



**TERMS & CONDITIONS**

**FOR THE SALE OF GOODS & SUPPLY OF**

**SERVICES**

**OF**

**THE INGENIOUS AIR COMPANY**

The Ingenious Air Company is a trading  
name of Hi-Velocity UK Ltd.

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## 1. INTERPRETATION

**Definitions:** in these Conditions, the following definitions apply:

**Agreed Date:** the date on which provision of the Goods and/or Services will commence, as agreed by both parties.

**Agreed Times:** the times that the parties shall agree upon, during which the Supplier shall have access to the Property to render the Services.

**Business Day:** Monday to Friday 8am – 5pm excluding UK Public Holidays.

**Conditions:** these Terms and Conditions as amended from time to time and (unless the context otherwise requires) includes any special Terms and Conditions agreed in writing between the Customer and the Supplier.

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

**Customer:** the individual person or business who accepts a Proposal Quotation or offer of the Supplier for the sale of Goods and/or supply of Services, or whose Order for Goods and/or Services is accepted by the Supplier.

**Customer Default:** failure by the Customer to meet the Conditions required for the supply of Goods and/or Services.

**Delivery Date:** the date on which the Goods and/or Services are to be delivered as stipulated in the Order Acknowledgement and accepted by the Supplier.

**Delivery Location:** the location agreed to which the Goods and/or Services are to be delivered to as stipulated in the Order Acknowledgement and accepted by the Supplier.

**Deposit:** advanced fee which is paid by the Customer and is non-refundable.

**Final Fee:** the total of all final sums payable which shall be shown on the invoice.

**Goods:** the product(s) required, which the Supplier shall procure and supply (unless otherwise agreed).

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other Intellectual Property Rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Month:** a calendar month of the year.

**Order:** the Customer's Order for Goods and/or Services as set out in the Customer's written acceptance of a Proposal Quotation by the Supplier.

**Order Acknowledgement:** written confirmation from the Supplier to the Customer that the Order is received, which is accepted and signed by the Customer.

**Preliminaries Fees:** costs incurred, where agreed and applicable, prior to commencement of the Project. Variations and additional costs will be charged for separately.

**Project:** the complete rendering of the Services.

**Site:** the Customer's Property or premises, as detailed in the Proposal Quotation at which the Goods and/or Services are to be rendered.

**Proposal Quotation:** a written document detailing proposed fees, and the Goods and/or Services to be supplied to the Customer by the Supplier.

**Services:** to be supplied by the Supplier to the Customer as set out in the Proposal Quotation.

**Specification:** the technical details of the Goods and/or Services.

**Supplier:** The Ingenious Air Company is a trading name of Hi-Velocity UK Limited, a Company incorporated and registered in England and Wales with Company Number 07437693 whose registered office is at Dickens House, Guithavon Street, Witham, Essex CM8 1BJ.

**Visit:** any occasion, scheduled or otherwise, on which the Supplier shall Visit the Site to render the Services.

**Warranty:** a written guarantee to the Customer by the manufacturer for parts.

**Warranty Period:** The specified period of time that the Warranty is valid.

**Work Area:** the part of the Site within which the Goods and/or Services are to be rendered.

**Works:** Task(s) to be carried out to complete the Project.

## 2. CONSTRUCTION

2.1. In these Conditions, the following rules apply:

- a. Each gender includes the others and person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b. A reference to a party/parties includes its personal representatives, successors or permitted assigns, the singular includes the plural and vice versa;
- c. 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;
- d. Any phrase introduced by the Conditions including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the meaning of the words preceding those Conditions;
- e. A reference to writing, including e-mails or other similar means of communication and;

