**TERMS AND CONDITIONS WITH OUR CUSTOMERS**

**1. Interpretation**

**1.1**   Definitions

In these Conditions, the following definitions apply:

Ancillary Specification: any specification that may relate to the Goods or to any part of a building to which the Goods will be fixed, for example:

* Opening Sizes
* Floor Level
* Type of Building

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

**Collection Location:** has the meaning set out in clause 4.3.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.8.

**Contract:** the contract between us and you for the supply of Goods and/or Services in accordance with these Conditions.

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

**Deliverables:** the deliverables set out in the Order.

**Delivery Location:** has the meaning set out in clause 4.2.

**Floor Level:** the level of the floor over which the Goods may be installed.

**Force Majeure Event:** has the meaning given to it in clause 15.1(a).

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

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that you have provided to us in order to prepare a Quotation.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Losses:** 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 professional costs and expenses.

**On Site Readiness Form:** a form submitted by us to you in accordance with clause 4.9 which will include those conditions set out in clause 7.6 together with any other conditions we may include from time to time.

**Opening Sizes:** the size of the opening (usually in a wall) in which the Goods will be fixed.

**Order:** your order for the supply of Goods and/or Services, as set out your purchase order form, or your written acceptance of our Quotation, or your letter of intent or written instruction to supply Goods and/or Services (as the case may be).

**Services:** the services, including the Deliverables, supplied by us to you as set out in the Service Specification or the Order (as the case may be).

**Service Specification:** the description or specification for the Services provided in writing by us to you or as detailed in an Order from you to us that we have accepted.

**Supplier / Us / We:** Humber Industrial Limited registered in England and Wales with company number 15161885.

**Supplier Materials:** has the meaning set out in clause 8.1(g).

**Type of Building:** the location of the building in which the Goods will be fixed and environment of the area in which the Goods will be delivered or fixed.

**Your Premises:** the premises where the Goods will be delivered and/or installed, whether such premises are under your control or otherwise.

**1.2 Construction**

In these Conditions, the following rules apply:

**a**   references to we, us, ours or ourselves refers to the Supplier;
**b**   references to you, your, yours or yourselves refers to the Customer;
**c**   a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
**d**   a reference to a party includes its personal representatives, successors or permitted assigns;
**e**   a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
**f**   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;
**g**   any reference to our Group will include any of our subsidiary companies, our parent company and any subsidiary company of our parent company; and
**h** save as expressly set out herein, a reference to writing or written includes faxes and e-mails.

**2. Basis of contract**

**2.1**On receipt of a written enquiry by you to provide you with a quotation for the supply of Goods and/or Services, we will issue you with a verbal or written quotation **(Quotation)** based on the Goods Specification or Service Specification or any written instructions delivered to us by you at that time.

**2.2** Any Quotation given by us shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue, unless extended by us in writing at any time.

**2.3**If you place an Order with us following acceptance of the Quotation, such Order will constitute an offer by you to purchase Goods and/or Services from us in accordance with these Conditions.

**2.4** The Order shall only be deemed to be accepted by us when we issue a written acceptance of the Order at which point and on which date the Contract shall come into existence **(Commencement Date)**.

**2.5**The Contract constitutes the entire agreement between the parties. 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.

**2.6** Without our prior written consent, you may not amend the Contract in any material way once an Order has been accepted by us.

**2.7** Save with our prior written consent, the Contract may not be terminated by you after the Commencement Date, other than as permitted in clause 13 of these Conditions.

**2.8** On the Commencement Date, we will issue a list of questions (either verbally or in writing) (Customer Questionnaire) to you containing all outstanding questions that we require you to answer prior to the commencement of manufacturing of the Goods.

**2.9**We will not commence the manufacture of the Goods unless and until all the questions detailed in the Customer Questionnaire are answered and this is acknowledged and understood by you.

**2.10** You acknowledge that we cannot agree to or provide you with a date for delivery of the Goods until all the questions detailed in the Customer Questionnaire are answered and manufacturing is commenced.

**2.11** You agree that we cannot be held liable or responsible for our failure to meet any delivery deadline or date stipulated in the Order or any subsequent written instruction from you which we have agreed to, arising out of us not commencing the manufacture of the Goods due to your failure to answer all the questions detailed in the Customer Questionnaire immediately on receipt of the Customer Questionnaire.

