

TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS TO BUSINESS CUSTOMERS

The Customer's attention is particularly drawn to the provisions of clause 11 .

1. Interpretation

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

Business Day	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Commencement Date	has the meaning set out in clause 2.3.
Conditions	means these terms and conditions as amended from time to time in accordance with clause 14.7.
Contract	means the contract between the Supplier and the Customer for the supply of Products and/or Services in accordance with these Conditions.
Customer	means the person or firm who purchases the Products and/or Services from the Supplier.
Estimate	means an approximate calculation of the value of the Contract
Force Majeure Event	has the meaning given to it in clause 13.1.
Products	means the Products (or any part of them) set out in the Order.
Products Specification	means any specification for the Products, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
Order	means the Customer's order for the supply of Products and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, Order Acknowledgment, or overleaf, as the case may be.
Order Acknowledgement	means written correspondence sent by the Supplier setting out details of the Order and payment terms.
Services	means the services, if any, supplied by the Supplier to the Customer as set out in the Service Specification below.
Service Specification	means the description or specification for any Services provided in writing by the Supplier to the Customer.
Supplier	means A R MANLEY & SON LIMITED registered in England and Wales with company number 00596052 whose registered office is at Somerwood, Rodington, near Shrewsbury, Shropshire SY4 4RF.

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

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

- 1.2.3 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;
- 1.2.4 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
- 1.2.5 a reference to **writing** or **written** includes e-mails.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Conditions.
- 2.2 It is the Customer's responsibility to ensure that the terms of Order are complete and accurate (including any drawings and Service or Product Specification)
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, descriptive matter or advertising issued by the Supplier and any descriptions of the Products or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any Estimate given by the Supplier shall not constitute an offer, and is only valid for a period of 3 months from its date of issue.
- 2.8 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.
- 2.9 Contracts for purchase of Goods made to a Specification may not be cancelled. Contracts for purchase of Goods not made to a Specification may, at the Supplier's sole discretion, be cancelled by the Customer in writing within 14 days of the Order date.

3. Products

- 3.1 To the extent that the Products are to be manufactured in accordance with a Products Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Products Specification. This clause 3.1 shall survive termination of the Contract.
- 3.2 The Supplier reserves the right to amend the Products Specification if required by any applicable statutory or regulatory requirements.
- 3.3 The Supplier reserves the right in the construction of the Products to substitute for any materials specified other materials, which the Supplier shall consider reasonably fit for the purposes. Samples submitted for approval are accepted as showing substance and general character only. This is not a sale by sample.
- 3.4 Glass and glazing are not included unless otherwise stated.
- 3.5 Where doors and joinery are supplied with a factory applied equalising stain or primer, the Customer must treat such products immediately after delivery with a preservative base coat and a minimum of two coats of proprietary wood stain and primed joinery must be treated with a full paint finish. Primer and equalising stains do not give long term protection against ingress of moisture and the Supplier cannot accept responsibility for Products not treated as recommended after sale.
- 3.6 Acceptance by the Customer of a Product Specification for a specific purpose shall constitute acceptance by the Customer that the Products are suitable for the intended purpose provided that they comply with the Specification.

4. Collection and Delivery of Products

- 4.1 Where collection of the Products has been agreed by the parties, the Customer shall collect the Products from the Supplier's premises at Somerwood, Rodington, near Shrewsbury, Shropshire SY4 4RF or such other location as may be advised by the Supplier at any time after the Supplier notifies the Customer that the Products are ready.
- 4.2 The Supplier may deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Products are ready.
- 4.3 The Supplier will notify the Customer in either the Estimate or the Order where any costs associated with delivery are additional.
- 4.4 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.
- 4.5 The Customer shall provide reasonable access to the Delivery Location at the time of delivery of the Goods and without causing delay to the Supplier's drivers or vehicles.
- 4.6 The Customer shall unload all goods at the Delivery Location promptly and the Supplier shall not be held responsible for any damage to the Goods in the course of unloading.
- 4.7 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.8 The Customer shall, on delivery, sign a delivery note confirming that the Products have been received in good condition and the Customer shall notify the Supplier of any shortages or defects in the Products within 48 hours of the delivery.
- 4.9 The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.
- 4.10 If the Customer fails to accept or take delivery of the Products within five Business Days of the Supplier notifying the Customer that the Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Products:
- 4.10.1 delivery of the Products shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Products were ready; and
- 4.10.2 the Supplier shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.11 If ten Business Days after the Supplier notified the Customer that the Products were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
- 4.12 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality of Products

- 5.1 The Supplier warrants that on delivery[, and for the relevant period set out in clause 5.2 from the date of delivery (**warranty period**),] the Products shall:
- 5.1.1 conform in all material respects with their description and any applicable Products Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 The Supplier gives the following warranties:
- 5.2.1 subject to clause 3.6, timber products manufactured by the Supplier are guaranteed against faulty materials or workmanship for a period of five years from the date of Delivery. Failure to carry out the recommended instructions for storage, decorating, sealing and installation of joinery products can seriously affect their performance and will invalidate any guarantees.

- 5.2.2 Building works carried out by the Supplier are guaranteed against faulty materials or workmanship for one year from the date of invoice.
- 5.3 The warranty given in clause 5.2.1 above does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.
- 5.4 Subject to clause 5.5, if:
- 5.4.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery (and in any event within 7 days of discovery) that some or all of the Products do not comply with the warranties set out in clauses 5.1 and 5.2;
- 5.4.2 the Supplier is given a reasonable opportunity of examining such Products; and
- 5.4.3 the Customer (where practical and if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in part or in full within proportion, as appropriate.
- 5.5 The Supplier shall not be liable for the Products' failure to comply with the warranties in clauses 5.1 and 5.2 if:
- 5.5.1 the Customer makes any further use of such Products after giving a notice in accordance with clause 5.4;
- 5.5.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- 5.5.3 the defect arises as a result of the Supplier following any drawing, design or Products Specification supplied by the Customer;
- 5.5.4 the Customer alters or repairs such Products without the written consent of the Supplier;
- 5.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 5.5.6 the Products differ from their description or the Products Specification (as applicable) as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranties set out in clauses 5.1 and 5.2.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Products supplied by the Supplier under clause 5.4.

6. Title and risk

- 6.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 6.2 Title to the Products shall not pass to the Customer until the earlier of:
- 6.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Products and any other Products that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and
- 6.2.2 the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Products has passed to the Customer, the Customer shall:
- 6.3.1 store the Products separately from all other Products held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- 6.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.13; and
- 6.3.5 give the Supplier such information relating to the Products as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:

- 6.4.1 it does so as principal and not as the Supplier's agent; and
- 6.4.2 title to the Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.13, then, without limiting any other right or remedy the Supplier may have:
 - 6.5.1 the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 the Supplier may at any time:
 - 6.5.2.1 require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

7. Supply of Services

- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all 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 Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's obligations

- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order and (if submitted by the Customer) information contained in the Products Specification and any Services Specification are complete and accurate;
 - 8.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.2 If the Supplier's performance of any of its obligations in respect of the supply of the Products or provision 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**):
 - 8.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of its obligations 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 the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

- 9.1 The price for the Products and any Services shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. Where no additional costs for delivery are stated in the Estimate or Order Acknowledgement, the price of the Products includes costs and charges of packaging, insurance and transport of the Products, for deliveries made between 9.00am and 5.00pm on a Business Day. Deliveries outside these times will incur additional charges.
- 9.2 The Supplier reserves the right to increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Supplier that is due to:
- 9.2.1 any factor beyond the control of the Supplier (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 Customer to change the delivery date(s), quantities or types of Products ordered, or the Products Specification; or
 - 9.2.3 any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products.
- 9.3 The Supplier may invoice the Customer on or at any time after completion of delivery. The Supplier reserves the right to issue interim invoices for work carried out and materials used in the preparation of Goods on or after 28 days from acceptance of the Order.
- 9.4 The Customer shall pay each invoice submitted by the Supplier:
- 9.4.1 In compliance with the payment terms for each Order as set out on the Order Acknowledgment and/or the Estimate ; and
 - 9.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier;and
- time for payment shall be of the essence of the Contract.
- 9.5 If the Customer requests that the Supplier delays delivery beyond the date when the Products are ready for delivery, the Supplier reserves the right:
- 9.5.1 to invoice the Customer on or after the third day following the day the Products were ready for delivery; and
 - 9.5.2 to increase the price of the Products if delivery is not taken within 28 days of the Products being ready for delivery.
- 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 Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 9.9 The Supplier reserves the right to claim damages or other remedy or withhold further deliveries until payment is made and/or to cancel the Contract in respect of the whole or part of the Products remaining undelivered and/or to suspend work for so long as any overdue payments remain outstanding.

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Products or Services shall be owned by the Supplier.

11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2 fraud or fraudulent misrepresentation;

- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 11.1.5 defective products under the Consumer Protection Act 1987; or
 - 11.1.6 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Supplier shall under no circumstances whatever 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; and
 - 11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products.
- 11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 The Supplier accepts no liability whatsoever for the following:
- 11.4.1 defects or losses caused by the Customer's negligence, inadequate, improper or careless storage of Products after delivery; and
 - 11.4.2 Products not primed and undercoated immediately after delivery; and
 - 11.4.3 Products not stored under cover in a dry place raised from the ground immediately after delivery; and
 - 11.4.4 any claim for defective workmanship or faulty materials beyond making good by the Supplier free of charge to the Customer.
- 11.5 Where the Supplier replaces or repairs Products, such replacement or repair shall extend only to Products in white or primed state as applicable and the Supplier shall not be responsible for work required by any other trades including without limitation removal, refixing and making good by other trades.
- 11.6 This clause 11 shall survive termination of the Contract.

12. Termination

- 12.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 12.1.1 the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after being notified in writing to do so;
 - 12.1.2 the Customer 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;
 - 12.1.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or a solvent reconstruction;
 - 12.1.4 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 Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 12.1.5 the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - 12.1.6 a creditor or encumbrancer of the Customer 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;

- 12.1.7 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 Customer (being a company);
 - 12.1.8 the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 12.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - 12.1.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.2 to clause 12.1.9 (inclusive);
 - 12.1.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 12.1.12 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 12.1.13 the Customer (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.
- 12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 12.4 On termination of the Contract for any reason:
- 12.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products or Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 12.4.2 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
 - 12.4.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. Force majeure

- 13.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.2 The Supplier 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.
- 13.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Products for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. General

14.1 Assignment and other dealings.

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

14.2 **Notices.**

14.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

14.3 **Severance.**

14.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.3.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4 **Waiver.** A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

14.7.1 The Supplier reserves the right to make additional charges in relation to any agreed variations to quantity or Specification of the Products or Services and to submit revised anticipated delivery dates.

14.8 **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

14.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).