

STANDARD CONDITIONS

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Additional Services (Variations): such services, which are additional to those Services set out in the Service Specification, shall be agreed in writing by both parties either prior to or when the Company is on site with such additional services being due either to additional Customer requirements or recommendations made by the Company having been accepted by the Customer.

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

Cancellation Charges: has the meaning set out in clause 15.

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 any such further recorded agreement between the Company and the Customer.

Company: Astley Signs Limited and any of its subsidiaries or divisions.

Company Materials: has the meaning set out in clause 8.1(j)

Company Premises: Redforrest House, Queens Court North, Earlsway, Team Valley, Gateshead NE11 0BP

Consumable: any item forming part of the Goods that will require replacement from time to time as part of a regular maintenance programme including but not limited to nuts, bolts, screws, fixings and electrical components including LEDs and fluorescent tubes.

Contract: the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Standard Conditions.

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

Delivery Location: has the meaning set out in clauses 4.2 and 4.4.

Force Majeure Event: has the meaning given to it in clause 16.1(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 is agreed in writing by the Customer and the Company.

Installation: The fixing of the Goods and/or setting up of the Goods in place at the Customer premises or Delivery Location.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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.

Normal Working Hours: 8.00 am to 4.30 pm on Monday and 8.00 am to 4.00 pm Tuesday to Friday.

Order: This is either the Customer's order for the supply of Goods and/or Services in accordance with the Service Specification as set out in the Customer's purchase order form, such purchase order being deemed to both include and accept these Standard Conditions or the Customer's written acceptance of the Company's quotation, such quotation having been deemed to include and be inherently based upon these Standard Conditions.

Services: the services supplied by the Company to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Company to the Customer.

Specialist Access Equipment: any powered access equipment, scaffolding or abseiling equipment.

1.2 Construction. In these Standard Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) 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.
- (c) 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; and
- (d) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order, in either form as defined above, constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Standard Conditions.

2.2 The Order shall only be deemed to be accepted either when the Company issues written acceptance of the Order or the Company, by conduct, progresses the provision of Goods and Services at which point, and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's catalogues or brochures 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.

2.5 These Standard Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation and/or proposed Service Specification given by the Company is only valid for a period of 30 Business Days from its date of issue.

2.7 All of these Standard Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Goods Specification. The Company shall not be liable for any material defects in the Goods resulting from a Goods Specification supplied by the Customer. This clause 3.2 shall survive termination of the Contract.

3.3 The Company reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

4.1 The Company shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Company references, the type and quantity of the Goods (including any specific identification numbers relating to the Goods, if applicable), any special storage instructions (if necessary) and whether Installation is required. Also, if the Order is being delivered by instalments, the outstanding balance of Goods yet to be delivered should be shown or referred to; and

4.2 The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Should the Customer choose to collect the Goods from the Company, the Delivery Location shall be deemed to be the Company premises from which the Goods are collected, and delivery of the Goods shall be completed upon the collection of the Goods.

4.5 If Installation of the Goods is required by the Customer, that requirement shall be set out in the Order and the Goods shall be installed by the Company upon delivery.

4.6 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality available in the existing current market, less the price of the Goods. 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 Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.8 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment however shall not entitle the Customer to cancel any further instalments.

4.9 Any loss or damage to the Goods in transit must be noted on the delivery note of the carrier and notified to the Company within 48 hours of delivery of the Goods. In the event of non-delivery, the Customer must notify the Company within 2 days of receipt of an invoice for the Goods.

4.10 If Installation of the Goods is required by the Customer and upon completion of the same, the Customer shall ensure that a duly authorised person is available and present to complete the required Company installation document in order to confirm the satisfactory completion of the Installation works. Any failure by the Customer to provide such a duly authorised person to sign off the works, shall be deemed to constitute full acceptance by the Customer of the completed and required Installation works as well as the satisfactory standard of the same. Any adjustment or any further works whatsoever to the Goods after the completion of Installation shall therefore incur an additional charge.

5. QUALITY OF GOODS/WARRANTY

5.1 Subject to the remaining provisions of this clause 5 the Company warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Goods Specification;

- (b) be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Company) returns such Goods to the Company's Premises at the Customer's cost,

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, except that in the case of repair, the warranty shall not include the cost of and relating to any necessary Specialist Access Equipment, which cost shall be payable by the Customer.