- f. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **3. ORDERS**

- 3.1 Before the Supplier prepares the Proposal Quotation, the Customer shall make available all of the information the Supplier may reasonably require, including amongst other things:
  - a. The location and size of the Site;
  - b. Number and type of rooms in which work is required;
  - c. The type(s) of installation required;
  - d. Details of when the Site will be available for the Supplier to complete the work including any restrictions on working times; and
  - e. Any limitations on access;
  - f. Information on any Works being carried out on the Site at the same time, written as a Schedule of Work(s) where appropriate;
  - g. Details of any site inductions required prior to commencement of Works;
- 3.2 After receiving the information required, the Supplier shall prepare and submit the Proposal Quotation to the Customer either by hand delivery, email or post, which shall set out the required Deposit (this will include any design fees and additional charges). The Customer shall be free to request changes to the Proposal Quotation prior to confirming their agreement with its contents. Such changes will only be effective by mutual consent of both Parties, evidenced in writing.
- 3.3 The Customer may agree the Proposal Quotation by submitting an Order to the Supplier by email or post. As stated in Clause 5 of the Conditions, the Order shall constitute an offer by the Customer to purchase the Goods and/or Services and shall only be deemed accepted when the Supplier issues written acceptance of the Order via Order Acknowledgement or an invoice to the Customer by hand delivery, post or e-mail.
- 3.4 When placing an Order the Customer shall set out, in detail, the Goods and/or Services required, including all of the information the Supplier may reasonably require as set out in Clause 3.1.

### **4. APPLICATION OF CONDITIONS**

- 4.1 The Supplier shall supply and the Customer shall purchase the Goods and/or Services in accordance with the Proposal Quotation, subject to these Conditions.
- 4.2 The Contract shall be to the exclusion of any other Conditions except those expressly referenced.

**5. BASIS OF CONTRACT**

- 5.1 The Supplier's employees or agents are not authorised to make any representations concerning the Goods and/or Services, unless confirmed by the Supplier in writing. When entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 5.2 Any Proposal Quotation given by the Supplier is only valid for a period of 30 Business Days from its date of issue, unless otherwise agreed.
- 5.3 An Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 5.4 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order using the Order Acknowledgement or invoice, by hand delivery, post or e-mail. The contract comes into existence at the point when the Order is accepted.
- 5.5 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.
- 5.6 Sales literature, price lists and other documents issued by the Supplier in relation to the Goods and/or Services are subject to alteration without notice and do not constitute offers to sell the Goods or supply the Services which are capable of acceptance.
- 5.7 These Conditions apply to the Contract to the exclusion of any other Conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 5.8 Any typographical, clerical or other accidental errors or omissions in any sales literature, Proposal Quotation, price list, acceptance of offer, invoice or other document of information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

**6. SUPPLY OF GOODS**

- 6.1 The Specification for the Goods shall be those set out in the Supplier's sales documentation unless varied expressly in the Proposal Quotation. Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Supplier are intended as a guide only and shall not be binding on the Supplier.
- 6.2 The Supplier reserves the right to make any changes to the Proposal Quotation and/or Specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Supplier's Specification, which do not materially affect their quality or performance.

6.3 No Order which has been accepted by the Supplier may be cancelled by the Customer unless it is either cancelled in accordance with Clause 9 or the Supplier agrees in writing and the Customer indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), and damages, charges and expenses incurred by the Supplier as a result of cancellation.

**7. DELIVERY AND NON-DELIVERY OF GOODS**

7.1 The Supplier shall ensure that:

- a. All reasonable endeavours are used to notify the Customer as soon as the Goods are ready for delivery;
- b. Each delivery of the Goods is accompanied by a Delivery Note.

7.2 Delivery of the Goods shall be made by the Supplier to the place as specified in the Proposal Quotation or such other location as the parties may agree in writing (the 'Delivery Location'), including permitting the Customer to collect the Goods from the Supplier's premises if agreed.

7.3 Standard delivery is anytime between 08.00hrs and 18.00hrs. Specific time slots and the associated costs must be agreed prior to the delivery date.

7.4 Any dates quoted for delivery are approximate only.

7.5 Any special delivery requirements must be agreed at the time the Order is placed.

7.6 The delivery driver's responsibility is to off load to floor level adjacent to the delivery vehicle, equipment up to a size suitable for a tail lift, providing suitable offloading conditions have been made available. Any further assistance given is at the delivery driver's discretion. Offloading of larger items is the responsibility of the Customer.

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

7.8 The Supplier shall have no liability for any delay to delivery or failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. In the latter circumstance, the Customer will be charged any cost of re-delivery incurred by the Supplier.

