.2.

Force Majeure Event: shall have the meaning given to it in condition 17.

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

Order: your order for the supply of Goods and/or Works as set out in your acceptance of our quotation.

Insolvency Event: shall have the meaning given to it in condition 19.6.

Permission: all planning, building regulation, party wall, landlord consents, health and safety requirements and all other third party permissions, licences, notice or certificates whatsoever necessary or desirable for any stage of the Works including completion of them.

Site: the place where the Works are to be carried out.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Works: the works (or any part of them) supplied by us to you as set out in the Order.

We/us/our: Air Control & Development Limited registered in England and Wales with company number 2902809 whose registered office is at Unit 5-6 ABS Business Park, Northgate, Aldridge, Walsall, West Midlands WS9 8TH.

You/your: the person, firm or company who purchases the Goods and/or Works from us.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under the statute or statutory provision.

2. APPLICATION OF TERMS

- 2.1 Each Order constitutes an offer by you to purchase Goods and/or Works in accordance with these conditions. The Order shall only be deemed to be accepted when you issue written acceptance of the Order.
- 2.2 Subject to any variation under condition 2.4 these conditions apply to the Contract to the exclusion of all other terms and conditions that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.3 No terms or conditions endorsed on, delivered with or contained in your purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.4 These conditions apply to all our sales and any variation to these conditions and any representations about the Goods or Works shall have no effect unless expressly agreed in writing and signed by one of our directors. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the Contract. Nothing in this condition shall exclude or limit our liability for fraudulent misrepresentation.
- 2.5 Any quotation provided by us is an invitation to treat and shall not constitute an offer, and is only valid for 30 days from the date of its issue.
- 2.6 All of these conditions shall apply to the supply of both Goods and Works except where application to one or the other is specified.

3. DESCRIPTION

- 3.1 You shall ensure that the terms of your order and any applicable specification and our quotation are complete and accurate.
- 3.2 The quantity and description of the Goods and/or Works shall be as set out in our quotation or, if issued, our acknowledgement of Order.
- 3.3 Unless our quotation states that we will carry out a survey, you accept that in the interest of saving cost we will not carry out a survey of the Site and where the Works include modifications or alterations to any building or structure the nature and extent of those works may not be apparent until the Works have commenced. If it appears that any assumption we have made regarding the Site upon which our quotation is based is incorrect then we will at our option provide you with a revised quotation. If you do not accept the revised quotation the Contract will be treated as at an end and we will be entitled to payment for the Works carried out in accordance with condition 11.3.
- 3.4 If our quotation states that we will carry out a survey then we reserve the right to provide a revised quotation in accordance with condition 3.3 following such survey.
- 3.5 All samples, drawings, descriptive matter, specifications or advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Works and/or Goods described in them. They shall not form part of the Contract or have any contractual force and this is not a sale by sample.
- 3.6 If we adopt any major changes or modifications in construction, design or specification of the Goods so as to alter their external appearance then we shall inform you in writing and unless you deliver a notice of cancellation to us within 7 days from the date of the written notice of the variation then you shall be deemed to accept the Goods as changed or modified in fulfilment of the Contract.
- 3.7 If the Goods are manufactured to or any process is applied to the Goods by us in accordance with specifications supplied by you then you will indemnify us against all liabilities losses damages costs claims and expenses, and all other reasonable professional costs and expenses, suffered or incurred by us arising out of or in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of your specification for the Goods. This condition 3.7 shall survive termination of the Contract

4. ORDERS FOR GOODS ONLY

- 4.1 Condition 5 below shall not apply to the Contract if it is for Goods only.
- 4.2 No order for Goods placed by you shall be deemed to be accepted by us until a written acknowledgement of the order is issued by us or (if earlier) we deliver the Goods to you.
- 4.3 You must carefully inspect the Goods on delivery and prior to your using or installing them or permitting them to be used or installed. If you believe the Goods may not

comply with the warranty given at condition 13.4 you must inform us in writing in accordance with condition 13.5. Once you have used or installed the Goods we shall have no liability to you in respect of any breach of the warranty given at condition 13.4 which would have been discoverable on inspection.

