

## 1. INTERPRETATION

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

- Bespoke Products** means bespoke or custom-made Products supplied by the Supplier specifically for the Customer to the Customer's Specification.
- Business Day** a day (other than a Saturday, Sunday or public holiday) when UK clearing banks in the city of London are open for general business.
- Certified Standard** any statutory, regulatory or binding industry guidance any applicable laws, regulatory standards or best practice which applies in relation to any Product including (as applicable and as updated or replaced from time-to-time):
- (a) Security:
    - (i) LPS1175 Version 7 onwards
    - (ii) PAS24 Version 2022 onwards
  - (b) Insulation
    - (i) BS EN14351
  - (c) Fire protection
    - (i) BS EN 1634 Version 2018 onwards
    - (ii) BS EN16034
    - (iii) BS EN1363 Version 2020 onwards.

**Conditions** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

**Contract** the contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Conditions and the Order Confirmation.

**Customer** the business or firm who purchases the Products from the Supplier in accordance with the Contract.

**Force Majeure Event** has the meaning given in clause 11.

**Installation** Location the retail premises, business premises or other location in which the Products are to be installed (if applicable).

**Installation and Maintenance Instructions** Any instructions in relation to the installation, fitting and/or ongoing maintenance of the Products which the Supplier may issue or update from time-to-time.

**Order** the Customer's order for the Products, as set out in the Customer's purchase order form and .

Order Confirmation has the meaning given in clause 2.3.

**Products** the products from Strongdor Ltd (including standard and any Bespoke Products) (or any parts and/or components of them or material incorporated in them) set out in the Order.

**Specification** any specification for the Bespoke Products, including any related plans and drawings, that is agreed in writing between the Customer and the Supplier.

**Supplier** Strongdor Ltd (registered in England and Wales with company number 06934375), with a registered address at Unit 10 Carnforth Business Park, Oakwood Way, Carnforth, United Kingdom, LA5 9FD.

**Trade Marks** means any trade name, business name, logo or trade mark, used or owned by the Supplier whether registered or otherwise.

**Website** means the Supplier's websites at [www.strongdor.com](http://www.strongdor.com).

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

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or 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 terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes emails.

## 2. BASIS OF CONTRACT

2.1 All Orders placed with the Supplier constitute the acknowledgement and acceptance of these Conditions by the Customer. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (whether as part of a purchase order or otherwise), or which are implied by trade, custom, practice or course of dealing. Such terms shall be void and of no effect whatsoever.

2.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions in their entirety. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order ("**Order Confirmation**") or dispatches the Products, at which point the Contract shall come into existence.

2.4 The Supplier shall be entitled to reject the Order at its sole discretion and if it elects to do so (for example due to unavailability of the Products requested by the Customer) it shall notify the Customer of this by email or telephone and will not process the Order. If the Customer has already made full or part payment for the Products, the Supplier shall refund such amounts as soon as reasonably practicable.

2.5 The Contract constitutes the entire agreement between the parties and supersedes any and all prior or contemporaneous written or oral agreements, correspondence, quotations, understandings, negotiations or discussions between the parties relating to the subject matter hereof. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.6 Any samples, drawings, images, descriptive matter, or advertising produced by the Supplier or any third parties and any descriptions or illustrations, specification figures as to performance and particulars of weights and dimensions contained in the Supplier's or third parties' catalogues, websites (including the Website) or brochures are produced for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract or have any contractual force.