7.9 If the Customer fails to take delivery of the Goods or any part of them on the date of delivery and for three business days thereafter, and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, then, except where such failure is caused by a Force Majeure event or the Supplier's failure to comply with its obligations under the Contract, the Supplier shall be entitled upon giving written notice to the Customer:

- a. To deem that delivery of the Goods took place at 9.00am on the third Business Day after the date on which the Supplier notified the Customer that the Goods were ready; and

- b. To store or arrange for the storage of the Goods and charge the Customer all reasonable costs and expenses, including storage, insurance and other charges arising as a result of storage.

7.10 If thirty Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of the part(s), or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

## **8. QUALITY OF GOODS**

8.1 The Supplier guarantees that the Goods and/or Services provided shall be free from any and all defects for a period of 12 months following practical completion of our Works. This guarantee is valid only if the equipment has been proven to have been reasonably and routinely serviced and maintained.

- a. Conform in all material respects with their description and any applicable Specification;
- b. Be free from material defects in design and material.
- c. Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 and/or the Consumer Rights Act 2015).

8.2 Warranties for Goods are as dictated by The Terms and Conditions of the individual manufacturer.

8.3 No Goods may be returned to the Supplier without the prior agreement in writing of the Supplier.

8.4 Subject to Clause 8.6, if,

- a. On delivery, any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery 'condition and contents unknown' and the Customer gives written notice of such defect to the Supplier within 14 Business Days of such delivery;
- b. The Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the Warranty set out in Clause 8.1;
- c. The Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost;
- d. The Supplier is given a reasonable opportunity of examining such Goods; and;
- e. The Supplier is satisfied that the Goods were subject to defects of quality or condition which would not be apparent on inspection.

The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 8.5 The Supplier shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as aforesaid.
- 8.6 The Supplier shall not be liable for the Goods, failure to comply with the Warranty set out in Clause 8.1 in any of the following events:
- a. The Customer makes any further use of such Goods after giving notice in accordance with Clause 8.3;
  - b. The defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - c. The defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - d. The Customer misuses, alters or repairs such Goods without the written consent of the Supplier;
  - e. The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions, or any act or omission on the part of the Customer, its employees, agents or any third party; or
  - f. Any modifications or alterations made to the Goods without the Supplier's prior written agreement may invalidate the Warranty; or
  - g. The Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 8.8 Goods, other than defective Goods returned under clause 8.3, returned by the Customer may be refunded or credited to the Customer at the Supplier's sole discretion and without any obligation on the part of the Supplier.
- 8.9 The Customer shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory handling and is carried out in accordance with directions given by the Supplier or any competent governmental or regulatory authority. The Customer will indemnify the Supplier against any liability loss or damage the Supplier might suffer as a result of the Customer's failure to comply with this Condition.
- 8.10 Except as provided in this Clause 8, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the Warranty set out in Clause 8.1.



- 8.11 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.12 The original stated Warranty Period from the time of original purchase will continue to be maintained following any Warranty exchange or parts replacement.
- 8.13 Goods purchased for hire only carry no Warranty.

## **9. RETURNED GOODS AND CANCELLATION OF SERVICES**

- 9.1 Orders for Goods, Services and Parts cannot be cancelled without the prior agreement and written consent of the Company.
- 9.2 The Company does not accept the return of Goods for credit unless the Customer has prior written permission from an authorised officer of the Company. Only new Goods with undamaged packaging and regarded by the Company as suitable for resale will be accepted for credit.
- 9.3 Credit for returned Goods and cancelled Services will be subject to a cancellation charge proportionate to the costs and loss of earnings incurred by the Company.
- 9.4 The Supplier may cancel the Service at any time before the Agreed Date and shall refund all sums paid prior to the Agreed Date, including any deposit.