- 5.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer 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;
- (c) the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Customer, which drawings, designs or Goods Specifications the Company is entitled to assume are fundamentally correct;
- (d) the defect arises as a result of any structural calculations provided by the Customer which were not carried out by the Company itself;
- (e) the Customer alters, modifies, or repairs such Goods without the written consent of the Company whether during the course of routine maintenance or otherwise;
- (f) the Customer uses any third party to repair, modify and or carry out works to the Goods without the express written permission of the Company;
- (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (h) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- (i) the defect arises as a result of any failure or defect in any Consumable item.

5.4 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of the warranty at clause 5.1 shall apply to any repaired or replacement Goods supplied by the Company under clause 5.2.

5.6 The terms of the warranty at clause 5.1 do not oblige the Company to maintain the Goods after installation. The Customer is strongly advised to seek a maintenance contract with the Company or another reputable company and a failure to maintain the Goods shall render the warranty at clause 5.1 void (see clause 5.3(b)).

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer from the time of despatch of the Goods from the Company's Premises.

6.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full as cleared funds for:

- (a) the Goods; and
- (b) any other goods that the Company has supplied to the Customer in respect of which payment has become due.

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

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's 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 the Company's behalf from the date of delivery;
- (e) notify the Company immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m); and
- (f) give the Company such information relating to the Goods as the Company may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m), or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6.5 If the Customer leaves property and/or a vehicle(s) belonging to the Customer with the Company in relation to performance of the Services, the property and/or vehicle(s) shall be at the Customer's risk and the Customer shall ensure adequate insurance is in place. The Company shall not assume title to or responsibility for the property or vehicle(s) and shall not be liable for any claim for direct or consequential loss arising from loss of or damage to any of the Customer's property or vehicle(s) left with the Company.

7. SUPPLY OF SERVICES

7.1 The Company shall provide the Services to the Customer in accordance with the Service Specification in all fundamental respects.

7.2 The Company shall use reasonable endeavours to meet any agreed performance dates for the Services, 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 shall have the right to make any changes to the Services and/or Service Specification 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 the Company shall notify the Customer in any such event.

7.4 The parties may agree Additional Services (**Variations**), the cost in relation to which shall be agreed and confirmed by both parties in writing at the time that the nature and extent of the Additional Services are agreed, or the method of calculating the cost will be agreed and confirmed by both parties, again in writing, that the Variation(s) will be carried out and recorded on a time and materials basis.

7.5 The Company warrants to the Customer that the Services and Additional Services will be provided using reasonable care and skill. The Company shall not be liable to the Customer under the terms of this warranty any later than 12 months after the Services have been provided and this warranty shall become void should any third party and/or the Customer also carry out works to items maintained by the Services.

7.6 The warranty at clause 7.5 in relation to the Services and Additional Services shall not include the cost of and relating to any Specialist Access Equipment, which cost shall be payable by the Customer.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:-

(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

(b) co-operate with the Company with all matters relating to the Services;

(c) provide the Company its employees, agents, consultants and sub-contractors with access to the Customer's premises, office accommodation and other facilities as are reasonably required by the Company to provide the Services. Any costs incurred by the Company in the event of delay in obtaining access arranged by the Customer shall be charged to and be paid for by the Customer;

(d) 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 accurate in all material respects, including but limited to in relation to any structural calculations;

(e) prepare the Customer's premises to ensure that they are suitable and adequate for the supply of the Goods and/or Services. The Customer shall be responsible for ensuring that any building, foundations, fascia or structure to which the Goods are to be attached must be sound and capable of accepting the size and weight of the Goods which are to be attached to it;

(f) unless otherwise agreed in writing by the Company obtain all approvals or consents for any works carried out by the Company pursuant to the Contract as may be required by statute, contract, landlord permission or otherwise including for the avoidance of doubt all necessary planning consents;

(g) wherever Goods are to be erected in the ground, be responsible for ensuring that no underground service media for items such as water, gas, electricity or phone/internet lines will be interfered with. Any interference, damage or obstruction thereto caused by the employees/agents of the Company and/or the installation of the Goods shall be the responsibility and liability of the Customer;

(h) be responsible for ensuring compliance with any requirement, statutory or otherwise, concerning health and safety or welfare on the premises of the Customer or any clients of the Customer or any premises required to be visited on behalf of the Customer;

(i) at its own cost provide a suitable electricity supply on the site of the installation of the Goods with suitable electrical spurs and feeds for any Goods that are to be illuminated. If no suitable electrical spurs or feeds are provided by the Customer, the Company will only install such electrical spurs or feeds with the consent of and at the expense of the Customer. Any such work carried out by the Company will be at additional cost to the Customer;

(j) keep and maintain all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;

(k) approve any artwork drawings or visual representation supplied to it by the Company prior to commencement of manufacture;

(l) comply with any additional obligations set out in the Service Specification and/or Goods Specification.

