

East Yorkshire Aluminium & Glass Limited

Conditions of Sale (2018 Edition)

1. Interpretation

1.1 In these Conditions the following words shall have the following meanings:

Buyer	the person, firm or company who purchases Goods and/or Services from Supplier.
Business Day	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
Conditions	the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between Supplier and Buyer.
Contract	the contract between Supplier and Buyer for the supply of Goods and/or performance of the Services in accordance with these Conditions.
Contract Price	the price for the supply of the Goods and/or performance of the Services the subject of the Contract
Force Majeure Event	has the meaning given to it in Condition 16.
Goods	any goods agreed in the Contract to be supplied to Buyer by Supplier (including any part or parts of any Order for Goods).
Goods Specification	any specification for the Goods, including any relevant plans, drawings and measurements submitted by Buyer or produced by Supplier (as applicable).
Installation Services	the installation of any Goods by Supplier for Buyer as detailed in the Order
Order	Buyer's order for the supply of Goods and/or performance of the Services, as set out overleaf.
Services	the Surveying Services and/or Installation Services (as applicable)
Site	the address where the Goods will be delivered and/or the Services will be performed as set out the Order
Supplier	East Yorkshire Aluminium & Glass Limited registered in England and Wales with company number 01230670, or any subsidiary or associated company which supplies

Goods to and/or performs Services for Buyer.

Supplier Materials

has the meaning given in Condition 9.1.11.

Surveying Services

survey of the Site and production of a Goods Specification by Supplier for Buyer.

1.2 Words in the singular include the plural and vice versa.

2. Basis of contract

2.1 These Conditions cancel and supersede any earlier conditions of sale of Supplier and shall govern the Contract to the exclusion of any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order, specification or other document, or which are implied by trade, custom, practice or course of dealing, and Buyer waives any right which it might have to rely on such terms or conditions.

2.2 No variation to these Conditions or any representation about the Goods and/or Services shall have effect unless expressly agreed in writing and signed by a duly authorised representative of Supplier.

2.3 Each Order for Goods and/or Services by Buyer from Supplier shall be deemed to be an offer by Buyer to purchase Goods and/or Services subject to these Conditions.

2.4 No Order placed by Buyer shall be deemed to be accepted by Supplier until Supplier has confirmed acceptance of the Order or (if earlier) Supplier delivers the Goods or performs the Services for Buyer.

2.5 Any quotation is given on the basis that no contract will come into existence until Supplier has confirmed acceptance of Buyer's Order or (if earlier) delivers the Goods or performs the Services. Any quotation is valid only for all the Goods and/or the Services referred to in the quotation for a period of three months from its date, provided that Supplier has not previously withdrawn it. Supplier may reject an Order which is for only part of the Goods and/or the Services the subject of a quotation. Supplier will reject an Order if Supplier is unable to obtain satisfactory credit references for Buyer for the value of the Contract.

2.6 Supplier may notify to Buyer a credit limit for purchasing Goods and Services from Supplier. Supplier shall be entitled to change such credit limit or remove Buyer's credit terms at any time upon giving notice to Buyer.

3. Description

3.1 Any samples, drawings, descriptive matter or advertising issued by Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and Supplier shall be entitled to correct any error without liability to Buyer.

3.2 Supplier reserves the right to change the Goods Specification and/or the Services after acceptance of Buyer's Order provided that such change does not materially alter the characteristics of the Goods and/or the Services (as applicable).

3.3 The sale of the Goods shall not be a sale by sample.

4. Delivery of Goods

4.1 The Supplier shall deliver or arrange delivery of the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**"). Buyer shall unload the Goods on delivery unless the Delivery Location is the Supplier's premises in which case the Buyer shall load the Goods at the Delivery Location.