- 4.4 Unless otherwise agreed by us in writing, delivery of the Goods shall take place at the delivery address stated in the quotation. You shall take delivery of the Goods on any date specified by us for delivery or within 7 days of us giving you notice that the Goods are ready for delivery. Any dates specified by us for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence. If no dates are so specified, delivery shall be within a reasonable time. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate instructions or any other instructions that are relevant to the supply of the Goods
- 4.5 Unless specified in our quotation, you shall pay all costs or charges in relation to packaging, loading, unloading, delivery, carriage and insurance, all of which amounts you shall pay in addition when you are due to pay for the Goods.
- 4.6 We may invoice you for the Goods on or at any time after the completion of delivery.
- 4.7 We may deliver the Goods by separate instalments. We have the right to invoice and be paid for each instalment separately in accordance with the provisions of the Contract. Each instalment shall constitute a separate Contract and no cancellation or ending of any one Contract relating to an instalment shall entitle you to repudiate or cancel any other Contract or instalment.

5. ORDERS FOR WORKS ONLY OR GOODS AND WORKS

- 5.1 Condition 4 above shall not apply to the Contract if it includes Works.
- 5.2 Unless otherwise stated in our quotation, our quotation is on the basis that:
- (a) the installation element (if any) of the Works can be carried out in one continuous visit to the Site;
 - (b) the commissioning element (if any) of the Works can be carried out in one further visit to the Site; and
 - (c) the maintenance element (if any) of the Works can be carried out in one continuous visit to the Site;

and any further work or visits to site required will be carried out upon request and charged as Additional Work. For the avoidance of doubt, more than one element of the Works may, at our discretion, be carried out in a visit to the Site.

- 5.3 You will without charge:
- (a) be responsible for the removal of any fixtures and fittings or other obstacles impeding the Works;

- (b) provide us with such copies as we may request of all drawings designs and specifications prepared by you or in your possession relating to the Works;
- (c) provide us with such information as we may reasonably request in order to carry out of the Works and ensure that such information is complete and accurate in all material respects;
- (d) provide us, our employees, agents, consultants and subcontractors with convenient and reasonable access to and about the Site for the purpose of carrying out of the Works;
- (e) provide electric current for tools and welding plant, artificial lighting, fuel, water and gas, and scaffolding necessary to enable the Works to be carried out;
- (f) comply with all applicable laws, including health and safety laws; and
- (g) immediately give us notice if the time when the Works can be carried out is likely to be delayed.

5.4 Any Goods delivered to the Site as part of the Works shall be at your sole risk upon delivery. The cost of repairing or replacing any Goods which are lost, damaged or destroyed, from whatever cause, will be charged by us as Additional Work.

5.5 If any (or parts) of the Goods and equipment maintained by us as part of the Works (together referred to as "**Equipment**") are worn, damaged or faulty, we shall notify you of:

- (a) what needs to be repaired or replaced (as appropriate); and
- (b) the costs, which shall include all labour and materials, associated with repairing or replacing that Equipment (or part thereof) as appropriate.

The cost of repairing or replacing any of the Equipment (or part thereof) which is worn, damaged or faulty will be quoted and charged by us as Additional Work.

5.6 Where the project that includes or comprises the Works is notifiable under the CDM Regulations you shall ensure that a principal contractor and CDM co-ordinator are appointed. You must keep us updated regarding their identities.

5.7 Any dates specified by us for the Works to be carried out are intended to only be an estimate and time shall not be of the essence. If no dates are so specified, the time for carrying out the Works shall be within a reasonable time.

5.8 Without affecting our other rights and remedies, we may at our option suspend provision of the whole or part of the Works immediately without notice without liability to you:

- (a) if you fail to pay us in full on the Due Date; or
- (b) if you fail to comply with any of the obligations in condition 5.3.

- 5.9 You shall be liable for and shall indemnify us against any expense liability loss claim or proceedings whatsoever in respect of personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Works at the Site except to the extent that the same is due to any act or neglect of ours or our employees or agents.
- 5.10 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation (**Your Default**):
- (a) without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Works until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations in each case to the extent Your Default prevents or delays our performance of any of our obligations;
 - (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from your failure or delay to perform any of our obligations as set out in this condition 5.10; and
 - (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default. For the avoidance of any doubt, if we are prevented, without prior written notice, from accessing the Site for a prearranged visit, or if we are not provided with safe access to enable us to carry out the Works, we reserve the right to charge a wasted visit charge at the standard rate and such charge shall be payable within 30 days of the date of the invoice.
- 5.11 We reserve the right to amend any specification for the Goods and/or Works 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 Goods and/or Works, and we shall notify you in any such event.