**2.11** Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Services are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force unless expressly stated in the Order.

**2.11**Prior to the manufacture and supply of the Goods, we may deliver samples or technical drawings or descriptions of the Goods to you for your approval. If we do this, then such samples or technical drawings or illustrations must be approved by you in writing prior to the commencement of the manufacture of the Goods. Furthermore, if you accept such samples or technical drawings or descriptions, then we shall not be liable or responsible for any Losses incurred by you or any third party arising out of the Goods not being fit for purpose or of satisfactory quality or not meeting your requirements provided that the Goods have been manufactured in accordance with the samples or technical drawings or descriptions that you have approved. Furthermore, you will indemnify us for any Losses we incur as a result of manufacturing and supplying Goods in accordance with samples or drawings or descriptions that you have approved. You also accept and agree to indemnify us for any Losses we or any other third party incurs as a result of delays in the supply of the Goods due under the Contract due to delays by you in approving the samples or technical drawings or illustrations.

**2.12** If we manufacture and supply Goods made in accordance with samples, technical drawings or descriptions given to us by you, you acknowledge that we cannot be held responsible for any Goods that do not meet the required specification or quality if such samples, drawings or descriptions were inaccurate. You will indemnify us for any Losses we incur arising out of any samples, drawings or descriptions you have delivered to us for the purposes of manufacturing and supplying the Goods being inaccurate or incomplete in any way.

**2.13** We will manufacture and supply the Goods in accordance with the terms of the Order, any written instructions given by you to us and any other Ancillary Specifications you have delivered to us in writing and that we have accepted in writing. We will not be responsible or liable for any defects in the Goods or the Goods not being fit for purpose or the Goods not being to your satisfaction if any terms of the Order, any written instructions or any Ancillary Specifications you have given us are inaccurate or incomplete. For the avoidance of doubt, this will include any inaccuracies in the dimensions of the Opening Sizes given to us. Therefore, if the Opening Sizes given to us by you are inaccurate, the Goods supplied will be of the incorrect size and you will have to place a further order with us for more Goods.

**2.14** These Conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.15** Notwithstanding the terms of clause 2.16, we may incorporate additional terms into the Contract that may be relevant to a specific project or specific Goods.

**2.16** 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 the goods described in the Goods Specification and those that you have included in the Order.

**3.2** Save with our prior written consent, you may not amend the Goods Specification after the Commencement Date. If we give our written consent to amendments to the Goods Specification, for the purposes of these Conditions such amendments will be deemed to be incorporated in, and be part of, the Goods Specification as if such amendments were originally submitted as part of the original Goods Specification.

**3.3** To the extent that the Goods are to be manufactured and supplied in accordance with the Goods Specification, you will indemnify us against all Losses suffered or we incur in connection with:

**a**   any amendment to the Good Specification after the Commencement Date; and
**b**   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 the Goods Specification

This clause 3.3 shall survive termination of the Contract.

**3.4** We may also manufacture and supply the Goods in accordance with any Ancillary Specification delivered to and accepted by us. We will not be responsible or liable for any defects in the Goods or the Goods not being fit for purpose or the Goods not being acceptable to you if any of the Ancillary Specifications you have given to us are inaccurate or incomplete. You will indemnify us against all Losses suffered or incurred by us in connection with:

**a**   any Ancillary Specifications amendment being inaccurate or incomplete; or
**b**   if you amend any of the Ancillary Specifications after the Commencement Date.

**3.5**We reserve the right to amend the Goods Specification and/or the Ancillary Specification if required by any applicable statutory or regulatory requirements.

**4. Delivery of Goods**

**4.1**We shall use our reasonable endeavours to ensure that:

**a**   each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers and the type and quantity of the Goods; and

**b**   if we require you to return any packaging material to us, that fact is clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request.

**4.2** We shall deliver the Goods to the location set out in the Order or such other location as the we may agree with you in writing at any time after we notify you that the Goods are ready for delivery **(Delivery Location)**.

**4.3** If the Goods are to be manufactured and supplied “ex works” from our factories, then you shall collect the Goods from our premises at the address detailed in the Quotation or such other location we may advise at least 3 Business Days before the Goods are due to be collected **(Collection Location)**.

