

Showcase PSR Limited – Terms and Conditions of Sale

The Customer's attention is particularly drawn to the provisions of clauses 3.3, 4.2, 5, 6.6, 6.7, 6.9, 7.4, 7.5, 8.2, 8.6, 10.2, 11.3, 14, 17 and 18.

1. INTERPRETATION

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

1.1 Definitions:

Briefing Document	any briefing document produced by the Supplier setting out the Service Specification.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Commencement Date	has the meaning given in clause 2.5.
Completion of Delivery	has the meaning given in clause 6.3.
Conditions	these terms and conditions as amended from time to time in accordance with clause 19.8.
Consultancy Services	any consultancy and procurement services supplied by the Supplier as set out in the Resource Schedule and Briefing Document.
Contract	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
Contract Price	means the total proposed cost of the Goods and/or Services or how the cost will be calculated, as set out in the Quotation, Resource Schedule and/or Drawdown Fee Document.

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Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Customer	the person or firm who purchases the Goods and/or Services from the Supplier.
Defective Good	has the meaning set out in clause 7.1. The term Defective Goods shall be construed accordingly.
Deliverables	the deliverables (other than the Goods) set out in the Resource Schedule and/or Briefing Document.
Delivery Location	has the meaning given in clause 6.2.
Drawdown Fee Document	the document prepared by the Supplier setting out how many hours of Consultancy Services the Supplier is proposing to provide, and the payment schedule for the Consultancy Services.
Force Majeure Event	has the meaning given to it in clause 17.
Furniture Schedule	any furniture schedule setting out the Goods Specification, and the Supplier's fee proposal for the Goods.
Goods	the goods (or any part of them, but always excluding the Sourced Goods) set out in the Quotation and/or Furniture Schedule.
Goods Documents	means the Quotation and/or Furniture Schedule.
Goods Specification	any specification for the Goods, including any plans or drawings, contained in the Furniture Schedule and/or Quotation.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights

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in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses	has the meaning set out in clause 4.2.
Other Provider(s)	has the meaning set out in clause 10.1.3.
Order	the Customer's order for the supply of Goods and/or Services.
Quotation	means the quotation document issued by the Supplier for the supply of Goods.
Requested Change	has the meaning given in clause 3.4.
Resource Schedule	any resource schedule setting out the resources the Supplier proposes to provide the Services, including the Supplier's fee proposal for the Services.
Seller	has the meaning given in clause 5.2.2.3.
Services	the Standard Installation Services and the Consultancy Services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.
Services Documents	means the Briefing Document, Drawdown Fee Document, and/or Resource Schedule.
Service Specification	the description or specification for the Services contained in the Briefing Document.
Sourced Goods	has the meaning given in clause 5.1.

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Standard Installation Services any delivery and installation of the Goods by the Supplier which does not form part of the Consultancy Services.

Supplier Showcase PSR Limited registered in England and Wales with company number 06066134.

Supplier Materials has the meaning given in clause 10.1.9.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its personal representatives, successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 A reference to **writing** or **written** includes email but not fax.

2. BASIS OF CONTRACT

2.1 The Customer accepts and acknowledges that:

2.1.1 subject to clause 2.1.2, unless otherwise stated on the relevant Goods Documents and/or Services Documents, such documents issued by the Supplier shall not constitute an offer and unless otherwise specified by the Supplier, such documents are only valid for a period of 14 days from the date of issue; and

2.1.2 prior to the Customer submitting an Order in respect of the relevant Goods Documents and/or Services Documents, the Supplier can withdraw such documents at any time.

2.2 The Conditions apply to all Goods Documents and Services Documents issued by the Supplier and all Orders placed by the Customer.

2.3 If the Customer's order does not match the Goods Documents and/or Services Documents in any way, the Customer shall not submit such order and shall instead promptly inform the Supplier so that the Supplier can revise the relevant documents. The Customer shall only submit an Order if it makes no alternations to the relevant Goods Documents and/or Services Documents.

2.4 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with the Goods Documents and/or Services Documents, and these Conditions.

2.5 The Order shall only be deemed to be accepted on the earlier of:

2.5.1 the Supplier issuing:

2.5.1.1 written acceptance of the Order; or

2.5.1.2 an invoice pursuant to clause 11.5.1; or

2.5.2 the Customer making payment in accordance with clause 11.4,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

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

2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. **CANCELLING AN ORDER**

3.1 The Customer may request to cancel the Contract, if the Customer notifies the Supplier as set out in clause 3.2.

3.2 To cancel the Contract, the Customer must inform the Supplier by emailing the Supplier at sales@showcase-psr.co.uk. The Customer must include details about the relevant Order it wishes to cancel so the Supplier can identify it.

3.3 If the Customer cancels an Order the Customer shall indemnify the Supplier against all Losses suffered or incurred by the Supplier in connection with the cancellation of such Order. The Customer acknowledges and accepts that due to the nature of the Goods and/or Services, this may be the full price of the relevant Goods and/or Services.

3.4 If the Customer wishes to amend the Order the Customer shall inform the Supplier in writing what changes it would like to make to the relevant Order (**Requested Change**). The Supplier shall inform the Customer in writing

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about whether it can accommodate the Requested Change, any changes to the price of the Goods and/or Services, the timing of supply and any other consequences of the Requested Change, and ask the Customer whether it wishes to go ahead with the Requested Change (**Change Consequences**). If the Customer agrees to the Change Consequences in writing:

3.4.1 the Order shall be varied accordingly; and

3.4.2 the Supplier may request immediate payment of any price increases of the Requested Change to the bank account nominated in writing by the Supplier.