4.2 Delivery of the Goods shall be completed when the Goods arrive at the Delivery Location.

4.3 Any date specified by Supplier for delivery of the Goods is an estimate only and time for delivery shall not be made of the essence by notice. Where Supplier agrees to change the specification or quantity of Goods ordered Supplier shall be entitled to adjust the delivery date accordingly. If no date for delivery has been so specified, delivery will be within a reasonable time. For information only, the manufacture period in respect of the Goods is typically six to eight weeks from receipt of all information requested by Supplier from Buyer.

4.4 Subject to the other provisions of these Conditions, Supplier shall not be liable for any loss (including but not limited to loss of profit and consequential loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle Buyer to terminate or rescind the Contract.

4.5 If for any reason Buyer will not take delivery of any of the Goods, the Contract Price shall become immediately due and payable and risk in the Goods will pass to Buyer. Supplier may store the Goods until actual delivery and Buyer will be liable for all related costs and expenses (including without limitation demurrage, storage and insurance). Without prejudice to Supplier's right to recover from Buyer any sums due to Supplier, if Buyer has not collected or taken delivery of the Goods within 14 days from the date upon which the Contract Price became due and payable Supplier may dispose of the Goods in such manner as Supplier may determine.

5. Shortfalls and Non-Delivery

5.1 The quantity of any consignment of Goods as recorded by Supplier upon despatch from Supplier's place of business shall be conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

5.2 Supplier shall not be liable for any non-delivery of Goods unless written notice is given to Supplier within three Business Days of the estimated date of delivery supplied by Supplier.

5.3 Supplier shall not be liable for any shortfall in the delivery of Goods unless written notice is given to Supplier within three Business Days of delivery.

5.4 Any liability of Supplier for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.5 Any liability of Supplier for any shortfall in the delivery of the Goods shall be limited to making up the shortfall within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. Risk and Ownership

6.1 The Goods shall be at the risk of Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to Buyer until Supplier has received in full in cash or cleared funds:

6.2.1 all sums payable in respect of the Goods; and

6.2.2 all other sums which are or which become payable to Supplier from Buyer on any account including any interest on such sums,

in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until ownership of the Goods has passed to Buyer, Buyer shall:

6.3.1 store the Goods (at no cost to Company) separately to other goods of Buyer or any third party in a way that they remain readily identifiable as Supplier's property;

6.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition insured for their full price from the date of delivery against all risks and hold the proceeds of insurance on trust for Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;

6.3.4 notify Supplier immediately if it becomes subject to any of the events listed in Conditions 14.1.2 to 14.1.4; and

6.3.5 give Supplier such information relating to the Goods as Supplier may require from time to time.

6.4 Subject to Condition 6.5, Buyer may resell or use the Goods before ownership has passed to Buyer solely on the condition that any sale or use shall be on Buyer's own behalf in the ordinary course of Buyer's business. If Buyer resells the Goods before ownership has passed to Buyer, any such sale shall be at full market value and Buyer shall deal as principal (not as Supplier's agent) when making such sale. In such circumstances, title to the Goods shall pass from Supplier to Buyer immediately before the time at which resale by Buyer occurs.

6.5 Buyer's right to possession, use and resale of the Goods before ownership has passed to Buyer shall terminate immediately and all sums shall become due and payable immediately and Buyer agrees that Supplier shall have the right to rescind or terminate the Contract and/or to suspend any further deliveries under the Contract if any of the following events, or Supplier reasonably believes that any of the following events will, happen:

6.5.1 Buyer is affected by any of the events specified in Conditions 14.1.2 to 14.1.4; or

- 6.5.2 Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Supplier and Buyer, or Buyer suspends or ceases to carry on all or a substantial part of its business.
- 6.6 Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Supplier.
- 6.7 Supplier may at any time require Buyer to deliver up all Goods in Buyer's possession which have not been resold or irrevocably incorporated into another product.
- 6.8 Buyer grants Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.
- 6.9 Where Supplier is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer shall be deemed to have sold all goods of the kind sold by Supplier to Buyer in the order in which they were invoiced to Buyer.
- 6.10 On termination of the Contract, howsoever caused, Supplier's (but not Buyer's) rights contained in this Condition 6 shall remain in effect.