**4.4**Delivery of the Goods shall be completed on the Goods’ arrival at the Delivery Location, prior to the off loading of the Goods at the Delivery Location; or, immediately prior to the loading of the Goods onto any transport vehicle at the Collection Location (as the case may be).

**4.5** Any dates quoted for delivery or collection of the Goods are approximate only, and the time of delivery or collection is not of the essence. We shall not be liable for any delay in delivery or collection of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate delivery or collection instructions or any other instructions that are relevant to the supply of the Goods.

**4.6** If we fail to deliver the Goods or if we fail to have the Goods ready for collection on the delivery date or the collection date agreed by us, our aggregate liability to you shall be limited to an amount equal to 10 per cent of the value (net of tax) of the Contract. For the avoidance of doubt, we shall have no liability whatsoever to you for any failure to deliver the Goods or any failure to have the Goods ready for collection on the agreed delivery date or agreed collection date to the extent that such failure is caused by a Force Majeure Event or your failure to provide us with adequate delivery or collection instructions for the Goods or any relevant instruction related to the supply of the Goods.

**4.7** Save with our prior written consent, the date of delivery or collection cannot be changed by you once we have informed you of that delivery date or we have agreed to any delivery or collection date stipulated by you. If you request the date of delivery or collection to be amended and we agree to such amendment, then we will store the Goods and you will be liable for all related storage costs and expenses (including insurance) incurred by us in the storing of the Goods from the date when the Goods were intended to be delivered or collected until the actual date of delivery or collection together with any loss incurred by cancelling or amending any transportation and/or shipping costs.

**4.8** We may deliver the Goods or instruct you to collect the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or collection or defect in an instalment shall not entitle you to cancel any other instalment.

**4.9**When we are to unload and/or to install any Goods at Your Premises, prior to any delivery or collection, we shall deliver to you an On-Site Readiness Form to ensure that Your Premises are suitable and safe. You will sign and return the On-Site Readiness Form to us immediately on receiving such form.

**4.10** The Goods will not be delivered to the Delivery Location or permitted to be collected by you (if we are to install the Goods but not deliver them) until the On-Site Readiness Form is returned to us correctly signed by you. We will not be liable for any Losses incurred by you or any third party as a result of late delivery or late collection caused by your failure to sign and return the On-Site Readiness Form to us. Furthermore, if we do not deliver the Goods on the agreed delivery date or allow you to collect the Goods on the agreed collection date due to your failure to sign and return the On-Site Readiness Form to us, then we will store the Goods and you will be liable for all related storage costs and expenses (including insurance) incurred by us in the storing of the Goods until the date when we receive the signed On-Site Readiness Form from you and are able to deliver the Goods or you are able to collect the Goods.

**5. Quality of Goods**

**5.1** We warrant that on delivery, the Goods shall:

**a**   conform in all material respects with the Goods Specification or any amendments made to the Goods Specification that have been made at any time with our written consent;

**b**   subject to these terms of these Conditions, including without limitation clauses 2.13, 2.15, 3.4 and 5.11, be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

**c**   subject to these terms of these Conditions, including without limitation clauses 2.13, 2.15, 3.4 and 5.11, be fit for any purpose held out by us (in writing).

**5.2**Within 24 hours of delivery or immediately on collection of the Goods, you will inspect the Goods. If you reject the Goods for any reason then you must notify us within 24 hours of delivery or collection of the Goods. If you do not notify us that you have rejected the Goods, then you will be deemed to have accepted the Goods and we will be deemed to have complied fully with our warranties given in clause 5.1. The Goods are to be accepted “seen and approved and accepted”.

**5.3** You may only reject the Goods if the Goods do not comply with our warranties set out in clause 5.1. If you reject the Goods on collection, we may withhold the Goods at our premises in order to inspect any defects to the Goods without any liability to us.

**5.4** You will not be entitled to reject the Goods if you have not notified us in accordance with the terms of clause 5.2. The fact that the Goods are not used or installed or taken out of their packaging immediately after delivery or collection will not negate your reporting obligations set out in clause 5.2.