6. CARE FOR GOODS

- 6.1 Where applicable, the Equipment must be commissioned by us or another company authorised by the manufacturer.
- 6.2 You must follow our oral or written instructions as to the storage, installation, commissioning, use and maintenance of the Equipment or (if there are none) good trade practice.
- 6.3 You must maintain the Equipment in accordance with the manufacturer's recommended maintenance procedure. This shall include, but shall not be limited to, you:
- (a) appointing a responsible person to inspect and clean all washable filters monthly if so recommended by the manufacturer unless otherwise instructed, to ensure that efficiency is maintained; and

(b) replacing disposable filters, if used, in accordance with the manufacturer's recommendations.

6.4 You must not modify or alter the Equipment without our written permission.

6.5 The Equipment must not be exposed to extremes of temperature.

6.6 You must not use the Equipment in any way which would void the manufacturer's warranty, if any.

6.7 You shall ensure that the Equipment is used solely for the purpose for which they are supplied.

7. PERMISSIONS

7.1 Save where we have expressly included our obtaining such Permission in the quotation, you are responsible for obtaining all Permissions which may be required for the Works, before the date on which the Works are to start. You are deemed to authorise us to commence the Works as if all the Permissions have been obtained.

7.2 If we have expressly undertaken to obtain a Permission in the quotation, we will use reasonable endeavours to attempt to obtain that Permission and you must give us all assistance we request in a timely manner. If the Permission is not forthcoming after a reasonable time and through no fault of either party and in our opinion is necessary for the Works to proceed then the Contract will be treated as at an end and we will be entitled to payment for the Works carried out in accordance with condition 11.3.

8. DELAY

8.1 Subject to the other provisions of these conditions we shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or supply of the Works (even if caused by our negligence), nor shall any delay entitle you to end or rescind the Contract unless such delay exceeds 180 days.

8.2 If for any reason you fail to accept delivery of any Goods when they are ready for delivery, or we are unable to deliver the Goods because you have not provided appropriate instructions, documents, licences or authorisations or the Site is not in an appropriate state to allow the Works to be carried out:

(a) risk in the Goods shall pass to you (including for loss or damage caused by our negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) we may store the Goods until delivery, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance) or we may leave the Goods at your premises or the Site at your risk.

8.3 If 10 days after the day on which we notified you that the Goods were ready for delivery you have not taken delivery of them, we may, with regard to part or all of the Goods return them to the supplier or resell or otherwise dispose of them and, after deducting an administration fee of £50 plus VAT or 2% of the value of the Goods (whichever is greater) and any storage charges we incur, we shall account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods.

9. NON-DELIVERY

9.1 The quantity of any consignment of Goods as recorded by us upon despatch from our place of business shall be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary.

9.2 We shall not be liable for any non-delivery of Goods (even if caused by our negligence) unless you give written notice to us of the non-delivery within 2 days of the date when the Goods would in the ordinary course of events have been received.

9.3 Our liability for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

10. RISK AND TITLE

10.1 The Goods are at your risk from the time of delivery.

10.2 Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of the Contract and all other sums which are or which become due to us from you on any account.

10.3 Until ownership of the Goods has passed to you, you shall:

- (a) hold the Goods on a fiduciary basis as our bailee;
- (b) store the Goods (at no cost to us) separately from all other goods held by you or any third party in such a way that they remain readily identifiable as our property;
- (c) not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition;
- (e) notify us immediately if you suffer an Insolvency Event or if you become subject to any of the events listed in conditions 15.1(c) and 15.1(d); and
- (f) give us such information relating to the Goods as we may require from time to time

10.4 You may resell the Goods before ownership has passed to you solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of your business at full market value; and
- (b) any such sale shall be a sale of your property on your own behalf and you shall deal as principal when making such a sale.

10.5 Your right to possession of the Goods shall end immediately if:

- (a) you are subject to an Insolvency Event or if you become subject to any of the events listed in conditions 15.1(c) and 15.1(d); or
- (b) you encumber or in any way charge any of the Goods.

10.6 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.

10.7 You grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession has ended, to recover them.

10.8 Where we are unable to determine whether any Goods are the goods in respect of which your right to possession has ended, you shall be deemed to have sold all goods of the kind sold by us to you in the order in which they were invoiced to you.