7. Quality of the Goods

- 7.1 Subject to the exceptions set out below in this Condition 7, Supplier warrants that, from the date of delivery (where the Contract is for the supply of Goods only) or from the date of installation (where the Contract includes Installation Services) and for the appropriate period set out below in Conditions 7.2 and 7.3, the Goods shall be free from material defects.
- 7.2 Subject to this Condition 7, the warranty period is:
- 7.2.1 five years in respect of all Goods which are UPVC and aluminium Goods and one year in respect of the working parts of those Goods;
- 7.2.2 twelve months in respect of all Goods which are hardwood Goods (which includes wooden frames into which double glazed units are fitted);
- 7.2.3 five years in respect of all Goods which are double glazed units (which, for the avoidance of doubt, does not include any wooden frames into which the double glazed units are fitted);
- 7.2.4 five years in respect of all Goods that are Fascias and Soffits; and
- 7.2.5 12 months in respect of all Goods that are gutters or electrical good and any building work.
- 7.3 Where the Contract is for or includes any Goods which are manufactured by a third party, Buyer shall have the benefit of any warranty given to Supplier in respect of those Goods where it is possible for Supplier to assign the benefit of such warranty to Buyer.

- 7.4 The warranty in Condition 7 does not apply to any defect in the Goods to the extent such defect arises from:
- 7.4.1 fair wear and tear;
 - 7.4.2 wilful damage, abnormal storage or working conditions, accident, negligence by Buyer or by any third party; abrasive cleaners, bleach, solvents, thinners, white spirits, must not be used to clean any products.
 - 7.4.3 failure by Buyer or a third party to use the Goods in accordance with the relevant user instructions including those available on Supplier's website;
 - 7.4.4 any alteration or repair by Buyer or by a third party who is not one of Supplier's authorised repairers;
 - 7.4.5 inclement weather where it would not be reasonable to expect the Goods to withstand such weather without damage;
 - 7.4.6 defective or inadequate Goods Specification (unless such Goods Specification has been produced by Supplier pursuant to any Surveying Services performed by Supplier for Buyer);
 - 7.4.7 subsidence due to soil shrinkage, tree roots or underground workings (e.g. a mine);
 - 7.4.8 the failure of foundations or structure where these have not been constructed by Supplier;
 - 7.4.9 warping, shrinkage, or expansion of the foundations, structure or media supporting and/or surrounding the Goods; or
 - 7.4.10 discolouration or frost damage to brickwork or minor defects to plaster or brickwork due to settlement of the Goods once they have been installed.
- 7.5 The warranty in Condition 7 does not apply in respect of marks on glass which are not visible when viewed:
- 7.5.1 from a distance of more than 3000mm if the glass is toughened and laminated glass and is within the Glass and Glazing Federation Guidelines; or
 - 7.5.2 2000mm in all other cases.
- 7.6 Supplier gives no guarantee, warranty or condition that the Goods will eliminate or reduce condensation as condensation is inevitable in any property which is not adequately ventilated.
- 7.7 Supplier will take all reasonable steps to preserve the appearance of the brass and lead used in the Goods but by their nature both brass and lead will tarnish when exposed to the atmosphere. The warranty in Condition 7 does not extend to brass or lead. Supplier recommends that such fittings are regularly maintained to reduce as far as possible the effects of tarnishing.
- 7.8 All claims under the warranty in Condition 7 must be made in writing and sent to East Yorkshire Aluminium & Glass Limited, Wiltshire Road, Dairycoates Industrial Estate, Hull, HU4 6QQ.