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- 2.7 A quotation for the Products given by the Supplier shall not constitute an offer to supply the Products. A quotation shall only be valid for a period of 30 days from its date of issue (or such other period as may be stipulated on the Supplier's quotation) and may be withdrawn by the Supplier at any time before it has been accepted by the Customer.
- 2.8 Although the Supplier has made every effort to display the colours of the Products accurately in its marketing materials and those of third parties, the Supplier cannot guarantee that the Customer's display of the colours will accurately reflect the colour of the Products and the Product may vary slightly from images advertised.
- 2.9 Due to the nature of the Products, the Customer hereby agrees, acknowledges and accepts that (where applicable):
- the colour and consistency of certain Products may vary from any samples and is liable to change as a result of the passage of time and any exposure to sunlight;
  - the Supplier cannot guarantee the quality, colour, pattern, grain, finish or texture of the Products, nor can consistency be guaranteed throughout due to unavoidable variances which may arise in the manufacturing process of the Products.

### 3. PRODUCTS

- 3.1 The Products are described in the Supplier's quotation or Order Confirmation.
- 3.2 To the extent that the Products are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.4 The Supplier shall be entitled to supply an alternative Product to match as closely as possible to the Products that the Customer has ordered. The Supplier will provide the Customer with reasonable notice as soon as this becomes apparent and the Customer will have the option to accept the alternate Product or cancel the Order.
- 3.5 The Customer shall be wholly responsible for determining whether the Products are fit for purpose where they are to be used for a particular or special purpose and whether they are suitable for the intended Installation Location and the Customer agrees, and acknowledges and accepts that the Supplier is a supplier of the Products only and nothing is to be taken as a warranty, representation or otherwise that the Supplier has provided any design advice or installation instruction upon which the Customer is entitled to place any reliance. Subject to clauses 6.1 and 6.2, all warranties relating to the Products, including but not limited to any warranty of merchantability, fitness for a particular purpose or use, or non-infringement, is expressly disclaimed and excluded.
- 3.6 The Supplier shall not be responsible for installing the Products and shall have no liability for any damage to the Products or any other Property, person or otherwise caused during the installation of the Products. Installation of the Products should only be carried out by an appropriately skilled professional using specified parts, fixings and tools. Any guidelines or instructions that the Supplier may provide (including the Installation and Maintenance Instructions) are intended to act as a general guide only and are not specific to the Installation Location or any individual Products. On this basis, such Installation and Maintenance Instructions do not constitute specific advice and should not be relied upon for the proper installation of the Products.
- 3.7 The Customer shall be responsible for installing and maintaining the Products in accordance with the Installation and Maintenance Instructions and the requirements of any Certified Standard(s) together with ensuring that the Products are adequately protected against damage. The Customer shall store all Products supplied by the Supplier in accordance with British Standard Institute recommendations, unless otherwise stated.
- 3.8 No agent, employee or representative of the Supplier (or any distributor, dealer or sales representative of the Supplier) has the authority to bind the Supplier to any statement, representation or warranty concerning the Products, and unless such statement, representation or warranty is specifically included in these Conditions, it shall not form a part of the basis of these Conditions and shall in no way be binding upon the Supplier or enforceable by the Customer. Except as expressly agreed to by the Supplier in writing, the Products are not rated or certified for any particular application or environment.
- 3.9 No Order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.
- 3.10 Where a Product is provided which is stated by the Supplier to meet any Certified Standard, the Customer acknowledges and agrees that:
- compliance with any such certification or rating is dependent on the Customer installing the relevant Product(s) in accordance with the Installation and Maintenance Instructions and any requirements of the Certified Standard; and
  - that the Supplier shall have no liability to the Customer for any failure of the Product(s) to meet the Certified Standard to the extent that it results from any failure of the Customer, its employees, agents, contractors or customers to install the relevant Product(s) in accordance with the Installation and Maintenance Instructions and any requirements of the Certified Standard.

### 4. CONFIDENTIALITY

- 4.1 The Customer will regard as confidential the Contract and all information obtained by it relating to the business and/or products of the Supplier and will not use or disclose to any third party such information without the Supplier's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Supplier's default.
- 4.2 The Customer will not use, authorise or permit any other person to use any Trade Mark which the Supplier is licensed to use or which is owned by the Supplier upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Supplier and (where appropriate) its licensor.