**5.5** Subject to clause 5.4, if:

**a**   you give notice in writing within 24 hours of delivery or collection that some or all of the Goods do not comply with the warranty set out in clause 5.1;

**b**   we are given a reasonable opportunity of examining such Goods; and

**c**   you (if asked to do so by us) return such Goods to our place of business,

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Should we decide to refund the price of the defective Goods in full, you will not have any right to claim that the Contract has not been performed by us in full or in part.

**5.6**We shall not be liable for the Goods’ failure to comply with the warranty in clause 5.1 if:

**a**   you make any further use of such Goods after giving a notice in accordance with clause 5.2;

**b**   the defect arises because you have failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice as employed by a suitably qualified person with the experience and knowledge of how to store, install, commission, use or maintain the Goods;

**c**   the defect arises as a result of us following any drawing, design, instruction or Goods Specification you have supplied us;

**d**   you alter or repair such Goods without our written consent;

**e**   the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

**f**   the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

**g**   the failure has arisen due to a Force Majeure Event;

**h**   you have failed to comply with your reporting obligations set out in clause 5.2;

**i**   your expectations are not met when the Goods have been manufactured and supplied in accordance with the Goods Specification or other written instruction from you or which has been accepted by us;

**j**   the failure has arisen due to variation to the Goods Specification of any nature or any written instructions from you that have not been accepted by us.

**5.7** If the terms of this clause 5 are not complied with by you and except as provided in this clause 5, we shall have no liability to you for any Losses of any nature howsoever caused in respect of the Goods’ failure to comply with the warranty set out in clause 5.1.

**5.8** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by us under clause 5.5 or at any other time.

**5.9** Unless we are responsible for arranging the transportation of the Goods to Your Premises, we will not be liable for any damage caused to any of the Goods in transportation, were we are able to demonstrate to you the condition of the Goods when they left or were collected from our premises, such evidence may include photographs of the relevant Goods.

**5.10** When we are supplying Goods but the Goods are being installed by you or any of your sub-contractors, you must instruct and use persons who are suitably qualified and trained and have the necessary experience to install the Goods. We will not be liable for any loss or damage caused to the Goods or Your Premises where the Goods are to be installed, as a result of faulty workmanship by you or any of your sub-contractors.

**5.11** You acknowledge and agree that we do not give any advice on the design of the Goods nor do we offer a design service. Whilst we may work with you and any person who is specifying the Goods on your behalf, we will not be held liable for any Losses you or any third party employed by you incur arising out of the specification or design of the Goods not meeting your requirements. We will furthermore not be responsible or liable for any Losses incurred by you or any third party employed by you as a result of the Goods not being fit for their purpose or of satisfactory quality if the Goods meet the Goods Specification or Ancillary Specifications any amendments to the Goods Specification or Ancillary Specifications (as agreed in writing by us).

**6. Title and risk**

**6.1** The risk in the Goods shall pass to you:

**a**   If we are to deliver the Goods, as soon as the Goods have been delivered to the Delivery Location and immediately prior to the unloading of the Goods off the vehicle in which the Goods were transported; or
**b**   If you are to collect the Goods from our premises, immediately prior to the Goods being loaded onto on the vehicle in which the Goods are to be transported.

**6.2** Title to the Goods shall not pass to you until we have received payment in full (in cash or cleared funds) for:
**a**   the Goods; and
**b**   any other goods and/or services that we have supplied to you in respect of which payment has become due.

**6.3** Until title to the Goods has passed to you, you shall:

**a**   hold the Goods on a fiduciary basis as our bailee;
**b**   store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
**c**   not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
**d**   maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
**e**   notify us immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(k); and
**f**   give us such information relating to the Goods as we may require from time to time, but you may resell or use the Goods in the ordinary course of its business, provided that until the date on which we are paid for the Goods by you, any person to whom you sell the Goods to in the ordinary course of business enters into undertakings with you similar to those undertakings contained in this clause 6.3.

**6.4** If before title to the Goods passes to you, you become subject to any of the events listed in clause 13.1(b) to clause 13.1(k), or we reasonably believe that any such event is about to happen and notify you accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter Your Premises or any other premises where the Goods are stored in order to recover them.

**6.5** If before title to the Goods passes to you, you have not complied with any of your obligations set out in clause 6.3, or we reasonably believe that you have not complied with them and we notify you accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter Your Premises or any other premises where the Goods are stored in order to recover them.