- 7.9 Following a claim under the warranty in Condition 7, if Supplier is satisfied that the defect has arisen because of faulty workmanship or materials Supplier will:
- 7.9.1 where the Contract is for the supply of Goods only, at its option, repair the Goods or provide replacement Goods or components free of charge. Unless otherwise agreed in writing, Supplier shall not perform any removal services or other services in respect of the defective Goods or perform Installation Services or any other services in respect of the replacement Goods or components; or
 - 7.9.2 where the Contract is for the supply of Goods and Installation Services in respect of those Goods, at its option, repair or replace the Goods or the faulty component free of charge. If Supplier is replacing the Goods or the faulty component, Supplier shall, unless otherwise agreed in writing, remove the defective Goods and perform Installation Services in respect of the replacement Goods or components.

If the Goods or component is no longer available Supplier will supply the nearest suitable alternative. All works carried out under the warranty will be carried out on Business Days only between 8:00 and 16:30.

8. Services

- 8.1 Where Supplier has agreed to provide Surveying Services, Supplier will contact Buyer to arrange for one of Supplier's technical surveyors to undertake a survey at the Site. Supplier will produce a Goods Specification for Buyer's approval following the survey. If:
- 8.1.1 the survey reveals that any additional work will be required to supply the Goods and/or perform the Services Supplier reserves the right to increase the Contract Price to reflect any increased costs to Supplier. If Buyer is unwilling to pay the increased Contract Price, Buyer may terminate the Contract by notice in writing to Supplier within 5 Business Days of notice from Supplier of the increased Contract Price. In such circumstances, Supplier shall return any deposit paid by Buyer in respect of the Goods, save that Supplier may retain a sum from the deposit equivalent to the Supplier's charges for the Surveying Services;
 - 8.1.2 pursuant to the Surveying Services, Supplier discovers that it is unable to supply the Goods and/or perform the Installation Services Supplier may terminate the Contract with immediate effect by notice in writing to Buyer. If Supplier terminates the Contract pursuant to this Condition 8.1.2, Supplier shall return any deposit paid by Buyer in respect of the Goods, save that Supplier may retain a sum from the deposit equivalent to the Supplier's charges for the Surveying Services.
- 8.2 Where Supplier has agreed to provide Installation Services, Supplier will notify Buyer when the Goods are ready for installation, following which Supplier will require a minimum period of two weeks notice in writing from Buyer of the date(s) on which Buyer would like Supplier to perform the Installation Services. Following receipt of written notice from Buyer Supplier will, subject to these Conditions, agree the date(s) on which Supplier will perform the Installation Services.
- 8.3 Unless otherwise agreed by Supplier in writing, Services shall be performed by Supplier between 8:00 and 16:30 on Business Days only.

8.4 Supplier shall use reasonable endeavours to meet any performance dates for the Services agreed in writing by the parties but any such dates shall be estimates only which are subject to design, approval and manufacture periods in respect of the Goods and time shall not be of the essence for the performance of the Services.

8.5 Supplier warrants to Buyer that the Services will be performed using reasonable care and skill.

9. Customer's obligations

9.1 Buyer shall:

9.1.1 ensure that the terms of its Order are complete and accurate. Supplier shall not be liable to Buyer if the terms of its Order are not complete or accurate.

9.1.2 where the Goods Specification is submitted by Buyer, ensure that the Goods Specification is complete and accurate. Buyer acknowledges and agrees that Supplier shall rely on the Goods Specification and will not undertake a Site visit to verify the Goods Specification. Supplier shall not be liable to Buyer if the Goods Specification is not complete or accurate. If: (i) Supplier becomes aware of any error or omission in respect of the Goods Specification or if the Goods Specification is not complete and accurate in all material respects ("Specification Error"); and/ or (ii) Supplier is unable to perform the Installation Services as a result of the Specification Error, without limiting or affecting any other right or remedy available to Supplier:

(a) Supplier reserves the right to increase the Contract Price to reflect any increased costs to Supplier resulting from correcting the Specification Error; and/or

(b) if it is not possible for Supplier to perform the Installation Services as a result of the Specification Error, Supplier may terminate the Contract with immediate effect by notice in writing to Buyer. If Supplier terminates the Contract pursuant to this Condition 9.1.2(b) Buyer shall pay to Supplier all costs incurred by Supplier in performing its obligations in the Contract up to the date of termination.