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## 5. DELIVERY

- 5.1 The Supplier shall ensure that:
- each delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
  - if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 5.2 Subject to clause 5.3, the Supplier shall (whether on its own account or using a haulage / logistics provider) deliver the Products to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") on such date as the Supplier shall notify the Customer by email in advance of dispatch of the Products ("**Delivery Date**"). Ahead of the Delivery Date, the Customer must provide a site contact name and mobile number available as a contact on the day of their delivery for the driver
- 5.3 If the Supplier has agreed in advance upon the Customer placing the Order, the Customer may collect the Products from the Supplier's premises or such other location as may be advised by the Supplier prior to delivery ("**Collection Point**").
- 5.4 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location or upon the Supplier making the Products available for collection from the Collection Point (as applicable).
- 5.5 The Supplier does not handle or unload the Products on arrival at the Delivery Location and does not load the Products at the Collection Point. The Customer must ensure that adequate assistance and personnel are available to unload the Products upon delivery. The Customer must ensure that unloading of Product(s) is completed within 20 minutes of the Supplier (or its haulage / logistics provider) arriving at the Delivery Location or else the Supplier reserves the right to levy a wasted journey / cancellation charge
- 5.6 Subject to clause 5.7, if the Supplier fails to deliver any or all of the Products ("**Undelivered Products**"), its liability shall be limited, at its election to one of the following:
- replacing the Products within a reasonable amount of time; or
  - issuing a credit note against the invoice raised for the Undelivered Products; or
  - replacing the Products in accordance with (a) above is not possible and where the Customer has paid in advance for the Undelivered Products, the Supplier may elect to reimburse the Customer for the price of the Undelivered Products.
- 5.7 The Supplier shall have no liability for any failure or delay in delivering the Products where:
- such failure or delay is caused by the Customer's failure to comply with its obligations under the Contract, including a failure to:
    - collect the Products in accordance with clause 5.3; and/or
    - provide the Supplier with the correct delivery address or any other relevant instructions; and/or
  - the failure or delay has been caused by a Force Majeure Event; and/or
  - such failure or delay is caused by the acts or omissions of any third party other than the Supplier;
- 5.8 If the Customer fails to take delivery of the Products or collect the Products from the Collection Point on the Delivery Date, or fails to provide any instructions, documents, licences consents or authorisations required to enable the Products to be delivered on the Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract:
- delivery of the Products shall be deemed to have been completed at 9.00am on the Delivery Date ("**Deemed Delivery**") and responsibility for the Products shall pass to the Customer upon Deemed Delivery;
  - the Supplier shall store the Products until delivery takes place, and charge the Customer for related costs and expenses (including, without limitation, storage and insurance);
  - if the Customer fails to accept delivery of the Products within 4 weeks of the date of Deemed Delivery, the Supplier may re-sell or otherwise dispose of the Products (or any part of them) to any third party, without any liability to the Customer.
- 5.9 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.10 The Customer shall not be entitled to reject the Products if the Supplier delivers up to and including 5% more or less than the quantity of Products ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Products was delivered. Subject to clause 6.3(c), the Customer shall not return any Products delivered to it without the consent of, and upon terms agreed to, by the Supplier. The Supplier may, in its absolute discretion, accept the return of Products which are not Bespoke Products to the credit of the Customer provided that such Products are returned to its premises unused and undamaged before the expiration of 14 days after their delivery to the Customer and the Customer agrees to pay a handling and administration charge equal to 20% of the price of the returned Products.
- 5.11 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.12 The type and quantity of Products recorded by the Supplier upon dispatch from its premises shall be conclusive evidence of the type and quantity received by the Customer upon Delivery, however the Customer is responsible for checking the Products upon Delivery and ensuring that it has been supplied with the correct Products (including but not limited to, the correct colour), before installing the Products at the Installation Location.
- 5.13 If the Customer fails to give notice of rejection in accordance with this Clause 5.13, it shall be deemed to have accepted the Products. The Supplier shall have no liability for any damage or shortages that would be apparent on reasonably careful inspection if the provisions of this clause 5.13 are not complied with and, in any event, will be under no liability and may not reject the Product(s) if a written complaint is not delivered to the Supplier within:
- 24 hours of delivery in the case of a defect that is apparent on normal visual inspection; or