10.9 When the Contract ends for any reason our (but not your) rights contained in this condition 10 shall remain in effect.

11. PRICE

11.1 Unless otherwise agreed by us in writing or set out in our quotation or acknowledgement of order, the price for the Goods and/or Works and/or Additional Works shall be:

- (a) if there is a relevant price contained in our price list, the price set out in our price list published on the date of delivery or deemed delivery a copy of which is available on request; otherwise
- (b) a sum calculated based on the cost of the goods, materials, labour, sub-contracts, transport, prolongation, duties and taxes prevailing at the time such Additional Work was performed together with a percentage in respect of overheads and profit.

11.2 The price for the Goods and/or Works and/or Additional Work shall be exclusive of any value added tax which you will pay in addition.

11.3 Where the Contract is ended for any reason you shall pay us a sum equal to the total of:

- (a) the value of the Work properly executed and Goods delivered as at the date of the Contract being ended;
- (b) the value of any bespoke Goods ordered by us;

- (c) any other amounts due to us under the Contract; and
- (d) any direct loss and/or damage caused to us by the ending of the Contract

less any payments made by you, and we shall be entitled to invoice you for that amount.

12. PAYMENT

- 12.1 We have the right to interim payments. We have the right to render invoices in respect of the whole or any part of the Works completed up to and/or Goods delivered as at the date of the invoice.
- 12.2 Unless otherwise stated in our quotation which details your credit terms, you shall pay our invoices in full and in cleared funds immediately upon the sooner of your receipt of the invoice or the date three Business Days after the date of the invoice ("**Due Date**"). Time for payment shall be of the essence of the Contract.
- 12.3 Without prejudice to any other right or remedy that we may have, if you fail to pay our invoice on or before the date 14 days after the Due Date we may charge interest on such outstanding sum from that date until payment of the outstanding sum at the annual rate of 10% above the base rate from time to time of National Westminster Bank plc accruing on a daily basis and being compounded quarterly until payment is made whether before or after any judgment and you shall pay the interest immediately on demand. We reserve the right to claim compensation under the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.4 You must pay on demand and on a reasonable basis all costs and expenses, including reasonable legal costs, which we may from time to time incur in connection with:
 - (a) enforcing the payment of any sum due to us under the Contract; and/or
 - (b) successfully defending a claim or counterclaim brought by you relating to the Contract.
- 12.5 We may appropriate payments by you to such amounts as are due to us as we think fit notwithstanding any purported appropriation by you to the contrary and we may make such appropriation at any time.
- 12.6 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. No retention can be withheld unless specifically agreed by us in writing. We may at any time, without limiting any other rights or remedies we may have, set off any amount owing to us by you against any amount payable by us to you.
- 12.7 All payments payable to us under the Contract shall become due immediately on it being ended despite any other provision.

13. QUALITY

- 13.1 Unless otherwise stated in our quotation, for the purposes of this condition "**Warranty Period**" shall mean:
- 13.1.1 in respect of labour, a period starting on the date of commissioning of the Goods and ending 12 months after that date (or such longer period as may be specified in the quotation); and
- 13.1.2 in respect of the Goods, a period starting on the date of delivery of the Goods and ending 12 months after that date (or such longer period as may be specified in the quotation).
- 13.2 We warrant to you that the Works shall be provided using reasonable care and skill.
- 13.3 We will not be responsible for any Claim in respect of the Works of which we are notified outside the Warranty Period.
- 13.4 With regard to any Goods supplied (and any Goods installed as part of the Works):
- (a) Where the manufacturer or supplier of the Goods ("**Manufacturer**") does not provide a warranty in respect of the Goods we warrant to you that for the Warranty Period the Goods shall:
- (i) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (ii) be reasonably fit for any purpose which you made known to us in writing and which we have confirmed in writing the Goods would be fit for.
- (b) Where the Manufacturer does provide a warranty in respect of the Goods we will endeavour to pass the benefit of that warranty on to you and:
- (i) Where we are able to transfer such warranty to you then we shall have no further liability to you (other than as to title).
- (ii) Where we are unable to transfer such warranty to you then we warrant on the same terms as the Manufacturer's warranty provided that our total liability in respect of any breach of such warranty whether arising in contract tort (including negligence) or otherwise howsoever arising shall be limited to the amount which we are able to recover from the relevant Manufacturer in respect of such breach and we shall have no other liability in respect of such breach. If the Manufacturer suffers an Insolvency Event then condition 13.4(a) shall apply.
- 13.5 If you believe that there is a defect with the Goods and/or Works and there is a possible breach of the warranty set out at conditions 13.2 or 13.4 above:
- (a) you must contact us and inform us in writing of the possible defect as soon as reasonably possible following your discovery of it;