This Condition 9.1.2 shall not apply where Supplier has produced the Goods Specification pursuant to Condition 8.1;

9.1.3 co-operate with Supplier in all matters relating to the Services;

9.1.4 provide Supplier with free, uninterrupted access to fully and properly prepared working areas as may be required by Buyer to perform the Services;

9.1.5 ensure the suitability of any sub-surfaces, openings and any other areas where the Goods are to be installed at the Site are fit for purpose, are to the correct dimensions and are complete in all respects. If Supplier notifies Buyer of any remedial work which must be carried out by Buyer, Buyer shall complete such remedial work before Supplier performs any Installation Services. If Buyer fails to complete such remedial work within any timeframes set by Supplier then, without limiting or affecting any other right or remedy available to it, Buyer may terminate the Contract with immediate effect by notice in writing to Supplier and Buyer shall pay to Supplier all costs incurred by Supplier in performing its obligations in the Contract up to the date of termination;

- 9.1.6 ensure that any employees of Buyer who the parties have agreed in writing will be made available at the Site will be made available at the Site on the dates and times agreed by the parties;
 - 9.1.7 provide Supplier, its employees, agents, consultants and subcontractors, with access to the Site, office accommodation and other facilities as reasonably required by Supplier to perform the Services;
 - 9.1.8 provide Supplier with such information and materials as Supplier may reasonably require in order to perform the Services, and ensure that such information is complete and accurate in all material respects;
 - 9.1.9 unless otherwise agreed in writing, obtain and maintain all necessary licences, permissions and consents (including, but not limited to, any applicable planning permissions and building consents) in respect of the Site which may be required for the performance of the Services by Supplier before the date on which the Services are to start;
 - 9.1.10 comply with all applicable laws, including health and safety laws;
 - 9.1.11 where Supplier is required to store materials, equipment, documents and other property of Supplier ("**Supplier Materials**") at the Site in order to perform the Services, keep such Supplier Materials in safe custody at Buyer's own risk, maintain Supplier Materials in good condition until returned to Supplier, and not dispose of or use Supplier Materials other than in accordance with Supplier's written instructions or authorisation; and
 - 9.1.12 comply with any additional obligations as set out in the Order and the Goods Specification.
- 9.2 If Supplier's performance of any of its obligations under the Contract is prevented or delayed by an act or omission by Buyer or failure by Buyer to perform any relevant obligation ("**Customer Default**"):
- 9.2.1 without limiting or affecting any other right or remedy available to it, Supplier shall have the right to suspend performance of the Services until Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays Supplier's performance of any of its obligations;
 - 9.2.2 Supplier shall not be liable for any costs or losses sustained or incurred by Buyer arising directly or indirectly from Supplier's failure or delay to perform any of its obligations as set out in this Condition 9.2; and
 - 9.2.3 Buyer shall reimburse Supplier on written demand for any costs or losses sustained or incurred by Supplier arising directly or indirectly from the Buyer Default.

10. Charges and payment

- 10.1 Unless otherwise agreed in writing by Supplier, the Contract Price shall be the price in force at the date of acceptance of Buyer's Order. The Contract Price shall be exclusive of value added

tax (where applicable) and delivery charges (where applicable), which sum Buyer shall pay at the same time.