**7. Supply of Services**

**7.1**   We shall provide you with the Services in accordance with the Service Specification in all material respects.

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

**7.3**   We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.

**7.4**   We warrant to you that the Services will be provided using reasonable care and skill.

**7.5** We will not commence the provision of Services until we have received an Order from you. You acknowledge and agree that we will not be held responsible or liable for any loss you or any third party incurs as a result of a delay in the Services caused by you not delivering an Order to us.

**7.6** When the Services include installation of Goods or the repair or service of any products at Your Premises, you shall ensure and you warrant to us that the following conditions are or will be complied with:

**a**   The removal by you of any obstructions that could affect the installation of the Goods and/or their operational use;
**b**   There is a clear access for transporting the Goods and equipment to the location where the Goods are to be installed and/or repaired and/or serviced;
**c**   The premises where the Services are being carried out are a safe working environment;
**d**   We will have clear uninterrupted access to the location where the Goods are to be installed and/or repaired and/or serviced;
**e**   The opening(s) in to which the Goods will be fitted has been formed to the correct size and in accordance with all written instructions provided to us or by us;
**f**   A suitable fork lift truck will be available by you to us for off loading, distribution and installation of the Goods;
**g**   Access equipment will be made available by you for the sole use of our employees and/or sub-contractors;
**h**   Any power supply required for the Goods is installed and ready to be connected to; and
**i**   Power for hand tools (110 V or 240 V) will be available for use by our employees and/or sub-contractors

**7.7** If any of the conditions set out in clause 7.6 are not met, then we may cease supplying the Services or refuse to deliver the Goods or refuse to allow you to collect the Goods (if we are to install the Goods but not deliver them) until such conditions have been met by you to our reasonable satisfaction.

**7.8** If we cease the supply of the Services or the delivery of the Goods or do not allow you to collect the Goods in accordance with clause 7.7, you will be liable for any Losses incurred by us as a result of the conditions set out in clause 7.6 not being met and we will charge you accordingly. Such losses may include abortive visits by our engineers and/or sub-contractors. Our standard abortive visit charge is £600 plus VAT.

**8. Your obligations**

**8.1** You shall:

**a**   ensure that the terms of the Order and (if submitted by you) the Goods Specification or the Service Specification are complete and accurate;
**b**   co-operate with us in all matters relating to the supply of the Goods and provision of the Services;
**c**   provide us, our employees, agents, consultants and subcontractors, with free and uninterrupted access to Your Premises, office accommodation and other facilities as reasonably required by us to supply the Goods and/or to provide the Services;
**d**   provide us with such information and materials as we may reasonably require to supply the Goods and/or supply the Services, and ensure that such information is accurate in all material respects;
**e**   prepare Your Premises for the supply of the Services and/or the delivery of the Goods (as the case may be);
**f**   obtain and maintain all necessary licences, permissions and consents which may be required for the supply of the Goods and/or the Services before the date on which the Services are to start or prior to the date on which the Goods are to be delivered or collected;
**g**   keep and maintain all materials, equipment, documents and other property of ourselves (Supplier Materials) at Your Premises in safe custody at your own risk, maintain the Supplier Materials in good condition until returned to us, and not dispose of or use the Supplier Materials other than in accordance with our written instructions or authorisation.

**8.2**If our performance of any of our obligations in respect of the supply of the Goods and/or provision of the Services is prevented or delayed by any act or omission by you or a failure by you to perform any relevant obligation contained in the Contract, these Conditions or otherwise (Customer Default):

**a**   we shall, without limiting our other rights or remedies, have the right to suspend performance of the Services or supply of the Goods until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent the Customer 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 or any third party arising directly or indirectly from our failure or delay to perform any of our obligations as set out herein; and
**c**   you shall indemnify us and reimburse us on written demand for any Losses we sustain or incur arising directly or indirectly from the Customer Default, including, without limitation, any abortive visits to or waiting time at your Premises by any of our employees or subcontractors.

**9. Charges and payment**

**9.1** The price for Goods shall be the price set out in the Order. Unless expressly stated otherwise, the price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which you shall pay when you pay for the Goods. If the Goods Specification or the Ancillary Specification is amended and we have agreed in writing to such amendments, we reserve the right to amend the price of the Goods depending upon how the Goods Specification or the Ancillary Specification is amended. The price may also be amended if we are permitted to in accordance with the terms of the Contract and/or these Conditions.

