

# TERMS AND CONDITIONS

## FOR THE SALE OF GOODS & SERVICES

The Buyer's attention is in particular drawn to the provisions of condition 13.

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## 1 INTERPRETATION

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

- Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- Buyer: the firm or company who purchases the Goods from the Company.
- Budgetary Proposals: informal non-binding estimates given to the Buyer by the Company in respect of its Goods and/or Services.
- Collection: the collection of the Goods from the Company's place of business by the Buyer or its agent.
- Company: Cobal Sign Systems Ltd (Registered Number 1597410) Brookway, Hambridge Lane, Newbury, Berkshire RG14 5PE
- Conditions: the terms and conditions as set out in this agreement.
- Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions.
- Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.
- Delivery: the delivery of the Goods by the Company to the Delivery Point in accordance with condition 4.
- Delivery Point: the place specified by the Buyer where Delivery or Collection of the Goods is to take place under condition 4.
- Force Majeure Event: has the meaning given in condition 15.
- GDPR: General Data Protection Regulations ((EU) 2016/679).
- Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
- Installation: the installation of the Goods by the Company or their contractors at the location specified by the Buyer.
- Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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 now or in the future in any part of the world.

- **Manufacture:** the manufacture of the Goods by the Company for the Buyer.
- **Order:** the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's written acceptance of the Company's quotation.
- **Services:** any services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
- **Specification:** any Specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Company.
- **UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

- 1.2 Words in the singular include the plural and words in the plural include the singular.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Condition headings do not affect the interpretation of these conditions.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re- enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 A reference to writing or written includes email but not fax or any other form of electronic communication.
- 1.10 A reference to a party includes its personal representatives, successors and permitted assigns.

## 2 APPLICATION OF TERMS

- 2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The 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. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract. Nothing in this condition shall limit or exclude any liability for fraud.
- 2.3 Orders will not be accepted against Budgetary Proposals.
- 2.4 Each Order or acceptance of a formal quotation for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these Conditions. The Buyer shall be responsible for ensuring that the terms of its Order are complete and accurate.
- 2.5 No Order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the Order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer, at which point the Contract shall come into existence.
- 2.6 An accepted Order may only be cancelled or varied with the Company's written consent. In the event that the Buyer wishes to vary the Order, including any agreed Specifications, delivery dates, Installation dates or times, the Company reserves the right to charge the Buyer for the Company's additional costs (including, without limitation, any indirect, special or consequential loss, loss of profit and other economic losses) incurred in relation to the variation of the Order.

- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of Order to the Buyer. Unless specifically stipulated in writing on the quotation, any quotation is valid for a period of thirty (30) days only from its date, provided that the Company has not previously withdrawn it.
- 2.8 The Company reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.
- 2.9 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application, suitability or fitness for purpose for use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendations which is not so confirmed.

### 3 DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in the Specification within the quotation or acknowledgement of the Order. The Buyer shall satisfy itself that the Specification is correct and accurately describes its requirements. The Company reserves the right to amend the Specification of the Goods if required by applicable statutory or regulatory requirements. The Company reserves the right to make minor amendments to the Specification as it deems necessary in order to aid the manufacturing process. The Company shall notify the Buyer in advance of making any amendments to the Specification that the Company considers, in its reasonable opinion, to be of a material nature or likely to affect the Buyer's use of the Goods.
- 3.2 Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, drawings, samples, price lists and its other literature these items are for the Buyer's general guidance only, for giving an approximate idea of the Goods described in them, and shall not constitute representations by the Company and shall not form part of the Contract.
- 3.3 The Company may amend the description of the Goods if required by any applicable statutory or regulatory requirement.
- 3.4 Where a Quotation is based upon information supplied by the Buyer, the Buyer is responsible for its accuracy and any increased costs of supply resulting in any inaccuracy are the Buyer's responsibility.