- 10.2 Supplier shall be entitled at any time prior to delivery of the Goods and/or performance of the Services to increase the Contract Price to reflect any increase in the cost of the Goods and/or Services to Supplier after acceptance of Buyer's Order which is due to factors beyond Supplier's reasonable control including, without limitation, currency exchange rate fluctuations, increases in taxes and duties and any other increase incurred by Supplier in respect of the Goods and/or Services.
- 10.3 Supplier reserves the right to adjust the Contract Price to reflect any alteration to the Goods Specification agreed between Supplier and Buyer after acceptance of Buyer's Order.
- 10.4 Supplier may require Buyer to pay a deposit before it commences manufacture of the Goods.
- 10.5 If the Contract is for the supply of Goods only, subject to Condition 10.10 and unless otherwise agreed in writing by the parties, Supplier shall invoice the Customer for the Contract Price (or the balance of the Contract Price where Buyer has paid a deposit) on or at any time after completion of delivery of the Goods and Buyer shall pay such invoice immediately on delivery.
- 10.6 If the Contract is for the supply of Goods and Installation Services, Supplier shall, subject to Condition 10.10 and unless otherwise agreed in writing by the parties, invoice Buyer for the Contract Price (or the balance of the Contract Price where Buyer has paid a deposit) on completion of the Installation Services and Buyer shall pay such invoice within 30 days from the date of the invoice, save that if the performance of the Installation Services extends into more than one calendar month, Supplier may invoice Buyer monthly in respect of the Installation Services performed in each month as the matter progresses and, subject to Condition 10.10, Buyer shall pay such invoices within 30 days from the date of the relevant invoice.
- 10.7 If the Contract includes Surveying Services Supplier shall, subject to Condition 10.10 and unless otherwise agreed in writing by the parties, invoice Buyer on completion of the Surveying Services and Buyer shall pay such invoice within 30 days from the date of the invoice,
- 10.8 Time for payment shall be of the essence. No payment shall be deemed to have been received until Supplier has received cleared funds.
- 10.9 All sums payable to Supplier under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 10.10 Any issues relating to an invoice must be communicated to Supplier within seven days of the date of the invoice.
- 10.11 Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 10.12 If Buyer fails to pay Supplier any sum due pursuant to the Contract then, without prejudice to any other right or remedy which Supplier might have against Buyer, Supplier shall be entitled to suspend performance of Supplier's obligations under the Contract or under any other contract between Supplier and Buyer and/or charge Buyer interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Bank of

England accruing on a daily basis until payment is made, whether before or after any judgment. Alternatively, Supplier shall be entitled to charge Buyer interest and compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended. In addition to interest, Supplier shall be entitled to recover from Buyer such legal costs as are incurred in the recovery of sums due and owing to Supplier.

10.13 Supplier may at any time set off any liability of Buyer to Supplier against any liability of Supplier to Buyer, whether such liability is present or future, liquidated or unliquidated, under the Contract or otherwise.

10.14 Credit Accounts

10.14.1 Credit accounts may only be opened at Supplier's discretion and are subject to:

- a) Supplier obtaining a signed account application form from Buyer; and
- b) Supplier obtaining satisfactory references in respect of Buyer.

10.14.2 If Supplier has agreed to operate a credit account for Buyer, such credit account shall be governed by these Conditions and the terms of the account opening form or such other terms as are notified by Supplier to Buyer.

10.14.3 Supplier may set a maximum amount of credit allowable and may, in its absolute discretion, withdraw credit facilities at any time and without explanation.

10.14.4 Buyer agrees that Supplier may obtain references as to Buyer's financial status. Any change to Buyer's financial status must be notified in writing to Supplier immediately.

11. Intellectual property rights

Buyer shall not use Supplier's name, logo or other intellectual property rights in advertising or publicity without Supplier's prior written consent.

12. Confidentiality

12.1 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 Condition 12.2.

12.2 Each party may disclose the other party's confidential information:

12.2.1 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 Condition 12.2; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Limitation of Liability

BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 13.2 to 13.4.

13.1 Nothing in these Conditions shall limit or exclude Supplier's liability for:

13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

13.1.5 any other matter which it would be illegal for Supplier to exclude or attempt to exclude its liability.

13.2 Subject to Condition 13.1, Supplier shall not be liable to Buyer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

13.2.1 loss of profits;

13.2.2 loss of sales or business;

13.2.3 loss of agreements or contracts;

13.2.4 loss of anticipated savings;

13.2.5 loss of use or corruption of software, data or information;

13.2.6 loss of or damage to goodwill; or

13.2.7 any indirect or consequential loss.