- (b) you must give us a reasonable opportunity to inspect the relevant Goods or Works;
- (c) you must not carry out any remedial work yourself or allow anyone else to do so; and
- (d) you must not make further use of the Goods.

13.6 Provided that:

- (a) you have complied with condition 4.3, condition 6 and condition 13.5 as applicable; and
- (b) we conclude that there has been a breach of the warranty set out at conditions 13.2 or 13.4

then you will allow us to at our option, repair the defect or replace the defective Goods or refund the price paid in respect of those Goods or Works at the pro rata Contract rate.

13.7 Except as provided in condition 13.6 we shall have no liability to you in respect of any breach of the warranty set out at conditions 13.2 and 13.4.

13.8 Any Goods replaced shall belong to us and any repaired or replacement Goods or Works shall be guaranteed on these terms for the unexpired portion of the Warranty Period.

13.9 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

14. LIMITATION OF LIABILITY

14.1 This condition 14 sets out what we will be liable to you for as a consequence of any breach of the Contract negligence tort or other act default omission or statement of us our employees agents or subcontractors in respect of which we are held liable to you ("**Claim**").

14.2 You acknowledge that it is reasonable for us to limit our liability for any Claim as:

- (a) it is not commercially sensible for us to accept unlimited liability especially given the nature and complexity of the Goods and the Works;
- (b) in the interests of keeping the price to a reasonable level we cannot cover every risk normally associated with the Goods and the Works.

14.3 You acknowledge that it is your responsibility to ensure that the facilities and functions of the Goods meet your requirements. We shall not be liable for any failure of the Goods to provide any facility or function which we are not required to provide under the Contract.

- 14.4 Subject to condition 14.5 and condition 14.8 in any Claim our total liability to you shall be limited to three times the price payable by you under the Contract. If you believe that this limit may be too low for your business then you should arrange your own insurance cover. We may agree to accept a greater level of liability only if we expressly do so in writing and if such increased liability is covered by an additional insurance policy taken out by us at your expense.
- 14.5 Subject to condition 14.8 in any Claim we will not be liable to you for losses that fall into the following categories:
- (a) loss of income or revenue; or
 - (b) loss of sales or business; or
 - (c) loss of profits; or
 - (d) loss of or damage to goodwill; or
 - (e) loss of anticipated savings; or
 - (f) loss of agreements or contracts; or
 - (g) loss of use; or
 - (h) loss of use or corruption of software, data or information; or
 - (i) waste of management or office time; or
 - (j) any indirect or consequential or pure economic loss costs damages charges or expenses.
- 14.6 Condition 14.5 will not prevent claims for loss of or damage to your physical property that are foreseeable or any other claims for direct loss that are not excluded by categories 14.5(a) to 14.5(j) inclusive of condition 14.5.
- 14.7 Our maximum liability for physical damage to your tangible personal or real property resulting from a Claim shall not exceed £25,000 per event or series of events.
- 14.8 Nothing in the Contract excludes or limits our liability for:
- (a) death or personal injury caused by our 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;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any other matter for which it would be illegal for us to exclude or attempt to exclude our liability.
- 14.9 For the avoidance of doubt, we shall not be liable to you for any liquidated damages

- 14.10 If any exclusion or limitation of liability or any other provision contained in this condition 14 or otherwise contained in these conditions is held invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if we thereby become liable for any defect loss damage or nuisance which would have otherwise been excluded such liability shall be subject to the other exclusions limitations or provisions set out in these conditions.
- 14.11 The restrictions on liability in this condition 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.12 This condition 14 shall survive termination of the Contract.