(b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent, in either case detailing the alleged damage or shortage. By accepting and/or installing or otherwise using the Products, the Customer acknowledges that the Supplier has fully discharged all of its obligations under the Contract and that it shall have no right to reject the Products.

5.13 The Supplier is able to deliver to certain countries outside of the United Kingdom ("International Delivery Location"). However, there are restrictions on certain Products for certain countries, so the Customer must contact the Supplier before ordering Products for delivery to any International Delivery Location to check whether the Supplier is able to deliver to the Customer's preferred country or location.

5.14 The Customer shall be responsible for payment of any import, duties and taxes which are applied when the Products reach the International Delivery Location. The Supplier has no control over these charges and cannot predict their amount. The Customer shall be responsible for ascertaining the amounts of any such import, duties and taxes and for payment of the same.

5.15 The Customer shall be responsible for complying with all applicable laws and regulations in the relevant International Delivery Location. The Supplier does not warrant or guarantee that the Products will be compliant with any International laws or regulatory standards, ratings or certifications applicable in any International Delivery Location, and will not be liable for any breach of such provisions by the Customer or in relation to the Products.

5.16 The Customer shall comply with and be responsible for all applicable laws, regulations and ordinances (including building codes and the Health and Safety at Work etc. Act 1974) and all industry standards which are or may hereafter be in effect from time to time with respect to the selection and/or installation of the Products. The Customer shall exercise suitable safety precautions and shall require employees to follow all installation and use procedures and recommendations as may be published by the Supplier (including the Installation and Maintenance Instructions), including preventing injury or damage to person or property. It is the Customer's responsibility to provide all the means that may be necessary to effectively protect all employees and other persons from harm or injury which otherwise may result from the method of installation or use of the Products. If the Customer fails to comply with the provisions of this clause or the applicable standards or regulations aforementioned, the Customer shall indemnify and hold the Supplier, and its respective employees and agents, harmless from and against all claims, losses or damages arising therefrom.

## 6. QUALITY

6.1 Certain Products benefit from a manufacturer's guarantee. For details of the applicable terms and conditions, the Customer should refer to the manufacturers guarantee provided with the Products.

6.2 Subject to clause 6.4, 4or Products which do not have a manufacturers guarantee, the Supplier provides a warranty that, provided that the Products are installed in accordance with the Installation and Maintenance Instructions and good industry practice, the Products shall be free from material defects in design, material and workmanship, conform in all material respects with their description and be fit for any purpose expressly held out by the Supplier and remain so for 12 months from the Delivery Date.

6.3 Subject to clause 6.4, if:

(a) the Customer gives notice in writing to the Supplier during the applicable warranty period at clause 6.2 above, within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 6.2;

(b) the Supplier is given a reasonable opportunity of examining such Products; and

l the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

6.4 The Supplier shall not be liable for any failure of Product(s) to comply with the warranty set out in clause 6.2 and shall not provide any warranty, in any of the following events:

(a) the Customer makes any further use of such Products after giving notice in accordance with clause 6.3;

(b) the defect arises because the Customer failed to follow the Supplier's user or manufacturer's guidelines, oral or written instructions as to the storage, commissioning, installation (including the Installation and Maintenance Instructions), use, protection and maintenance of the Products or (if there are none) good trade practice regarding the same or if the Customer fails to keep such accurate records and information as to the maintenance, use and condition of the Product(s) as the Supplier may reasonably require;

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer (including but not limited to in the case of Bespoke Products);

(d) the Customer or any third party alters or repairs such Products 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, accident or negligence by the Customer or any third party including but not limited to upon the installation of the Products;

(f) the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;

(h) the failure to comply with warranty arises out of any failure of Products to comply with any applicable laws and regulations in an International Delivery Location.

6.6 The Customer shall be responsible for the installation of the Products at the Installation Location and hereby undertakes to install the Products in accordance with:

(a) Installation and Maintenance Instructions as per the Declaration of Performance (DOP) label present on the Product;

(b) national and local Building Control Regulations;

(c) national and local Fire Regulations; and

(d) any Certified Standard, applicable regulatory standards or best practice which applies in relation to any Product,

and the Supplier shall have no liability to the Customer in respect of any failure of a Product to comply with any warranty, Certified Standard or other quality issue which arises as a result of incorrect installation by the Customer or its third party contractors or any end customer of the Customer.

- 6.7 If the Customer (including its employees, agents and contractors) considers that the Installation and Maintenance Instructions are not consistent with the standards specified at 6.6 (a) – (d) inclusive, the Customer shall notify the Supplier immediately and shall not attempt to install the Product until such time as it has discussed such circumstances with the Supplier.
- 6.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.8 These Conditions shall apply to any repaired or replacement Products supplied by the Supplier.

## 7. TITLE AND RISK

- 7.1 The risk in the Products shall pass to the Customer upon the earlier of the arrival of the Products at the Delivery Location (prior to unloading) or the Collection Point (as applicable) or Deemed Delivery.
- 7.2 Subject to clause 7.4, title to the Products shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for:
- (a) the Products; and
  - (b) any other goods that the Supplier has supplied to the Customer, in which case title to the Products shall pass at the time of payment of all such sums.
- 7.3 Until title to the Products has passed to the Customer, the Customer shall:
- (a) store the Products (at no cost to the Supplier) separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - (c) not install or permit the installation of the Products at the Installation Location;
  - (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and upon the Supplier's request, produce such policies of insurance to the Supplier;
  - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
  - (f) give the Supplier such information relating to the Products as the Supplier may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:
- (a) it does so as principal and not as the Supplier's agent; and
  - (b) title to the Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2 then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the Products or use them in the ordinary course of its business ceases immediately and the Customer assigns to the Supplier any claim or rights against sub-purchasers in order to enable the Supplier to make full recovery of monies owed; and
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them (or appoint an agent in writing to do so).
- 7.6 In the event that the Customer sells or transfers the Products to a third party before legal and beneficial title has passed to it 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.
- 7.7 Should the Customer alter the Products by subjecting them to any manufacturing process or incorporating them into any other product or mixing them in any way the Supplier will own the resulting product until payment due under all contracts between the Supplier and Customer has been made in full.

## 8. PRICE AND PAYMENT

- 8.1 The price of the Products shall be as quoted by the Supplier in writing or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 8.2 The Supplier may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the Delivery Date, quantities or types of Products ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Products is exclusive of the costs and charges of packaging, insurance, loading, unloading and transport of the Products ("**Additional Payments**"), which shall be invoiced to the Customer.
- 8.4 The price of the Products is exclusive of applicable amounts in respect of value added tax ("**VAT**"), excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Products, which the Customer shall be additionally liable to pay to the Supplier. 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 Products.