**9.2** The charges for Services shall be those contained in any Quotation given to you or, in the absence of a Quotation, on a time and materials basis:

**a**   the charges shall be calculated in accordance with the charges issued to you from time to time;
**b**   our standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days and will normally be charged at a standard rate of £44.00 per hour per man;
**c**   we shall charge an overtime rate of 1.5 times the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b);
**d**   we shall charge an overtime rate of 2 times the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services on weekend or Bank Holiday (at whatever time); and
**e**   we shall charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Services, and for the cost of any materials.

**9.3** We reserve the right to:

**a**   increase our standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. We will give you written notice of any such increase 2 months before the proposed date of the increase. If such increase is not acceptable to you, you shall notify us in writing within 2 weeks of the date of our notice and we shall have the right without limiting our other rights or remedies to terminate the Contract by giving 4 weeks’ written notice to you; and
**b**   increase the price of the Goods, by giving you notice at any time before delivery or collection, to reflect any increase in the cost of the Goods to us that is due to:

**i**   any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
**ii**   any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification, or the Ancillary Specification;
**iii**   any delay caused by any of your instructions in respect of the Goods or your failure to give us adequate or accurate information or instructions in respect of the Goods;
**iv**   any delay caused by a Customer Default; or
**v**   any delay caused by a Force Majeure Event.

**9.4** Save as set out below, in respect of Goods, we shall invoice you on or at any time after completion of delivery or collection of the Goods and, in the case of the Services, on or at any time after completion of the Services.

**9.5** You shall pay each invoice submitted by us:

**a**   within 30 days of the date of the invoice; and
**b**   in full and in cleared funds to a bank account nominated in writing by us, and time for payment shall be of the essence of the Contract.

**9.6** All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made to you under the Contract by us, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

**9.7** Without limiting any other right or remedy we may have, if you fail to make any payment due to us under the Contract by the due date for payment (Due Date), we shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the then current Barclays Bank plc’s base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly. For clarity, this interest rate is not a penal rate of interest but rather an interest rate to cover our costs and expenses with our own bank.

**9.8** You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law or except as expressly provided in the Order 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. We may, without limiting our other rights or remedies, set off any amount owing to it by you against any amount payable by us to you.

**9.9** Our standard payment terms set out above are subject to a satisfactory credit check of you and the obtaining of credit insurance against both you and the Goods or Services described in the Order. If we are unable to obtain credit insurance on you or your credit check does not prove satisfactory to us, we will revise our payment terms, which may include insisting on payment in full or in agreed instalments prior to the commencement of manufacturing of the Goods or prior to the commencement of the Services. We will be entitled to terminate the Contract immediately if you refuse to accept to our revised payment terms.

**9.10** On specific projects, we may agree alternative payments terms with you for the supply of Goods or provision of Services. For the avoidance of doubt, if we do not agree alternative payment terms, the payment terms stipulate in these Conditions will apply.

**9.11** You acknowledge and understand that we may from time to time factor our invoices with our funders. Therefore, you accept that the debts relating to the invoices we submit to you may be owned by our funder or invoice discount provider and not us who may seek to recover any unpaid invoices directly from you.

**10. Intellectual property rights**

**10.1** All Intellectual Property Rights in or arising out of or in connection with the Goods and the Services shall be owned by us or our parent company.

**10.2** You acknowledge that, in respect of any third party Intellectual Property Rights in the Goods and the Services, your use of any such Intellectual Property Rights is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.

**10.3** All Supplier Materials are our exclusive property.

**11. Confidentiality**

You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature that we have disclosed to you, your employees, agents or subcontractors, and any other confidential information concerning our business or our products or services which you may obtain. You shall restrict disclosure of such confidential information to such of your employees, agents or subcontractors as need to know it for the purpose of discharging your obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind you. This clause 11 shall survive termination of the Contract.

**12. Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**12.1** Nothing in these Conditions shall limit or exclude our liability for:

**a**   death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
**b**   fraud or fraudulent misrepresentation;
**c**   breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
**d**   breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
**e**   defective products under the Consumer Protection Act 1987.

**12.2** Subject to clause 12.1:

**a**   we shall under no circumstances whatever be liable to you or any of your agents or any other third party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect loss or any consequential loss you or any other person incurs arising under or in connection with the Contract;
**b**   we shall under no circumstances whatever be liable to you or any of your agents or any other third party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any Losses incurred arising out of a Force Majeure Event; and
**c**   our total liability to you and your agents and any other third party in respect of all Losses incurred by you, your agents and any third party arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to 10 per cent of the value (net of tax) of the Contract.

**12.3** Unless agreed in writing by both our Managing Director and our Finance Director, we do not entertain or agree to any of the following and none whatsoever will ever be given:

**a**   parent company guarantees
**b**   cross company guarantees
**c**   personal guarantees by the Directors
**d**   collateral warranties
**e**   liquidated damages

Should any of the above conditions be agreed with you or given to you without the signature of both our Managing Director and our Finance Director attached to such agreement, you must assume that such agreement is fraudulent and is not valid or binding upon us and you must inform us immediately.

**12.4** Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**12.5** This clause 12 shall survive termination of the Contract.

**13. Termination**

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

**a**   the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
**b**   the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
**c**   a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
**d**   the other party (being an individual) is the subject of a bankruptcy petition or order;
**e**   a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 7 days;
**f**   an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
**g**   a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
**h**   a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
**i**   any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(k) (inclusive);
**j**   the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
**k**   the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

**13.2** Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if:

**a**   you fail to pay any amount due under this Contract on the due date for payment; or
**b**   you fail to agree to our revised payment terms described in clauses 9.9 or 9.10; or
**c**   you fail to agree to any amendments to our pricing structure as stipulated in clause 9.3.

**13.3** Without limiting our other rights or remedies, we shall have the right to suspend the supply of Services or all deliveries of Goods under the Contract or any other contract between you and us if:

**a**   you fail to make pay any amount due under this Contract on the due date for payment; or
**b**   you become subject to any of the events listed in clause 13.1(a) to clause 13.1(k), or we reasonably believe that you are about to become subject to any of them.

**13.4** Save as set out in this clause 13, clause 15.1 and clause neither party may terminate the Contract for any other reason.

**14. Consequences of termination**

**14.1** On termination of the Contract for any reason:

**a**   you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, we shall submit an invoice to you, which you shall pay immediately on receipt;
**b**   you shall return to us all of the Supplier Materials and any Deliverables which have not been fully paid for. If you fail to do so, then we may enter Your Premises or any other premises where they are stored and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
**c**   the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
**d**   clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**14.2** If we terminate the Contract pursuant to clause 13.2 or if you terminate the Contract for any reason, then, in addition to your liabilities set out in clause 14.1, you will be responsible and liable for any and all Losses and other costs incurred by us in complying with the terms of the Contract from the Commencement Date up to and including the date of termination. Such costs shall include, but shall not be limited to, all labour and material costs incurred up to and including the date of termination and any costs which relate to orders we have placed or instructions we have given to our suppliers and/or subcontractors whether we have received an invoice for such work or which we have not yet received an invoice for, but will do so in the future and will become liable to pay. You accept that materials may have to be ordered and labour may have to be incurred and paid for by us immediately after the Commencement Date in order to carry out the terms of the Contract.

**15. General**

**15.1 Force majeure**

**a**   For the purposes of this Contract, Force Majeure Event means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**b**   We shall not be liable to you as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

**c**   If the Force Majeure Event prevents us from providing any of the Services and/or supplying any of the Goods for more than 10 weeks, we shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

**15.2 Assignment and subcontracting**

**a**   We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party, including for the avoidance of doubt any company in our Group.

**b**   You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

**15.3 Notices**

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

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

**c**   This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this service of legal proceedings or other documents in any legal action, such proceedings or documents will only be deemed to have been correctly served if such proceedings or documents have been personally delivered or posted to the party’s registered office or usual place of business and address to a director or partner or owner of that party. For the avoidance of doubt, legal proceedings or other documents in any legal action will not be deemed validly served if sent by e-mail or by fax.

**15.4 Waiver and cumulative remedies**

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

**b**   Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

**15.5 Severance**

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

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

**15.6 No partnership**

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

**15.7 Third parties**

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

**15.8 Variation**

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

**15.9 Governing law and jurisdiction**

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