8.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):-

(a) the Company shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the

Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Company's performance of any of its obligations;

- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this clause 8.2;
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

- 9.1 The price for Goods and Services shall be the price set out in the Order ("the Price").
- 9.2 As stated in clause 7.4, the specific cost for Additional Services shall be agreed by the parties or agreed to be on a time and materials basis.
- 9.3 The Company reserves the right to increase the Price if:-
 - (a) in the reasonable opinion of the Company, it subsequently becomes necessary to use any specialist equipment for the proper performance of the Contract;
 - (b) any part of the Contract, is at the request of the Customer or otherwise, performed outside Normal Working Hours;
 - (c) the cost of any materials to be used by the Company during the performance of the Contract increases as a result of circumstances both outside and beyond the Company's control.
- 9.4 In respect of Goods, the Company shall, unless it has previously notified the Customer, invoice the Customer on or at any time after completion of delivery. In respect of Services and/or Additional Services, the Company shall, unless it has previously notified the Customer that interim payments will be required, invoice the Customer on completion of the Services and/or Additional Services.
- 9.5 The Customer shall pay each invoice submitted by the Company within 30 days of the earliest of the following events:
 - (a) the date of the delivery of the Goods in circumstances where the Contract is for the supply of Goods only; and
 - (b) the date of completion of the Services in circumstances where the Contract is for the supply of Goods and Services or for Services only, and
 - (c) the date of the Company's invoice

Time for payment shall be of the essence of the Contract, and

- (d) In accordance with the provisions of the Housing Grants, Construction and Regeneration Act 1996 (**The Act**) as amended by the Local Democracy, Economic Development and Construction Act 2009, if the provision of Goods and/or Services under this Contract are deemed to be 'Construction Operations' under a 'Construction Contract' then the Company may be entitled to payments by instalments, stage payments or other periodic payments for any work provided for by this Contract. In this circumstance, the payment provisions of the Act will be implied into this Contract.
- 9.6 All amounts payable by the Customer 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 under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company 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. However, when both the Company and Customer operate within the HMRC CIS scheme the 'VAT reverse charge for Building and Construction Services' may apply.
- 9.7 Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the agreed final date for payment (**Final Date**), the Company shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Lloyds Bank plc base rate accruing on a daily basis from the Final Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 10.2 The Customer acknowledges that, in respect of any third-party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Customer obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 10.3 All Company Materials including all tools, dies and patterns used in the manufacture of the Goods are the exclusive property of the Company even if the whole or part of the cost for such tools, dies or patterns have been charged to and paid for by the Customer.

11. CONFIDENTIALITY

A party (**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 Receiving Party by the other

party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents, or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in these Standard Conditions shall limit or exclude the Company's 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 as amended (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 as amended (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987 as amended.
- 12.2 Subject to clause 12.1:
 - (a) the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
 - (b) the Company shall under no circumstances whatever be liable to the Customer for any loss or damage caused to the Customer's premises or property during the performance of the Contract;
 - (c) the Company shall under no circumstances whatever be liable to the Customer for any loss or damage suffered by the Customer arising out of any defect in the Customer's premises; and
 - (d) the Company shall under no circumstances be liable for any damage to the Customer's premises or property or to any third party by the Goods after installation.
- 12.3 Except as set out in these Standard 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.
- 12.4 The Customer is strongly advised to maintain regular and sufficient insurance cover in relation to the Goods and/or the Services.
- 12.5 This clause 12 shall survive termination of the Contract.

13. TERMINATION

- 13.1 Without limiting 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 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within seven days after receipt of notice in writing of the breach;
 - (b) 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 as amended 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;
 - (c) 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;
 - (d) 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;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (f) 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 14 days;
 - (g) 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);
 - (h) 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;
 - (i) 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;
 - (j) 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(i) (inclusive);

- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) 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; or
- (m) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy

13.2 Without limiting its other rights or remedies, the Company may terminate the Contract:

- (a) by giving the Customer one month's written notice;
- (b) with immediate effect by giving written notice to the Customer, if the Customer fails to pay any amount due under this Contract, or any other contract being performed by the Company on behalf of the Customer, on the agreed final date for payment.

13.3 Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if:

- (a) the Customer fails to make payment of any amount due under this Contract, or any other contract being performed by the Company on behalf of the Customer, on the agreed final date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m), or the Company reasonably believes that the Customer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

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

15. CANCELLATION CHARGES

15.1 No Cancellation Charges shall be charged to the Customer in the event of a termination of the Contract in accordance with clause 13.1.