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- 8.5 Where the Supplier has agreed that the Products shall be delivered to an International Delivery Location, the price of the Products does not include any relevant import duties, taxes or any other fees associated with such delivery (“International Payments”), and the Customer shall be responsible for all such International Payments in accordance with clause 5.14.
- 8.6 The price of the Products does not include delivery charges. Delivery charges are as notified by the Supplier in writing.
- 8.7 Subject to clause 8.8, the Supplier will invoice the Customer for the price of the Products, VAT, Additional Payments and any applicable International Payments at any time after the Customer has placed the Order and payment must be made in full and cleared funds to the bank account nominated in writing by the Supplier within 30 days of the date of the invoice. Time of payment is of the essence. The Supplier reserves the right to require payment prior to the time of shipment or collection if, in its opinion, exercised in its subjective judgment, the Customer’s financial condition has deteriorated or the risk of non-payment has otherwise increased.
- 8.8 If the Customer’s Order includes any Bespoke Products, a non-refundable payment of 50 per cent of the price of the Bespoke Products must be made at the time the Customer places its Order. The Supplier shall be entitled to invoice the Customer for the balance at any time after the Customer has placed the Order, and except as otherwise agreed by the Supplier in writing, payment must be made to the Supplier in full and cleared funds to the Bank account nominated by the Supplier in writing, within 30 days of the date of the invoice, and in any event prior to delivery of the Bespoke Products. The Supplier shall not dispatch the Bespoke Products for delivery or allow collection of them until it has received payment in full and cleared funds.
- 8.9 For the avoidance of doubt, where the Customer has ordered Bespoke Products, any deposit paid by the Customer in accordance with clause 8.8 or otherwise shall be non-returnable in the event that the Customer subsequently cancels or terminates the Order or fails, for whatever reason, to collect or take delivery of the Bespoke Products within a period of 6 weeks from the Delivery Date.
- 8.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then:
- (a) the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
  - (b) the Supplier reserves its right to recover all of its costs in pursuing the debt (including legal fees) from the Customer.
- 8.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 9. TERMINATION AND SUSPENSION

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where 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;
  - (c) 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;
  - (d) 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;
  - (e) the holder of a qualifying floating charge over the Customer’s assets has become entitled to appoint or has appointed an administrative receiver;
  - (f) a person becomes entitled to appoint a receiver over the Customer’s assets or a receiver is appointed over the Customer’s assets;
  - (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) 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 9.2(a) to clause 9.2(g) (inclusive);
  - (i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - (j) the Customer’s financial position deteriorates to such an extent that in the Supplier’s opinion the Customer’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - (k) the Customer fails to perform any of its obligations under these Conditions.
- 9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Products 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 9.2(a) to clause 9.2(k), 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.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier’s outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties’ rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

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## 10. LIMITATION OF LIABILITY AND INDEMNITY

10.1 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, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

10.2 Subject to clause 10.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, (whether direct, indirect or consequential (and whether caused by the negligence of the Supplier, its servants or agents or otherwise) for any:

- (i) loss of profit or pure economic loss;
- (ii) loss of sales, business or revenue;
- (iii) loss of corruption of data, information or software;
- (iv) loss of business or business opportunity;
- (v) loss of anticipated savings;
- (vi) loss of goodwill; or
- (vii) or any indirect, special or consequential loss, arising under or in connection with the Contract, the supply of the Products or their use, installation or resale by the Customer;

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Products subject to the Order to which the liability relates.

10.3 In addition to clause 3.2, the Customer hereby releases and agrees to defend, indemnify and hold the Supplier, and its respective employees and agents, harmless from and against any and all claims, losses, liabilities, damages or expenses whatsoever, including any arising from any:

(a) actual or alleged injury to person, property or business, arising from or in any way relating, directly or indirectly, to the delivery, assembly, erection, installation, use or repair of the Products and/or any related or other claims or losses;

(b) failure to install or maintain any Products in accordance with the Installation and Maintenance Instructions and/or good industry practice in each case to the extent caused by the Customer and/or its agents or employees or any of their acts, omissions or negligence.

## 11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, labour or transportation difficulties, inability to obtain products, materials or components, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 12. GENERAL

### 12.1 Assignment and other dealings.

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

### 12.2 Notices.

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

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the third Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission provided that such email was sent to the correct email address of the intended recipient and not recalled, or a message of non-delivery received.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 12.3 Severance.

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

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- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 12.7 **Governing law.** The 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 the law of England and Wales.
- 12.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).