13.3 Subject to Condition 13.1, Supplier's total liability to Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising in connection with the performance or contemplated performance of the Contract, shall be limited to the lower of:

13.3.1 where the Contract is for the supply of Goods only, the price of the Goods the subject of the claim; or

13.3.2 where the Contract is for the supply of Goods and Services, the aggregate sum of:

- (a) the price of the Goods the subject of the claim; and
- (b) the price of the Installation Services under the Contract pro rated to reflect the value of the Installation Services performed by Supplier in respect of the Goods the subject of the claim.

13.4 Subject to Condition 13.1, in no circumstances shall Supplier's total liability to Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising in connection with the performance or contemplated performance of the Contract exceed the Contract Price.

13.5 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.

13.6 This Condition 13 shall survive termination of the Contract.

14. Termination

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

14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

14.1.2 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;

14.1.3 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

14.1.4 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.

14.2 Without affecting any other right or remedy available to it, Supplier may terminate the Contract with immediate effect by giving written notice to Buyer if Buyer fails to pay any amount due under the Contract on the due date for payment.

15. Consequences of termination

15.1 On termination of the Contract:

15.1.1 Buyer shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest and, in respect of Services performed and Goods supplied but for which no

invoice has been submitted, Supplier shall submit an invoice, which shall be payable by Buyer immediately on receipt;

- 15.1.2 Buyer shall return all of Supplier Materials and any Goods which have not been fully paid for. If Buyer fails to do so, then Supplier may enter Buyer's premises and take possession of them. Until they have been returned, Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and 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.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 16. Force majeure**
- 16.1 **“Force Majeure”** means an event beyond the reasonable control of Supplier, which prevents Supplier from complying with any of its obligations under the Contract, including but not limited to:
- 16.1.1 acts of God, inclement weather, flood, lightning, storm, drought, earthquake, tidal waves, or other natural disaster;
- 16.1.2 epidemic or pandemic;
- 16.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, invasion, rebellion, revolution, insurrection, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 16.1.4 nuclear, chemical or biological contamination or sonic boom;
- 16.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 16.1.6 collapse of buildings, fire, explosion or accident;
- 16.1.7 any labour or trade dispute, walk out, go slows, strikes, industrial action or lockouts;
- 16.1.8 non-performance by suppliers or subcontractors; and
- 16.1.9 interruption or failure of utility service.
- 16.2 Supplier reserves the right to defer the date of delivery of the Goods and/or performance of the Services or to terminate the Contract or to reduce the volume of the Goods ordered by Buyer (without liability to Buyer and without prejudice to Supplier's right to recover all sums owed to it by Buyer in respect of Goods delivered, Services performed and cost incurred prior to the date of such deferment, termination or reduction) if Supplier is prevented from or delayed in the carrying on of its business due to Force Majeure as defined in Condition 16.1.

17. General

- 17.1 Buyer shall not assign the Contract or any part of it without the prior written consent of Supplier, save that if Buyer sells the Site where the Goods are installed, the warranty in Condition 7 will transfer to the new owner of the Site and any subsequent owners. Supplier may require the party seeking to rely on the warranty to produce a letter or chain of letters transferring the benefit of the warranty to them.
- 17.2 Supplier shall be entitled to assign the Contract or any part of it to any person, firm or Supplier.
- 17.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.4 Failure or delay by Supplier in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 17.5 Any waiver by Supplier of any breach of, or any default under, any provision of the Contract by Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17.6 Each right or remedy of Supplier under the Contract is without prejudice to any other right or remedy of Supplier whether under the Contract or not.
- 17.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 17.8 Subject to Conditions 17.1 and 17.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.
- 17.9 Nothing in the Contract excludes the statutory rights of consumers.
- 17.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts.