

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Goods and/or Services in accordance with Clause 5 (Charges and payment).

Commencement Date: has the meaning given in Clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 11.5.

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

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

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

Customer Default: has the meaning set out in Clause 4.2.

Data Protection Legislation: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Deliverables: any deliverables set out in the Order produced by the Supplier for the Customer.

GDPR: General Data Protection Regulation (EU) 2016/679).

Goods: any Goods supplied by the Supplier to the Customer as set out in the Order.

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 or will subsist now or in the future in any part of the world.

Order: the Customer's order for Goods and/or Services as set out the Customer's written acceptance of the Supplier's quotation.

Services: Any services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Order.

Supplier: Tamworth Corporation Limited (Company Number 2928668) whose registered office is at 1349/1353 London Road, Leigh-On-Sea, Essex, SS9 2AB and/or S&S Northern Limited (Company Number 3000888) whose registered office is at Ryans Chartered Accountants, 67 Chorley Old Road, Bolton, BL1 3AJ and/or Lloyd & Lloyd Limited (Company Number 07849271) whose registered office is at 1422-4 London Road, Leigh-On-Sea, Essex, SS9 2UL, whichever company or companies is supplying the Goods or Services.

Supplier Materials: has the meaning set out in Clause 4.1(h).

1.2 Interpretation:

1.2 Interpretation of certain references

- (a) 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.
- (b) 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.
- (c) A reference to writing or written includes fax and email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 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).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 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.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

3.1 The Supplier shall supply the Goods and/or Services to the Customer in accordance with the Order in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order or where otherwise agreed, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier 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 Goods and/or Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that any Services will be provided using reasonable care and skill and in relation to any Goods supplied that the Supplier has the right to sell the Goods or will have such a right at such time when the Goods are to pass.

3.5 Any Goods shall be supplied according to the descriptions and specifications given in the relevant and current brochures or other promotional literature provided by the Supplier.

3.6 The Supplier will, free of charge, within a period of 3 months from the date of delivery of any Goods which are proved to the reasonable satisfaction of the Supplier to be damaged or fail to comply with such descriptions and specifications in the Supplier's brochures due to defects in material, workmanship or design, repair or at its option replace such Goods. Any damage or defect must be reported within such period, in writing, to the Supplier at the office from which the Goods were despatched. This obligation on the part of the Supplier will not apply where:-

- (a) the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- (b) the Goods have been improperly installed or connected by the Customer;
- (c) the Goods have damaged by fire, water or smoke;
- (d) the Goods have (where applicable) exceeded the guarantee or warranty period;
- (e) any maintenance requirements have not been complied with;
- (f) any other reason which in the Supplier's reasonable discretion does not entitle the Customer to a refund or for return of Goods.

3.7 In the event that any Goods are to be returned:-

- (a) the Supplier shall be supplied with a valid purchase order number by the Customer before despatching any Goods, replacement or otherwise
- (b) any returned Goods must be marked with a return authority number (RAN) which will be supplied by the Supplier and should be accompanied by a written explanation for the reason for the return;
- (c) the complete packaging must be retained in case of suspected pilfering or a breakage has occurred. If pilfering is suspected, the Supplier's carriers and the Supplier must be notified immediately;
- (d) the complete packaging material should be retained where it is a warranty condition to do so, i.e. in cases where equipment may have to be returned for service or repair at regular intervals;
- (e) any returns are to be at the expense of the Customer unless expressly agreed by the Supplier in writing.

3.8 The Supplier may separately offer:-

- (a) over the phone support/diagnosis;
- (b) indepth technical/analytical support relating to any Goods;

However, unless this is specifically offered then the Supplier shall be under no obligation to supply this.

3.9 In relation to any site faults, the Supplier confirms as follows:-

- (a) the Supplier is not a “field service” organisation but will be willing under certain circumstances, and at the sole discretion of the Supplier, to attend the site when needed to assist field personnel with “on site” fault diagnosis;
- (b) the Supplier will require a purchase order number prior to attending the site in the event that charges need to be applied;
- (c) the Supplier reserves the right to issue call out charges, charged at the Supplier’s standard rate as may be determined by the Supplier from time to time;
- (d) if an on site fault is found to be caused by manufacturing defect on a product supplied by the Supplier, the call out charge will be cancelled. If, in this case, the product is under warranty terms, a new product will be issued free of charge and delivered at the Supplier’s expense

4. Customer obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and/or Services;
- (c) 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;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply any Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of any Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which any Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (i) comply with any additional obligations as set out in the Order; and
- (j) ensure that it has personnel available to take delivery of any Goods at all reasonable times during business hours

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend its obligation to supply the Goods and/or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 The Charges for any Goods and/or Services shall be and provided for in the Supplier's quotation but if in relation to any Services the Supplier considers that further time will be needed then the Supplier will be entitled to increase the Charges on a reasonable basis having regard to any additional work required.

5.2 The Supplier shall invoice the Customer in relation to any Goods on delivery of the Goods or in relation to any Services on completion of the Services.

5.3 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) 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.

5.4 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 at the same time as payment is due for the supply of the Goods and/or Services.

5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

6.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

6.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing any Services to the Customer.

7. **Data protection and data processing**

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

7.3 Without prejudice to the generality of Clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.

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

8.1 The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

8.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or section 12 of the Sale of Goods Act 1979 (implied terms of that title etc.).

8.3 Subject to Clause 8.2, the Supplier's total liability to the Customer shall not exceed the Charges actually paid for the relevant Order. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

8.4 Any other amounts awarded or agreed to be paid under this contract shall count towards the cap on the Supplier's liability under Clause 8.3.

8.5 This Clause 8.5 sets out specific heads of excluded loss:-

- (a) Subject to Clause 8.2, the types of loss listed in Clause 8.5(c) are wholly excluded by the parties;

(b) If any loss falls into one or more of the categories in Clause 8.5(c) and also falls into a category, or is specified, in Clause 8.5(d), then it is not excluded.

(c) The following types of loss are wholly excluded:-

- (i) Loss of profits
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

8.6 The Supplier has given commitments as to compliance of the Goods and/or Services with relevant specifications in Clause 3. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8.8 This Clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without affecting any other right or remedy available to it, the Supplier 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 any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) 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.

9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) there is a change of control of the Customer.

9.3 Without affecting any other right or remedy available to it, the Supplier may suspend the delivery of Goods or supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 9.2(b) to Clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10. Consequences of termination

10.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Goods, Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier 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 the Contract.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

11.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

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

11.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 11.3(b);
- (b) Each party may disclose the other party's confidential information:-
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 Entire agreement.

- (a) 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

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

11.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the initial quote;
- (b) Any notice or communication shall be deemed to have been received:-
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) 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 or at the time recorded by the delivery service; and
 - (iii) if sent by fax or email], at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

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

11.11

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

Once you have read and agreed the terms and conditions please sign below and return to us.

Signature

Name

Position

Customer

Address

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