## **10. RISK AND TITLE IN GOODS**

- 10.1 The risk of damage to or loss of the Goods shall pass to the Customer on completion of delivery in accordance with the International Commercial Terms (Incoterms), or:
  - a. In the case of Goods to be collected by the Customer from the premises of the Supplier, at the time that the Supplier notifies the Customer that the Goods are available for collection; and
  - b. In the case of Goods being installed by the Supplier, at the time that the Goods are delivered to site.
- 10.2 Legal and beneficial title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
  - a. The Goods; and/or
  - b. Any other Goods or Services that the Supplier has supplied to the Customer in respect of which, payment has become due.
- 10.3 Until payment has been made by the Customer to the Supplier and title to the Goods has passed to the Customer, the Customer shall:
  - a. Hold the Goods on a fiduciary basis as the Supplier's Bailee;
  - b. Store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the Supplier's Site;
  - c. Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- d. Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - e. Notify the Supplier immediately if it becomes subject to any of the events listed in Clause 10.9; and
  - f. Give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 10.4 In the event that the Customer sells or transfers the Goods to a third party before legal and beneficial title has passed to them under these Conditions, the proceeds of the sub-sale or transfer (or such proportion as is due to the Supplier) shall be held by the Customer on behalf of the Supplier. The Customer shall ensure that such moneys are held separately from, and are in no way mixed with, any other moneys or funds, and that all moneys held on the Supplier's behalf are identified as such.
- 10.5 The Supplier may, in accordance with the provisions of the Companies Act 2006, register any charge created by these Conditions.
- 10.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier forthwith) become due and payable.
- 10.7 If invoices remain unpaid the Supplier reserves the right to repossess any Goods in which the Supplier retains title, without notice. The Customer irrevocably authorises the Supplier to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which the Supplier retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of Sub-Clause 10.3.
- 10.8 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in Clause 10.9 or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in Order to recover them.
- 10.9 For the purposes of Clause 10.3(e), the relevant events are:
- a. The Customer commits or permits any material breach of its obligations under these Conditions;
  - b. The Customer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors;
  - c. 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) 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;

- d. 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 Quotation for or enters into any compromise or arrangement with its creditors other than (where the Customer is a Company) where these events take place 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;
- e. (Being a Company) a petition is filed, a notice is given, a resolution is passed, or an Order is made, for or in connection with the winding up of the Customer, 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;
- f. (Being an individual) the Customer is the subject of a bankruptcy petition or Order;
- g. 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;
- h. (Being a Company) an application is made to court, or an Order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- i. (Being a Company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- j. A person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- k. 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 1.1a to Clause 1.1j (inclusive);
- l. The Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- m. 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; and

- n. (Being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## **11. SUPPLY OF SERVICES**

- 11.1 The Services shall be rendered in accordance with the Specification set out in the agreed Proposal Quotation. The Specification may be amended by mutual agreement between the parties from time to time.
- 11.2 The Supplier may provide technical assistance, plans, diagrams, heat load calculations, system design, suggested layout or similar documents in advance of the Works. Any such material is intended for illustrative purposes only and is not intended to provide an exact Specification of the Works or to guarantee specific results. The final decision on equipment selection is the responsibility of others involved.
- 11.3 The Supplier shall use all reasonable endeavours to meet any performance dates specified, but any such dates shall be estimates only and time shall not be of the essence in the rendering of the Services.
- 11.4 The Supplier shall use their best endeavours to ensure that the Services are rendered with reasonable care and skill, to a reasonable standard, which is commensurate with best trade practice.
- 11.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any relevant law or safety requirement, and will endeavour to notify the Customer in any such event.
- 11.6 Following completion of the Services, the Customer shall inspect the completed work and sign a Job Sheet to confirm the work has been completed to a satisfactory standard;
- 11.7 The Customer should notify the Supplier of any defects immediately or in any case, within 7 days of completion of the Works;
- 11.8 The Supplier shall correct such defects at no additional cost to the Customer within 30 days of notification to this effect, or as is reasonably practical. Once rectified, the Customer shall sign a Job Sheet to confirm the work has been completed to a satisfactory standard; at which point the Supplier shall not be obliged to provide any further defect corrections.

## **12. CUSTOMER'S OBLIGATIONS**

- 12.1 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 Services;
  - c. Pay the price for the Goods and/or Services in accordance with the Contract;
  - d. Provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

- e. Obtain and maintain all necessary licences, consents or other permissions needed from any third parties such as landlords, planning authorities, local authorities or similar, which may be required before the planned start date of the; at their own cost and prior to the commencement of the Services;
  - f. Prepare the site for the supply of the Services:
    - a. Ensure the Supplier has required access to electrical outlets, adequate lighting and a supply of hot and cold running water;
    - b. Ensure all single and three phase electrical supplies conform to current regulations;
  - g. Provide the Supplier with safe access to site at the Agreed Times to render the Services; Give the Supplier a set of keys to the site or be present at the Agreed Times to give the Supplier access to site. The Supplier hereby warrants that all keys shall be kept safely and securely, being returned upon the receipt and clearance of the Final Fee, in relation to the Services rendered;
  - h. Keep the Work Area clear of all obtrusive furniture, fixtures and fittings. As well as the area being out of use for the duration of the Works, unless otherwise directed by the Supplier;
  - i. Observe all relevant health and safety rules, whilst complying with any additional instructions given to them by the Supplier, in the case the Customer is present in the Work Area at any time during the course of the Works;
  - j. At the Customer`s own risk; Keep and maintain all materials, equipment, documents and other property of the Supplier at the site in safe custody, maintaining the Supplier`s quality until returned to the Supplier, and to not dispose of or use the Supplier`s materials, other than in accordance with the Supplier's written instructions or authorisation;
  - k. Organise any required building structure hole penetration, unless otherwise agreed upon with the Supplier;
  - l. Have sole responsibility for any re-decoration (or the making of arrangements thereof) following completion of the Works, unless this forms an agreed part of the Services.
- 12.2 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), including those obligations listed under Sub-Clause 12.1.
- a. The Supplier shall, without limiting its other rights or remedies, possess the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent 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 suppliers failure or delay to perform any of its obligations in the circumstances stated in Sub- Clause 12.2; and
  - c. The Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising, whether directly or indirectly from the Customer Default, including but not limited to delays and aborted Visits.
- 12.3 The Customer shall give the Supplier at least 7 days' notice (verbally, either by telephone or in writing) if the Customer will be unable to facilitate the Supplier in order to provide the Services on a particular day or time.

### **13. PRICES**

- 13.1 The prices for the Goods and/or Services shall be the price listed in the Proposal Quotation; current at the date of acceptance or such other price as may be agreed in writing by the Supplier and the Customer.
- 13.2 Where the Supplier has quoted a price for the Goods and/or Services the price quoted shall be valid for 30 days only, or a lesser time if specified by the Supplier.
- 13.3 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or/and Services, to reflect any increase in the costs of those Goods or Services to the Supplier, that is due to:
- a. Any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture); or
  - b. Any change in delivery dates, quantities or Specifications for the Goods and/or Services requested by the Customer; or
  - c. Any delay caused, by any instructions of the Customer, or the Customer failing to give the Supplier adequate information or instructions.
- 13.4 In the event that the price of Goods and/or Services increases during the period after the Supplier's submission of the Proposal Quotation but before the Supplier's written acceptance of the Customer's Order, the Supplier shall inform the Customer of any such increase and of any difference in the Final Fee.
- 13.5 All amounts payable by the Customer in respect of Goods and/or Services under the Contract are exclusive of amounts in respect of Value Added Tax chargeable for the time being (VAT) or sales or tax levies which are imposed or charged by any competent, fiscal authority in respect of Goods or Services. 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 Services, as well as additional amounts in respect of sales or other tax levies imposed.

- 13.6 The Proposal Quotation shall not include the following potential additional costs unless expressly stated otherwise:
- a. Out of hours Works;
  - b. Negotiations associated with planning approval and landlord's permission;
  - c. Provision of scaffold, towers, lifting or hoisting equipment;
  - d. Builders work, structural alteration and redecoration;
  - e. Mains electrical supplies with local isolator to outdoor/indoor units.

#### **14. DEPOSIT**

- 14.1 The Supplier shall invoice the Customer for the Goods and/or Services on or prior to delivery of the Goods as indicated in the Proposal Quotation and the Suppliers written acceptance of the Order.
- 14.2 The Customer shall pay the Deposit to the Supplier. The deposit shall be the sum written in the Proposal Quotation as indicated in Clause 14.1 and/or written in any subsequent amendments to the Proposal Quotation agreed in writing by the Supplier, before the Supplier provides the Customer with its written acceptance of the Order.
- 14.3 In the event that interim invoicing is selected, the minimum interim invoicing terms are as follows:
- a. A Deposit of 50% of the Final Fee is due immediately upon the Supplier's written acceptance of the Customer's Order and in accordance with Clause 14.1, unless otherwise specified in the Order Acknowledgement;
  - b. A payment of 35% of the Final Fee is due when equipment is delivered to site;
  - c. Final payment of 15% of the Final Fee is due on practical completion, following testing and commissioning. No deductions for retention to be made unless agreed by both parties prior to work commencement.
- 14.4 The Supplier reserves the right to only commence operations once the Deposit has been paid in full by the Customer.
- 14.5 The Supplier reserves the right to vary the above deposit terms in the event that they deem it reasonably appropriate following receipt of a report form from a credit reference agency. Any decision to vary the terms will be based on the Customers previous payment record provided by the credit agency.
- 14.6 Subject to the provisions of Clause 6 (Supply of Goods) of the Conditions, and Clause 10 the Deposit shall be non-refundable.

#### **15. FEES & PAYMENT**

- 15.1 All payments required are to be made in accordance to these Conditions and shall be made as stated on the relevant invoice, without any set-off, withholding or deduction unless agreed in writing by the Supplier except such amount (if any) of tax as that party is required to deduct or withhold by law.

- 15.2 All payments shall be made to the Supplier as indicated, as each invoice issued by the Supplier and the time of payment shall be of the essence for the Contract.
- 15.3 The Customer shall pay each invoice submitted by the Supplier:
- a. In full and in cleared funds to a bank account nominated in writing by the Supplier, and
  - b. Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, the Supplier shall be entitled, in addition to any unpaid amount that should properly have been paid, to simple interest on that amount from the final date for payment until the date of actual payment, such interest to be calculated at a daily rate of 5% above the Bank of England base rate, which is current to the date where the payment became overdue. If the Customer is a business, it is agreed that the provisions of this clause constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 15.4 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding, except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in Order to justify withholding payment of any such amount in whole or in part. 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.
- 15.5 The Supplier is not obliged to accept Orders from any Customer who has not provided the Supplier with references satisfactory to the Supplier; if at any time the Supplier is not satisfied as to the creditworthiness of the Customer it may give notice in writing to the Customer that no further credit will be allowed to the Customer in which event no further Goods will be delivered to the Customer, other than against cash payment and notwithstanding Clause 10.3 of these Conditions, all amounts owing by the Customer to the Supplier shall be immediately payable in cash.
- 15.6 The Supplier shall use reasonable endeavours to use only the Goods (and quantities thereof) set out in the Proposal Quotation. However, if additional Goods are required, the Customer will be given an additional Proposal Quotation in order to reflect this, and upon the Customer's acceptance of this additional Proposal Quotation the Final Fee shall be adjusted to reflect this.
- 15.7 The Supplier shall use all reasonable endeavours to ensure that any such Proposal Quotation increases are kept to a minimum.
- 15.8 All invoices must be paid by the Customer within 14 days of receipt, unless stipulated otherwise on the Proposal Quotation, or if authorised credit terms have previously been agreed upon in writing by the Supplier.
- 15.9 In the event that final testing and commissioning of the installation of the Services is delayed due to any factor which is beyond the control of the Supplier or otherwise a Force Majeure Event, the Supplier reserves the right to claim payment up to 100% of



the total Final Fee, less the commissioning costs specified in the Proposal Quotation and/or in any agreed written amendments to the Proposal Quotation.

- 15.10 It is assumed that all Works to be carried out by the Supplier can be done so during normal working hours without breaks in continuity. Planned site Visits delayed or aborted by the Customer, which result in additional Visits by the Supplier being required, will be charged on a daily rate basis to be agreed between both parties.
- 15.11 If the Customer fails to make payment on the due date, then without prejudice to any right or remedy available to the Supplier, the Supplier shall be entitled to:
- a. Cancel the Contract or suspend any further deliveries to the Customer
  - b. Suspend the Contract until due payment is made.