## 4 DELIVERY/COLLECTION

- 4.1 Dispatch of the Goods shall take place by the Company delivering them to, or the Buyer or its agent collecting them from, the Delivery Point, whichever is agreed between the parties in writing.
- 4.2 Delivery of the Goods to the Delivery Point shall be at the Buyer's expense unless otherwise stated by the Company.
- 4.3 The Buyer shall provide at the Delivery Point at the time of Delivery or Collection and at its expense, adequate and appropriate equipment and manual labour for unloading or loading the Goods. In doing so, the Buyer shall not cause any delay to the Company.
- 4.4 If the Company is delivering the Goods, any dates specified by the Company for Delivery of the Goods are intended to be an estimate and time for Delivery shall not be made of the essence. If no dates are so specified, delivery shall be within a reasonable time.
- 4.5 If the Buyer is collecting the Goods, Collection must take place within three (3) Business Days of the Company notifying the Buyer in writing that the Goods are ready for collection. Time of Collection is of the essence.
- 4.6 If for any reason the Buyer fails to accept Delivery of any of the Goods when they are ready for Delivery, or fails to collect the Goods when they are ready for Collection in accordance with the timescale in condition 4.5, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences, authorisations or appropriate equipment and manual labour for unloading the Goods:
  - 4.6.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - 4.6.2 the Goods shall be deemed to have been delivered or collected;
  - 4.6.3 the Company may store the Goods until Delivery or Collection takes place, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and



- 4.6.4 the payments due under the Contract shall not be delayed.
- 4.7 If ten (10) Business Days after the day on which the Buyer fails to accept Delivery of the Goods, or fails to collect the Goods when they are ready for Collection in accordance with the timescale in condition 4.5, the Buyer has not accepted or taken the Goods, the Company may resell or otherwise dispose of part or all of the Goods and after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 4.8 The Company may deliver the Goods or the Buyer or its agent may, if agreed with the Company, collect the Goods, by separate instalments which shall be invoiced and paid for separately. Each instalment shall be a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

## 5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive written evidence proving the contrary within 24 (twenty-four) hours of Delivery or Collection.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

## 6 RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of Delivery or Collection, subject to condition 4.6.
- 6.2 Title to the Goods shall not pass to the Buyer until the Company has received in full (cleared funds) all sums due to it in respect of:
  - 6.2.1 the Goods;
  - 6.2.2 the Services; and
  - 6.2.3 all other sums (including but not limited to retentions) which are or which become due to the Company from the Buyer on any account.
- 6.3 The Buyer may resell the Goods before title has passed to it solely on the following conditions:
  - 6.3.1 any sale shall be affected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represents the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and
  - 6.3.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
  - 6.3.3 title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.4 Until title to the Goods has passed to the Buyer, the Buyer shall:
  - 6.4.1 hold the Goods on a fiduciary basis as the Company's bailee;
  - 6.4.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.4.3 not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 6.4.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company;
- 6.4.5 give the Company such information relating to the Goods as the Company may require from time to time, but the Buyer may resell or use the Goods in accordance with condition 6.3; and
- 6.4.6 notify the Company immediately if it becomes subject to any of the events listed in condition 12.2.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if, before title to the Goods passes to the Buyer:
  - 6.5.1 the Buyer becomes subject to any of the events listed in condition 12.2; or
  - 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer; or
  - 6.5.3 the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that title to any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them (provided that the Goods have not been resold or irrevocably incorporated into another product).
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

- 6.9 The risk in any Goods sold for export outside the UK passes to the Buyer upon receipt of the Goods by the Buyer or his shipping agent and the Buyer shall indemnify the Company against any consequences of any breach of foreign laws, regulations or licensing requirements in relation to the Goods supplied.
- 6.10 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

## 7 SUPPLY OF SERVICES

- 7.1 The Company shall supply the Services to the Buyer in accordance with the Order in all material respects.
- 7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or as notified by the Company to the Buyer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Company reserves the right to amend the Order 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 Company shall notify the Buyer in any such event.
- 7.4 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.

## 8 BUYER'S OBLIGATIONS

### 8.1 The Buyer shall:

- 8.1.1 ensure that the terms of the Order are complete and accurate;
- 8.1.2 co-operate with the Company in all matters relating to the Services;
- 8.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises and other facilities as reasonably required by the Company to provide the Services;
- 8.1.4 provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 8.1.5 obtain and maintain all necessary licences, permissions, and consents which may be required for the provision of Goods or Services before the date on which manufacture or the provision the Services are to start;
- 8.1.6 comply with all applicable laws, including health and safety laws;
- 8.1.7 keep all materials, equipment, documents and other property of the Company (Company Materials) at the Buyer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company or paid for by the Buyer, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisations;
- 8.1.8 comply with any additional obligations as set out in the Order; and
- 8.1.9 ensure that the building or structure to which the Goods are to be attached is suitable and where the Goods are to be fixed to an existing sub-fascia that the sub-fascia is suitable and of sound construction and condition. When installing the Goods onto an existing sub-fascia the Company will not intrude into or dismantle the sub-fascia but will install the Goods onto the sub-fascia on the basis that the sub-fascia is sound and suitable.
- 8.1.10 carry out any applicable health and safety assessments in relation to the Goods prior to installing and using them.

- 8.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligations (Buyer Default):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;
  - 8.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition 8.2; and
  - 8.2.3 the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.



## 9 PRICE

- 9.1 Subject to condition 2.3 and condition 2.6, the price for the Goods and/or Services shall be the price set out in the quotation. If no quotation is given, or a quotation is no longer valid:
- 9.1.1 the price for the Goods shall be the price set out in the Company's price list published on the date of Delivery or Collection or deemed delivery or collection.
- 9.1.2 the price for the Services shall be calculated in accordance with the Company's standard daily rate, with any part-day charged at the cost of a full day as set out in its current price list at the date of the Contract or as otherwise stated by the company. The Company shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services.
- 9.2 The Company may, by giving notice to the Buyer at any time before delivery or completion, 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: -
- 9.2.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.2.2 any request by the Buyer to change the Specification, delivery dates, quantities or types of Goods ordered;
- 9.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions; and
- 9.2.4 any additional work carried out by the Company to be able to perform the Services (including but not limited to the preparation of surfaces to which Goods are to be applied and the disposal of materials at the request of the Buyer); and
- 9.2.5 any failure of the Buyer to comply with any other provision of these conditions for which it is responsible.
- 9.3 Unless otherwise stated on the quotation, the price for the Goods excludes:

- 9.3.1 amounts in respect of value added tax (VAT), unless otherwise stated, which where applicable the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice;
- 9.3.2 the costs and charges for packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer;
- 9.3.3 any import or export duties, taxes, duties or charges which shall be the responsibility of the Buyer to pay;
- 9.3.4 the cost of any customs certificates (such as, but not limited to, SASO, EUR.1 or ATR1 Certificates) any costs associated with which shall be payable by the Buyer; and
- 9.3.5 the cost of any certification of the Goods outside of the European Union (including, but not limited to, UL Listing and UL certification).
- 9.4 The Company shall not be obliged to dispatch the Goods until the full price (including any taxes, charges or costs referred to in condition 9.2 above) has been paid in cleared funds, and may, in its sole discretion, cancel or delay delivery of the Goods until it has received such payment.
- 9.5 UK VAT will be charged on all Orders for Goods and/or Services unless the Buyer supplies evidence to the Company's satisfaction that:
  - 9.5.1 The supply is zero-rated or exempt; or
  - 9.5.2 The Buyer is VAT registered in the European Union and that the relevant export requirements imposed by HMRC at the time have been met; or
  - 9.5.3 The Buyer uses an approved shipping agent for export abroad and the Company receives a satisfactory Certificate of Shipment.
- 9.6 If any import duties, tariffs or levy are imposed upon the sale, licensing or other transfer of the Goods from the United Kingdom to a member state of the European Union those charges shall be paid by Buyers.

- 9.7 The Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Company, the Buyer shall make those licences and consents available to the Company prior to the relevant shipment.
- 9.8 The Inland Revenue have accepted that the Company is not deemed to be associated with the building industry and therefore are not within the province of the construction industry tax deduction scheme, as detailed in Appendix B of publication IR14/15 (CIS). There is therefore no restriction on the Company being paid in full without deduction of tax.

## 10 PAYMENT

- 10.1 The Company shall invoice and require payment for the full value of the Goods and/or Services in advance of Manufacture. The Company may, at its sole and absolute discretion, agree alternative payment terms with the Buyer, including credit terms.
- 10.2 Where Manufacture, Delivery or Collection is by instalments, the Buyer may be invoiced for each separate instalment on or at any time after the completion of each instalment.
- 10.3 Depending on the nature of the Goods and the duration of the Contract, the Company reserves the right to require a deposit with the Order and the Buyer may be sent an invoice on receipt of the Order and on each agreed stage.
- 10.4 Where credit terms have been agreed, and subject to condition 8.8, the Buyer shall pay each invoice submitted to it by the Company within thirty (30) days of receipt of the invoice. Time for payment shall be of the essence.
- 10.5 Payment may be made by bank transfer (BACS) only.
- 10.6 No payment shall be deemed to have been received until the Company has received full and cleared funds. A Delivery or Collection date cannot be confirmed until the clearance of funds. The Company will not accept liability for bank charges.
- 10.7 All payments shall be made in the currency specified on the invoice. If payment is made in any other currency, or attracts any other charges in transfer to the Company's bank account, the Buyer will meet all charges and costs incurred by the Company in exchanging or cashing such payments.
- 10.8 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 10.9 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

- 10.10 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Buyer shall pay the interest together with the overdue amount.
- 10.11 Where payment is to be by instalments the Company shall not be bound to take any step in performance of the Contract until the Buyer has paid the deposit or first instalment and if the Buyer shall fail promptly to pay the second or any subsequent instalment the Company shall be entitled to suspend or terminate its performance of the Contract and to call on the Buyer to furnish a bank guarantee for the due payment of the outstanding balance of the price.
- 10.12 If the Contract or provision of any part of it is suspended at the Buyer's request or because of default for a period of 30 days, the Company reserves the right to invoice the Buyer for work already carried out, materials specially ordered, and other additional costs including storage.

## 11 QUALITY

- 11.1.1 The Company warrants that (subject to the other provisions of these conditions) on Delivery or Collection, and for twelve (12) months from the date of Delivery or Collection, the Goods shall be of satisfactory quality (with the meaning of the Sale of Goods Act 1978) and free from manufacturing defects in design, material and workmanship. The warranty shall not apply to illumination and associated control gear and devices.
- 11.2 Subject to condition 11.3, the Company shall not be liable for a breach of the warranty in condition 11.1 unless:
- 11.2.1 the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within three (3) Business Days of Delivery; and
- 11.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 11.3 The Company shall not be liable for a breach of the warranty in condition 11.1 if:
- 11.3.1 the Buyer makes any further use of such Goods after giving such notice in accordance with condition 11.2.2; or
- 11.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 11.3.3 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions;
- 11.3.4 the Buyer alters or repairs such Goods without the written consent of the Company;
- 11.3.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards or other necessary amendment pursuant to condition 3.1.

- 11.4 Subject to condition 11.2 and condition 11.3, if any of the Goods do not conform with the warranty in condition 11.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.
- 11.5 If the Company complies with condition 11.4 it shall have no further liability whatsoever for a breach of the warranty in condition 11.1 in respect of such Goods.
- 11.6 These conditions shall apply to any repaired or replacement Goods supplied by the Company.

## 12 TERMINATION

- 12.1 If the Buyer becomes subject to any of the events listed in condition 12.2, or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend by giving written notice all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and all outstanding sums in respect of Goods and/or Services delivered to the Buyer shall become immediately due.
- 12.2 For the purposes of condition 12.1, the relevant events are:
- 12.2.1 the Buyer fails to pay any amount due under the Contract on the due date for payment;
- 12.2.2 the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.2.3 the Buyer 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 the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- 12.2.4 (being a company) 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 Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- 12.2.5 (being an individual) the Buyer is the subject of a bankruptcy petition or order;



- 12.2.6 a creditor or encumbrancer of the Buyer 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 5 (five) days;
- 12.2.7 (being a company) 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 Buyer;
- 12.2.8 (being a company) the holder of a qualifying charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- 12.2.9 a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- 12.2.10 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 12.2.2 to condition 12.2.9 (inclusive);
- 12.2.11 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 12.2.12 the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 12.2.13 (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 12.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 12.4 On termination of the Contract:

- 12.4.1 the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and / or Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt; and
- 12.4.2 the Buyer shall return all of the Company Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

## 13 LIMITATION OF LIABILITY

13.1 The Company will make every reasonable effort to ensure that all Goods and Services comply with the Specification, but it is in all cases the Buyer's responsibility to ensure that the Goods are fit and suitable for the purpose for which they are required and comply to all applicable legislation and regulations.

13.2 The Company shall have no liability in respect of any defects in the Goods arising from any specification or other material or instructions submitted by the Buyer.

13.3 Subject to condition 4, condition 5 and condition 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

13.3.1 any breach of these conditions;

13.3.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

13.3.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.3.4 Nothing in these conditions excludes or limits the liability of the Company:

13.3.5 for death or personal injury caused by the Company's negligence, or the negligence of its employees, agents or sub-contractors (as applicable); or

13.3.6 under section 2(3), Consumer Protection Act 1987; or

13.3.7 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

13.3.8 for fraud or fraudulent misrepresentation.

