

STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. INTERPRETATION

1.1 Definitions:

Business Day:	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions:	the terms and conditions set out in this document as amended from time to time in accordance with clause 16.5.
Contract:	the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or Services in accordance with and subject to these Conditions.
Customer:	the person or firm who purchases the Goods and/or Services from the Supplier.
Customer Assets:	assets (including physical or fabricated objects, raw or semi-processed materials) belonging to the Customer which are provided to the Supplier for the affixation or fitting of Goods or to be worked on as part of the Services.
Customer Information:	may include any designs, plans, drawings or specifications provided by the Customer to the Supplier for the purpose of providing the Goods and/or Services.
Data Protection Legislation:	all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).
Deliverables:	the drawings, plans or artwork created for the purpose of delivering Goods and/or Services under this Contract and any other deliverables set out in the Order or Specification.
Delivery:	delivery of Goods to the Customer and/or collection of the Goods by the Customer as the context shall require.

Delivery Rates:	the rates applicable in accordance with clause 4.2 and as indicated to the Customer in accordance with clause 4.3.
Dispatch:	the date on which the Goods are passed to the courier, as may from time to time be instructed by the Supplier, to deliver the Goods.
Goods:	the goods (or any part of them) set out in the Order.
Intellectual Property Rights:	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, 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.
Invoice Pack:	the invoice document either in pro forma form or final invoice which shall include the Specification and such other documents and instructions that the Supplier determines as required in relation to the Order, and be subject to these Conditions.
Order:	the Customer's order for the Goods and/or Services, constituting either an order as purchased through the Supplier's Website or, as confirmed in the Invoice Pack.
Services:	the services (or any part of them) set out in the Specification.
Specification:	the specification for the Goods and/or Services, which may include related plans and drawings, that is included in the Invoice Pack.
Supplier:	Decomet Ltd trading as James Gilbert and Son (registered in England and Wales with company number 08353405).
Website:	www.jamesgilbertandson.com

1.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to such statute or 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.

- (b) 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.
- (c) A reference to **writing** or **written** includes emails.

2. BASIS OF CONTRACT

- 2.1 The Supplier shall supply and the Customer shall purchase the Goods and/or Services in accordance with the Specification which shall be subject to these Conditions.
- 2.2 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.
- 2.3 The Order constitutes an offer by the Customer to purchase the Goods or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Specification are complete and accurate.
- 2.4 The Order shall only be deemed to be accepted, at the Supplier's sole discretion, by the Supplier when the Supplier issues the Invoice Pack or, in respect of online orders, the order confirmation, at which point the Contract shall come into existence.
- 2.5 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.
- 2.6 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on its Website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.7 The Customer agrees and acknowledges that materials and finishes may alter and vary between, samples, panels, batches and/or over time due to exposure to light, temperature and other atmospheric and physical conditions and the Supplier shall not be liable for any natural variations that arise. This applies to both samples and to Goods.

2.8 Any quotation for the Goods and/or Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 7 Business Days from its date of issue.

2.9 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 To the extent that the Goods are to be manufactured in accordance with Customer Information, 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 including but not limited to those incurred by the Supplier in connection with:

- (a) 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 Customer Information; or
- (b) to the extent permitted by law, any claim made against the Supplier for death or personal injury, the cause of which is directly attributable to work carried out in accordance with Customer Information.

This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements, or to improve the efficiency of manufacture or to improve the quality, effectiveness or integrity of the Goods.

3.4 Subject to clause 10.6 the Customer may request the amendment of the Specification on written notice to the Supplier. The Customer acknowledges and agrees that amendment to the Specification and/or Order may result in a need to reschedule manufacture and delivery timetables. The Supplier shall not be liable to the Customer in respect of any variation to the schedule required as a result of an amendment to the Specification.

3.5 Manufacturing tolerance within +/- 1 to 2mm depending on the size of the product. If tighter tolerances are required, then we must be notified in writing prior to commencement of manufacture. This may affect the price.

4. DELIVERY OF GOODS

- 4.1 Subject to clause 10.8 below, the Supplier shall ensure that each Delivery of the Goods is accompanied by a delivery note (which may, at the sole discretion of the Supplier, be provided to the Customer by email or with the Invoice Pack) that includes special storage and/or care instructions (if any) and, if the Goods are being Delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Customer will pay any Delivery Rates, in addition to the price determined in accordance with clause 10.1, in the following circumstances:
- (a) Subject to clause 4.2(b), standard delivery rates as set out on the Website will apply to all online Orders for standard decorative grilles (woven, regency and perforated) and air vents delivered within mainland UK (excluding the Scottish Highlands);
 - (b) In respect of:
 - (i) online decorative grille orders measuring over 50 square feet;
 - (ii) all orders for delivery outside mainland UK (including the Scottish Highlands);
 - (iii) all non-decorative grille orders
 - (iv) any other order, including those which at our sole discretion will require a bespoke courier quote for safe and secure delivery;a courier quote and confirmation of any international delivery charges will be obtained and notified to the Customer.
- 4.3 Where Delivery Rates are payable, the Supplier shall use reasonable endeavours to set out any Delivery Rates in the quotation or in the Supplier's confirmation of the Order. Where the Delivery Rates are not readily determined at or before the time when the Order is placed, the Supplier shall notify the Customer of the Delivery Rates as soon as is reasonably practicable upon receiving confirmation of the applicable Delivery Rates.
- 4.4 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**), at any time after the Supplier notifies the Customer that the Goods are ready. The Customer agrees and acknowledges that changes to the Delivery Location may incur additional costs and charges payable to the Supplier.
- 4.5 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence unless otherwise agreed in writing by the Supplier which may, at the Supplier's absolute discretion, incur additional charges to be payable by the Customer to the Supplier (such charges

to be made available to the Customer on request). The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a force majeure event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.7 If the Customer fails to accept Delivery of the Goods within 1 Business Day 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 the Supplier's failure to comply with its obligations under the Contract:
- (a) Delivery of the Goods shall be deemed to have been completed at 9:00 am on the Business Day after the day on which the Supplier notified the Customer that the Goods (and where applicable the Customer Asset) were ready; and
 - (b) the Supplier shall store the Goods (including where applicable the Customer Assets) at the Customer's risk until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods (and where applicable, the Customer Asset(s)) were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. 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 Subject to clause 5.3, the Supplier warrants that on delivery, the Goods shall:
- (a) conform in all material respects with the Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 The Customer shall inspect the Goods immediately on Delivery and inform the Supplier immediately (together with the provision of photographs of the product and its packaging) if some or all of the Goods do not comply with the warranty set out in clause 5.1. The Goods shall be deemed to comply with the warranty set out in clause 5.1 if the Customer does not immediately inform the Supplier otherwise on Delivery and the Supplier shall have no liability to the Customer in respect of defects not made known to it in accordance with this clause 5.2. The Customer shall not sign any courier documentation unless it accepts the Goods in the condition in which they are delivered. The Customer's signature on any courier documentation shall be deemed acceptance

by the Customer of the Goods and the Customer shall have no claim for any breach of warranty upon acceptance.

5.3 The Customer acknowledges and agrees that the nature of the Goods supplied by the Supplier is such that the Goods may naturally tarnish and discolour over time. The Customer acknowledges and agrees that it is its responsibility to ensure the proper storage and care of the Goods once Delivery is complete and accepted, and that tarnishing and discolouration does not constitute a latent defect for the purposes of the warranty at clause 5.1. Furthermore, the Customer acknowledges and agrees that the Goods are made from relatively soft, decorative metals and surface finishes such as polishing and patination which offer no protection from scratches. Goods must be handled with due care and caution from the moment they are delivered, until they are fitted to ensure they are fitted in their intended condition. Patinated finishes are not coatings and therefore are not intended to provide a perfectly uniform appearance nor do they provide any protection from scratches. The Customer acknowledges and agrees that the Supplier shall have no liability to the Customer for scratches or markings incurred after acceptance of delivery or during the fitting of Goods, or for scratches or markings incurred through the negligent unpacking of the Goods.

5.4 Subject to clause 5.3, if:

- (a) the Customer gives notice to the Supplier pursuant to clause 5.2 or, within a reasonable time of discovery (in respect of latent defects) that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods either by photographic evidence (sent to the Supplier within 3 Business Days of the Supplier's request) or physical inspection (at the Supplier's sole election); and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods securely in the original packaging (or if the original packaging is not available, in such equivalent safe and secure packaging as will ensure the safe return of the Goods in the condition in which they were originally delivered) to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair (or provide materials for the Customer to repair) or replace the defective Goods, or refund the price of the defective Goods.

5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises (or is made worse) because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and/or maintenance of the Goods provided on delivery or at any other time (including in this

Agreement at clause 5.3 or elsewhere), 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;
- (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 storage or working conditions;
- (f) the Customer has failed to mitigate the damage to the Goods while in its possession or control or in respect of the Customer's failure to appropriately package returned Goods;
- (g) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (h) in the event of the Customer acting fraudulently in any respect.

5.6 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.

5.7 The Supplier shall not be liable to the Customer for any latent defect arising later than one calendar year after Delivery. The Customer agrees that for the purposes of liability for latent defects, the Limitation Act 1980 shall not apply.

5.8 The Supplier is unable to issue any refund or exchange in respect of bespoke, made or cut to measure/order, special or modified orders that are not in breach of the warranty set out at clause 5.1.

5.9 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

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

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on immediately prior to unloading.

6.2 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 and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

- 6.3 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 from the date of delivery;
 - (d) not resell or use the goods in the ordinary course of its business or at all;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1; and
 - (f) give the Supplier such information relating to the Goods 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 11.2, then, without limiting any other right or remedy the Supplier may at any time:
- (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) 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.

7. SUPPLY OF SERVICES

- 7.1 The Supplier shall supply 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, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services unless otherwise agreed in writing by the Supplier which may, at the Supplier's absolute discretion, incur additional charges to be payable by the Customer to the Supplier (such charges to be made available to the Customer on request).
- 7.3 The Supplier reserves the right to amend the 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.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CDM REGULATIONS

8.1 Insofar as the Construction (Design and Management) Regulations 2015 apply, the Customer and the Supplier agree to comply with their respective obligations under these regulations.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- (a) ensure that the terms of the Order and any information contained in the Invoice Pack are complete and accurate;
- (b) notify the Supplier immediately in writing of any errors in the Invoice Pack and in any event before the Supplier commences work in accordance with the Invoice Pack;
- (c) co-operate with the Supplier in all matters relating to the Services including but not limited to adhering to the date of delivery to the Supplier of any Customer Information or Customer Assets to be worked on;
- (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other site address or facilities as reasonably required by the Supplier to provide the Services;
- (e) 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;
- (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 any additional obligations as set out in the Specification;
- (h) ensure that where Services (including for the purposes of this clause 9.1(h) inspections carried out prior to Order or the fitting of Goods to Customer Assets) are to be carried out at the Customer's premises (to include for the purpose of this clause 8, the premises of any third party that the Customer requires the work to be carried out on), the premises shall be ready, cleared and prepared for those Services to be carried out without obstruction. If this is not the case and the Supplier or its' sub-contractors are not able to perform the Services the Customer agrees and acknowledges that additional charges may be payable by it to the Supplier including but not limited to charges for additional visits; and
- (i) not leave Customer Assets or Customer Information with the Supplier for any longer than expressly agreed with the Supplier in writing. The Customer acknowledges that the Supplier does not provide storage facilities and shall not be liable for Customer Assets or Customer Information except as provided for in these Conditions

9.2 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 9.2; 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.

10. PRICE AND PAYMENT

10.1 The price of the Goods and/or Services shall be the price confirmed by the Supplier on its website order confirmation, quotation or Invoice Pack as applicable.

10.2 The Supplier may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:

- (a) any factor beyond the Supplier's control (including but not limited to foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, sub-contractor charges and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

10.3 The price of the Goods and/or Services:

- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer,

unless otherwise stated on the Invoice Pack.

- 10.4 The Supplier may invoice the Customer for the Goods and/or Services on or at any time after acceptance of an Order.
- 10.5 The Supplier shall require that the Customer pays a deposit or pre-pays for the Goods and/or Services as set out in the Invoice Pack and unless otherwise stated at the Supplier's sole discretion. Deposits are credited against any final invoice issued in respect of an Order but are non-refundable in the event that the Customer breaches these Conditions. In the event that a Deposit is insufficient to cover the costs incurred on the final invoice, the balance shall be due and payable by the Customer in accordance with these Conditions.
- 10.6 In the event that the Customer requires a change to the Specification and/or Order, the Supplier reserves the right to invoice the Customer for those costs, fees and charges incurred (including for administering the change, time, materials and Deliverables) by the Supplier to the date of the change and the Customer shall pay the invoice in accordance with this clause 10. The Customer further agrees and acknowledges that a change to the Specification may vary the price payable for the Goods and/or Services and that any additional costs or charges will be due and payable by the Customer to the Supplier in accordance with these Conditions.
- 10.7 The Supplier's invoice will include details of the Delivery Rates where applicable and available. Where Delivery Rates are not available at the time that the Invoice Pack is sent to the Customer, the Delivery Rates shall be confirmed once known
- 10.8 All invoices are due and payable immediately. The Customer shall pay the invoice in full and in cleared funds to the bank account nominated in writing by the Supplier. In the event that pre-payment or a deposit is required, the Supplier shall not be obliged to commence manufacture or Services until payment is received and it is the responsibility of the Customer to ensure that any payment is made in time to enable any expedited delivery date to be met. Time for payment is of the essence. Any lead time will commence from the date payment is received in cleared funds by the Supplier or that the final details (including Customer Information or Customer Assets as applicable) are received from or agreed with the Customer, whichever is the later.
- 10.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4.0% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

10.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

11. TERMINATION AND CANCELLATION

11.1 The Customer may cancel any order for Goods and/or Services upon written notice to the Supplier. In the event of cancellation, the Supplier shall invoice for and the Customer shall pay to the Supplier such costs, fees and charges incurred (including for administering the cancellation, time, materials and Deliverables) by the Supplier to the date of cancellation. The Customer agrees and acknowledges that charges incurred on Cancellation may include (but not be limited to) the purchase of minimum quantities of materials, charges incurred in the instruction of a sub-contractor and time incurred in designing Goods or scoping Services required.

11.2 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five days of that party being notified in writing to do so;
- (b) the Customer 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), 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 Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer'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;
- (e) the Customer acts in a manner which we deem (in our sole discretion) to be disruptive or incompatible with the Supplier's reasonable working practices for example by, but not limited to, making excessive demands upon the Supplier's time.

11.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 11.2(a) to (d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 11.4 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 the Contract on the due date for payment.
- 11.5 The Supplier shall be entitled to recover and resell the Goods (without prejudice to its right to damages) and for that purpose the customer hereby irrevocably grants the Supplier its servants or agents a licence to enter upon the Customer's premises for the purpose of removing the Goods if the Customer becomes subject to any of the events listed in clause 11.2 (a) to (d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.6 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services for which no invoice has been submitted but for which the Supplier is entitled to charge for pursuant to clauses 10.6 and 11.1 or at all, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 11.7 Termination of the Contract shall not affect the Supplier's rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Deliverables, the Goods and/or Services (other than Intellectual Property Rights in any Customer Information) shall be owned by the Supplier.
- 12.2 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 providing the Goods and/or Services to the Customer.

13. DATA PROTECTION, DATA PROCESSING AND CONFIDENTIALITY

- 13.1 Save for contact details processed by the Supplier to manage orders placed with it, which shall be processed in accordance with the Supplier's privacy policy and in which case where the contact details are not the Customer's own, the Customer warrants and represents to the other that it has the necessary authority to share such contact details with the Supplier for this purpose, the

Supplier is not a data processor for the purposes of Data Protection Legislation. In the event that this changes, the Supplier shall require the Customer to enter a separate data sharing or data processing agreement as applicable to set out the basis of such sharing or processing and in compliance with applicable Data Protection Legislation.

13.2 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 Clause 13.3.

13.3 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 Clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

14. LIMITATION OF LIABILITY

14.1 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 (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

14.2 Subject to clause 14.1:

- (a) the Supplier shall under no circumstances whatsoever 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 (including but not limited to any penalties arising against the Customer in respect of its third party relationships) arising under or in connection with the Contract;

- (b) where the Services require work on Customer Assets and/or Customer Information, the Customer Assets and/or Information shall be held by the Supplier at the Customer's risk and the Supplier shall not be liable for loss or damage to Customer Assets and/or Customer Information, in particular arising as a result of force majeure; 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 the price paid by the Customer for the Goods and/or Services.

15. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a force majeure event. If the period of delay or non-performance continues for three months, the party not affected may terminate this Contract by giving written notice to the affected party.

16. GENERAL

16.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

16.2 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

16.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 16.4 **Waiver.** No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.6 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause (a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 16.7 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 16.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 16.9 **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 this Contract or its subject matter or formation.
- 16.10 **Duties & Taxes on International Orders.** Investigation of any possible taxes and duties that may be incurred through international transit are a matter for the Customer. Any customs duties

and taxes that may be incurred through the international transit of goods purchased from the Supplier will be billed to the Customer by the appropriate bodies. Any dispute arising from the occurrence of any duties or taxes applicable shall be directed to the body issuing the charge.