## **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1 All Intellectual Property Rights in or arising out of, or in connection with the Goods and Services, shall be owned by the Supplier.
- 16.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

## **17. CONFIDENTIALITY**

The Customer, its agents, employees and Contractors shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by the Supplier, its employees, agents or Approved Contractors, and any other confidential information concerning the Supplier's business or its Goods or its Services which the Customer, its agents, employees or Contractors may obtain. The Customer shall restrict disclosure of such confidential information to such of its employees, agents or Approved Contractors as need to know it for the purpose of discharging the Customer obligations under the Contract, and shall ensure that such employees, agents or Approved Contractors are subject to obligations of confidentiality corresponding to those which bind the Customer. This Clause 17 shall survive termination of the Contract.

## **18. LIMITATION OF LIABILITY:**

- 18.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- a. Death or personal injury caused by its negligence, or the negligence of its employees;
  - b. Fraud or fraudulent misrepresentation; or
  - c. Breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 18.2 Subject to Clause 18.1, the Supplier shall not be liable to the Customer, whether in Contract, tort (including negligence), breach of statutory duty, express or implied term of these Conditions or Contract or otherwise, for any loss of profit, or any

indirect or consequential loss arising under or in connection with the Contract including any losses, damage, costs, expenses or other claims that may result from a deliberate breach of the Contract by the Supplier, its employees, agents or Approved Contractors; and

18.3 The Customer shall indemnify the Supplier against all damages, costs, claims and expenses arising from loss or damage to any equipment (including that of third parties) caused by the Customer, its agents or employees.

18.4 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.

18.5 The Supplier shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control.

18.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

18.7 This Clause 18 shall survive termination of the Contract.

## **19. TERMINATION**

19.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a. The other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- b. The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- c. The other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a Proposal Quotation 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 that other party with one or more other companies or the solvent reconstruction of that other party;
- d. A petition is filed, a notice is given, a resolution is passed, or an Order is made, for or in connection with the winding up of that other party (being a

Company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- e. The other party (being an individual) is the subject of a bankruptcy petition or Order;
- f. A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- g. An application is made to court, or an Order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a Company);
- h. A floating charge holder over the assets of that other party (being a Company) has become entitled to appoint or has appointed an administrative receiver;
- i. A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- j. Any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 19.1b to clause 19.1i (inclusive);
- k. The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- l. The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

19.2 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.

19.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party two months' written notice.

19.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other Contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 19.1b) to clause 19.1l, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## **20. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- a. The Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied, or ordered specifically for the Works 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 Supplier Materials and any Goods 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 this Contract;
- c. The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- d. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **21. GENERAL**

### **21.1 Force Majeure:**

- a. 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 Approved Contractors.
- b. Neither party shall be liable to the other party and shall not be deemed in breach of its obligations under the Contract or these Conditions as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- c. The party subject to the Force Majeure Event shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.
- d. If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 26 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.

### **21.2 Entire Agreement**

- a. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise

or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

21.3 Assignment and Sub-Contracting

- a. The Supplier may at any time assign, transfer, charge, Sub-Contract or deal in any other manner with all or any of its rights or obligations under these Terms & Conditions, provided that any and all Sub-Contractors are reasonably skilled in the relevant practices and provided that no additional charges are passed on to the Customer.
- a. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, Sub-Contract or deal in any other manner with all or any of its rights or obligations under the Contract.

21.4 Notices:

- a. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid post, recorded delivery or by commercial courier, at its registered office (if a Company) or (in any other case) its principal place of business.
- b. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email on a Business Day prior to 4.00pm, at the time of transmission and otherwise on the next Business Day after transmission.
- c. This Clause 21.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, 'writing' A reference to writing or written includes e-mails or other similar means of communication.

21.5 Waiver:

- a. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- b. No waiver by either party to enforce the performance of any provision in these Conditions shall constitute a waiver of the right to subsequently enforce that provision or any other provision of these Conditions. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

- c. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

21.6 Severance:

- a. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- b. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

21.7 No partnership:

- a. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

21.8 Third parties:

- a. A person who is not a party to the Contract shall not have any rights under or in connection with it pursuant to the Contracts (Rights of Third Parties) Act 1999.

21.9 Variation:

- a. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

21.10 Data Protection:

- a. The Supplier will not share the Customer's personal data with any third parties for any reasons without the prior consent of the Customer. Such data will only be collected, processed and held in accordance with the Supplier's rights and obligations arising under the provisions and principles of the Data Protection Act 1998.

21.11 Governing law and jurisdiction:

- a. This Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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