15.2 The Customer acknowledges that when a Contract involving installation works is cancelled or delayed at short notice to the Company, prior to the date of installation, the Company will incur/will have incurred costs in preparation for performance of the Contract, including but not limited to materials costs, installation crew costs and management costs.

15.3 Subject to clause 15.1, where the time for installation under the Contract is either cancelled or delayed by the Customer at 7 days or less notice to the Company, the Customer agrees to the following Cancellation Charges:

- (a) Cancellation/delay 7 days in advance of installation date – 20% of the installation cost
- (b) Cancellation/delay 3 days in advance of installation date – 50% of the installation cost
- (c) Cancellation/delay 24 hours in advance of installation date – 100% of the installation cost.

15.4 Wherever an installation is to take place over more than one day, the "installation date" referred to in this Clause is the first day of the installation works.

16. GENERAL

16.1 Force Majeure:

- (a) For the purposes of the Contract, a **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other body), 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. For the purposes of clarity and certainty, any event which is declared as being either an epidemic or pandemic by the government of the United Kingdom and results in the delay to or the prevention of the required performance under this Contract will be deemed to be a Force Majeure event.
- (b) The Company shall not be liable to the Customer 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 the Company from providing any of the Services and/or Goods for more than 28 days, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16.2 Assignment and subcontracting:

(a) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

(b) The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.3 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, or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00am 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, or if sent by fax, on the next Business Day after transmission.

(c) This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

16.4 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.

16.5 Severance:

(a) If a court or any other competent authority finds that any provision of the Contract (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.

16.6 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.

16.7 Employees:

Whilst, neither the Company nor the Customer envisage that either during or following the existence of this Contract that any issues whatsoever would arise regarding the transfer or alleged transfer of the employment or engagement of any employees would occur, it is agreed that if any such issues do arise then the requirements and procedures included within the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced will be fully complied with.

17. DETERMINATION OF DISPUTES

17.1 The parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Contract.

17.2 Subject to either Party's rights under and in accordance with this Contract or at Law, prior to initiating any proceedings in the English Courts, the parties agree to follow the procedure stated herein to settle all disputes arising under or out of this Contract.

17.3

Following the receipt of written notice given by either Party to the other concerning the existence of a dispute or potential dispute arising out of or under this Contract, the operational authorised representatives of each Party shall meet within 7 days of the receipt of the initial written notice in order to discuss and resolve the dispute or potential dispute. If no such resolution is reached at or immediately following this first meeting, then the duly authorised representatives at Director or equivalent level of each Party shall meet within the 7 days following the date of the first meeting to discuss and resolve the said dispute or potential dispute. If no resolution is reached at or immediately following this second meeting, a third and final meeting shall be held, within 14 days following the date of the second meeting, between duly agreed and authorised representatives of each Party. If the dispute or potential dispute remains unresolved following this third meeting and following a period of 45 days after the date

of the receipt of the initial written notice concerning the existence of a dispute or potential dispute, then either Party will be free to pursue whatever remedies are available to them at Law.

17.4

All rights of the Parties in respect of any dispute or potential dispute will be and shall remain fully reserved and the entire procedure involving authorised representatives of the Parties as set out in Paragraph 17.3 above will be strictly confidential and will be conducted 'without prejudice' to any subsequent proceedings.

17.5

If a dispute or potential dispute is resolved in accordance with Paragraph 17.3, the Company and the Customer will create a written record of the resolution agreement reached which will then be duly signed by their designated and authorised representatives. Following this both Parties will immediately execute such further documentation and carry out such further actions necessary and required to give effect to the resolution agreement.

17.6

Neither party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an 'ex parte' basis or otherwise as a result of the terms of this Clause 17, such provisions not applying in respect of any circumstance where such remedies are sought.

17.7

Notwithstanding the above provisions, if in accordance with the provisions of the Housing Grants, Construction and Regeneration Act 1996 (**the Act**), as amended by the Local Democracy, Economic Development and Construction Act 2009, the provision of Goods and/or Services under this Contract are deemed to be 'Construction Operations' under a 'Construction Contract' then a party to this Contract has a right to refer a dispute arising under the Contract for Adjudication under a procedure complying with the Act.

18 THIRD PARTIES:

A person who is not a party to the Contract shall not have any rights under or in connection with it and furthermore no rights under the Contracts (Rights of Third Parties) Act 1999.

19 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 the Company and the Customer.

20 GOVERNING LAW AND JURISDICTION:

This Contract, and any dispute or claim arising under, 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.