15. ENDING THE CONTRACT

- 15.1 We may at our option end the Contract immediately without liability to you:
- (a) if you commit any breach of any of these conditions (or in the case of any breach capable of remedy you do not remedy such breach within 72 hours of a request to do so);
 - (b) if you suffer an Insolvency Event;
 - (c) if you suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business;
 - (d) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy;
 - (e) in any circumstances where we are entitled to end the Works noted anywhere in these conditions; or
 - (f) if you fail to pay any amount due under the Contract to us on the Due Date.
- 15.2 When the Contract ends for any reason:
- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest;
 - (b) in respect of any Goods delivered or Works carried out for which no invoice has been submitted we may submit an invoice calculated in accordance with condition 11.3 which shall be payable by you immediately upon receipt;
 - (c) it will not affect any legal rights, remedies, liabilities and obligations which may already have accrued up to the date of termination; and
 - (d) any condition that expressly or by implication is intended to have effect after the end of the Contract shall continue in full force and effect.

16. ASSIGNMENT

16.1 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights under the Contract.

16.2 You shall not be entitled to assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract without our prior written consent.

17. EVENTS OUTSIDE OUR CONTROL

17.1 We will not be responsible for any delay or failure to comply with our obligations under the Contract if the delay or failure arises from any cause which is beyond our reasonable control ("**Force Majeure Event**").

17.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control including the following: strikes lock-outs or other industrial action; civil commotion riot invasion terrorist attack or threat of terrorist attack war (whether declared or not) or threat or preparation for war; fire explosion storm flood earthquake subsidence epidemic or other natural disaster; impossibility of the use of railways shipping aircraft motor transport or other means of public or private transport; impossibility of the use of public or private telecommunications networks; or pandemic or epidemic.

17.3 Our obligations under the Contract are suspended for the period that the Force Majeure Event continues and we will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract can be performed despite the Force Majeure Event.

17.4 If a Force Majeure Event continues for more than 90 days after its commencement then either party may end the Contract on notice in writing to the other party.

18. DATA PROTECTION

18.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 18 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this condition 18, "**Applicable Laws**" means (for so long as and to the extent that they apply to us) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and "**Domestic UK Law**" means the UK Data Protection Legislation and any other law that applies in the UK.

18.2 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the controller and we are the processor.

18.3 Without prejudice to the generality of condition 18.1, you shall ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the Contract.

18.4 Without prejudice to the generality of condition 18.1, we shall, in relation to any personal data processed in connection with the performance by us of our obligations under this Contract:

- (a) process that personal data only on your documented written instructions unless we are required by Applicable Laws to otherwise process that personal data. Where we are relying on Applicable Laws as the basis for processing personal data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
- (b) ensure that we have in place appropriate technical and organisational measures, reviewed and approved by you, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of our systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless your prior written consent has been obtained and the following conditions are fulfilled:
 - (i) you or we have provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) we comply with all our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) we comply with reasonable instructions notified by you in advance with respect to the processing of the personal data;
- (e) assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify you without undue delay on becoming aware of a personal data breach;
- (g) at your written direction, delete or return personal data and copies thereof to you on termination of the Contract unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate our compliance with this condition and immediately inform you if, in our opinion, an instruction infringes the Data Protection Legislation.

18.5 You consent to us appointing a third party processor as a third party processor of personal data under the Contract.

18.6 Either party may, at any time on not less than 30 days' notice, revise this condition by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

19. GENERAL

19.1 Each of our rights or remedies under the Contract is without prejudice to any other of our rights or remedies whether under the Contract or not.

19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

19.4 Any waiver by us of any breach of, or any default under, any provision of the Contract by you shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

19.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.6 For the purposes of these conditions "**Insolvency Event**" shall mean:

- (a) (if you are a company) if you take any step or action in connection with you entering into administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business; or

- (b) (if you are an individual) if you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors.

19.7 Nothing in these conditions 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

19.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

20. COMMUNICATIONS

20.1 All communications between the parties about the Contract shall be in writing and shall be:

- (a) delivered by hand or sent by pre-paid first class post to its registered office (if it is a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number or sent by email to the address specified in the quotation which forms part of the Contract.

20.2 Communications shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; or
- (b) if sent by pre-paid first class post, at 9.00am on the second Business Day after posting (exclusive of the day of posting); or
- (c) if sent by fax or email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this condition, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

21. CONFIDENTIALITY

21.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by condition 21.2.

21.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses

the other party's confidential information comply with this condition 21;
and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority

21.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract

22. ENTIRE AGREEMENT

22.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.