13.4 Subject to condition 13.2 and condition 13.3:

13.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall not exceed 100% of the price of the Goods and/or Services as set out in the Order; and

13.4.2 the following types of loss are wholly excluded:

- Loss of profits.
- Loss of sales or business.
- Loss of agreements or contracts.
- Loss of anticipated savings.
- Loss of use or corruption of software, data or information.
- Loss of damage to goodwill.
- Indirect or consequential loss.
- Costs of, or relating to, the Installation or re-installation of the Goods, other than those costs which are reasonable and properly incurred as a direct result of defective Goods or assembly

13.5 Unless the Buyer notifies the Company that it intends to make a claim in respect of an event within the notice period, the Company shall have no liability for that event. The notice period for an event shall start on the day on which the Buyer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire one month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.6 The Buyer acknowledges that if the Goods are being placed onto a wall, partition or any other property, damage may be caused and whilst the Company shall take all reasonable care so as to not cause damage and/or limit the damage caused, the Company, its employees, agents or subcontractors shall not be liable for any damage caused unless they are proven to be negligent.

13.7 This condition 13 shall survive termination of the Contract.

## 14 ASSIGNMENT/SUB-LETTING

- 14.1 The Company may assign or sub-contract the Contract or any part of it to any person, firm or company.
- 14.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 15 FORCE MAJEURE

The Company reserves the right to defer the date of Delivery or Collection or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event. A Force Majeure Event means any event beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, default of suppliers, failure of a utility service or transport network, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of ninety (90) Business Days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract by giving ten (10) Business Days written notice to the Company.

## 16 INSTALLATION, FITTING & SERVICE

- 16.1 If the Company undertakes to install the Goods or assist the Buyer or their contractor (where required) in installing the Goods at the Buyer's premises the following additional terms shall apply:
- 16.1.1 the Company shall be given clear, safe and unobstructed access to the premises and applicable immediate surrounding area(s);
  - 16.1.2 the Company shall be entitled to use free of charge such supplies of electricity, water, gas and other services as may be reasonably required to carry out the services provided;
  - 16.1.3 the Buyer shall provide at its own expense such temporary roadways, footways, scaffolding, lifting equipment and the like as may be reasonably required for the safe completion of the Installation;
  - 16.1.4 the Buyer shall at its own expense be responsible for the cleaning out and preparation of the site prior to Installation;
  - 16.1.5 the Buyer shall at its own expense be responsible for the proper fencing, guarding, lighting and protection of the works during the Installation and until it is completed;
  - 16.1.6 the Buyer shall give the Company facilities for carrying out the works on the site continuously during the normally recognised working hours or at such other hours as the Company shall in its sole discretion specify;
  - 16.1.7 the Buyer shall provide secure and suitable on-site facilities for the storage of Goods and/or Company Materials until their Installation;
  - 16.1.8 the Buyer is responsible for the connection of the Goods to the electrical supply in accordance with all applicable laws and regulations;
  - 16.1.9 the Buyer shall carry out any health and safety or risk assessments in relation to the Goods and Installation in accordance with any applicable laws and regulations;

- 16.1.10 the Buyer shall satisfy itself that the Installation has been completed to a satisfactory standard immediately following Installation and in any event prior to using the Goods, and, where requested, signature of the Company's installation note by a person reasonably appearing to be the Buyer's representative shall be conclusive proof of satisfactory installation.
- 16.2 Where the Company's ability to carry out installation is prevented or delayed by any of the clauses in 16.1, the Company reserves the right to continue with the supply of the Goods and charge for such costs (if any) as it has incurred at its standard rates in relation to such installation (up to a maximum of the amount it would have charged for the installation) in which case the Contract shall be deemed to be amended so as to limit the relevant Services to those actually provided.
- 16.3 Notwithstanding any assistance the Company may provide during the Installation, the Company accepts no liability for the Installation of the Goods by the Buyer, their contractors, or any other third parties and any such liability is excluded to the fullest extent permissible.
- 16.4 With regard to particular types of Goods, such as high-level external signage, the Buyer acknowledges that without adequate maintenance there is a risk over time that the Goods may become loose and/or detached from the building, structure or sub-fascia to which they have been fixed. The Company accepts no liability for any damage if the Buyer has not adequately maintained the Goods.

## 17 INDEMNITY

- 17.1 The Buyer shall keep the Company fully and effectively indemnified against:
- 17.1.1 any claims for infringement of any patent, registered design, logo or trade mark or any other rights of a third party by reason of the Buyer's requirements for the provision of any modified or specifically designed Goods, to the Buyer's design and at the Buyer's request, and against all costs and damages which the Company may incur in any action for such infringement; and
  - 17.2 any claim in contract or tort or otherwise to pay direct or indirect damages expenses or costs relating to damage to property or injury or loss to any person, firm or company occasioned by reason of any act or omission by the Buyer or any employee, agent or sub-contractor of it.

## 18 INTELLECTUAL PROPERTY

- 18.1 All Intellectual Property Rights arising in or arising out of or in connection with the Goods and / or Services shall remain the exclusive property of the Company and shall not be used, distributed, licensed, disclosed or registered by the Buyer or any third party without prior written consent of the Company.
- 18.2 All Goods (including codes and names), registered designs, drawings, images, photographs and descriptions may not be reproduced whatsoever without the prior written consent of the Company.
- 18.3 The Buyer acknowledges that many of the Goods supplied are the subject of patents, patent applications and/or registered designs in the United Kingdom and other countries.

## 19 DATA PROTECTION



- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 19.2 By placing a Quotation, the Buyer allows the Company to use the Buyer's personal details for the purposes of supplying the Goods and performing the Services (including passing the Buyer's details on to subcontractors) and for the marketing to it by the Company.
- 19.3 To the extent that the Company, now or at any stage in the future, processes any personal data on behalf of the Buyer, the Company shall:
- 19.3.1 process such personal data only in accordance with the Buyer's instructions;
  - 19.3.2 implement appropriate technical and organizational measures to protect such personal data against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
  - 19.3.3 use reasonable endeavours to ensure the reliability of its personnel with access to such personal data;
  - 19.3.4 notify the Buyer of any suspected, potential or actual data incident, including any suspected, potential or actual accidental, unlawful or unauthorized destruction, disclosure, loss, alteration or access in relation to personal data processed on behalf of the Buyer;
  - 19.3.5 not subcontract any processing of such personal data without the Buyer's prior written consent; and
  - 19.3.6 not process and/or transfer any such personal data to any country outside the European Economic Area without the Buyer's prior written consent.

## 20 CONFIDENTIALITY

- 20.1 The Buyer (or any receiving party) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Company, its employees, agents or subcontractors, and any other confidential information concerning the disclosing the Company's business, its Goods and Services which the Buyer may obtain. The Buyer shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Buyers obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this condition as though they were a party to the Contract. The Buyer may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This condition shall survive termination of the Contract.
- 20.2 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 21 GENERAL

- 21.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 21.2 If any provision or part-provision of the Contract is or becomes illegal, invalid or unenforceable it shall be deemed modified to the minimum extent necessary to make it legal, valid, and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.
- 21.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 21.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 21.5 In the event of a dispute between the parties arising out of the Contract, the parties shall negotiate in good faith. If unsuccessful, any dispute shall be referred to a single arbitrator who will be agreed between the parties or who failing such agreement shall be appointed at the request of the either party by the President of the Law Society.
- 21.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 21.7 Except as set out in these Conditions, no variation to the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

21.8 The Contract and any dispute or claim in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## 22 COMMUNICATIONS

22.1 All communications between the parties about the Contract shall be in writing (which shall include email) and delivered by hand or sent by pre-paid first-class post or email:

22.1.1 in case of communications to the Company if:

- (a) by post to its registered office or such changed address as shall be notified to the Buyer by the Company in writing; or
- (b) by email to the email address of the person as shall be notified to the Buyer by the Company in writing from time to time;

22.1.2 in the case of the communications to the Buyer if:

- (a) by post to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer from time to time or
- (b) by email to any email address set out in any document which forms part of the Contract or such other email address as shall be notified to the Company by the Buyer from time to time.

22.2 Communications shall be deemed to have been received if:

- (a) sent by pre-paid first-class post, two Business Days after posting (exclusive of the day of posting); or
- (b) delivered by hand, on the day of delivery; or
- (c) sent by email on a working day prior to 4:00pm, at the time of sending and otherwise on the next Business Day.

22.3 Communications addressed to the Company shall be marked for the attention of Edward Salter.

22.4 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.