4. **GOODS**

4.1 The Goods are described in the Goods Documents.

4.2 To the extent that the Goods are to be manufactured in accordance with a Goods 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) (**Losses**) suffered or incurred by the Supplier arising out of or 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 Goods Specification. This clause 4.2 shall survive termination of the Contract.

4.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, but for the avoidance of doubt, the Supplier shall not be responsible for checking the Customer's statutory or regulatory requirements and/or ensuring such requirements are met. If the Goods Specification is amended under this clause, the Supplier shall notify the Customer in any such event.

4.4 The Supplier shall not, unless otherwise agreed in writing by the Supplier, assemble, erect and or install the Goods.

5. **Sourced Goods**

5.1 The Customer may request that the Supplier sources and buys certain goods on its behalf as part of providing the Services or as agreed between the Supplier and Customer in writing (**Sourced Goods**). When requested by the Supplier, the Customer shall promptly inform the Supplier of all of its requirements relating to the Sourced Goods, including but not limited to type and quantity and shall ensure such information is complete and accurate.

5.2 If clause 5.1 applies:

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- 5.2.1 the Supplier is authorised by the Customer as an agent to negotiate and conclude contracts for the purchase of Sourced Goods on behalf of the Customer as an undisclosed principal. Unless otherwise agreed with the Customer, the Supplier shall contract on the Seller's terms and conditions of sale.
- 5.2.2 the Customer acknowledges and accepts that:
- 5.2.2.1 the Supplier may disclose to the Seller the Customer's existence as principal to the transaction relating to the Sourced Goods before or after placing an order for the Sourced Goods;
 - 5.2.2.2 unless otherwise agreed in advance and in writing by the Supplier, the Customer shall pay for the Sourced Goods in full and in cleared funds in advance of the Supplier placing any order for such Sourced Goods, to the bank account nominated in writing by the Supplier; and
 - 5.2.2.3 should any person from which the Supplier purchases any Sourced Goods under clause 5.2.1 (**Seller**) fail to fulfil any order for whatever reason (including, but not limited to, due to insolvency), the Supplier shall:
 - (a) provide the Customer with any information the Supplier holds that the Customer requires in order to pursue a claim against the Seller;
 - (b) not be liable for the failure to supply any Sourced Goods; and
 - (c) shall not be obliged to provide any replacement goods.

6. DELIVERY OF GOODS

- 6.1 The Supplier shall ensure that:
- 6.1.1 each delivery of the Goods 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 Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 6.1.2 it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. 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.

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- 6.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier informs the Customer that the Goods are ready.
- 6.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location (**Completion of Delivery**).
- 6.4 Any dates quoted for delivery of the Goods 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 Goods that is caused by:
- 6.4.1 a Force Majeure Event;
 - 6.4.2 the Pandemic;
 - 6.4.3 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;
 - 6.4.4 the Customer requesting any changes to their Order, or any other changes to the Contract that are relevant to the supply of the Goods.
- 6.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:
- 6.5.1 a Force Majeure Event;
 - 6.5.2 the Pandemic; or
 - 6.5.3 the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 6.6 If the Customer fails to accept delivery of the Goods after the Supplier informed the Customer that the Goods were ready, then except where such failure or delay is caused by a Force Majeure Event, the Pandemic or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 6.6.1 delivery of the Goods shall be deemed to have been completed when the Supplier first attempted delivery or at 9.00 am on the third Business Day following the day on which the Supplier informed the Customer that the Goods were ready (whichever occurs earlier) ; and
 - 6.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance) (**Storage Expenses**). The Customer shall pay the Storage Expenses in accordance with clause 11.6.

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- 6.7 If ten Business Days after the Supplier first attempted delivery or informed the Customer that the Goods were ready for delivery (whichever occurred earlier) the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 6.8 The Supplier may deliver the Goods 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.
- 6.9 Where the Supplier is delivering the Sourced Goods to the Customer, references to "Goods" in clauses 6.2 - 6.4 (inclusive) and clauses 6.6 - 6.7 (inclusive) shall be deemed to be to "Sourced Goods". For the avoidance of doubt, the Supplier may deliver the Sourced Goods by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

7. QUALITY OF GOODS

- 7.1 The Supplier warrants that on delivery, for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- 7.1.1 conform in all material respects with their description and any applicable Goods Specification; and
 - 7.1.2 be free from material defects in design, material and workmanship,
- and any Good that does not comply with this clause 7.1 is a **Defective Good**.
- 7.2 The Customer shall inspect the Goods on delivery and shall inform the Supplier in writing on the delivery note or in any case within 24 hours of Completion of Delivery if the Goods are damaged or if there are any defects with the Goods that would be apparent of on a visual inspection (**Defective Delivery Report**). The Defective Delivery Report must include a description of the relevant damage or defect, and the number and type of Goods affected.
- 7.3 Subject to clause 7.4:
- 7.3.1 if the Customer has provided a Defective Delivery Report in accordance with clause 7.2 that some or all of the Goods do not comply with the warranty set out in clause 7.1; or
 - 7.3.2 excluding where clause 7.3.1 applies, if the Customer discovers any relevant defect in the Goods during the Warranty Period and the Customer gives the Supplier written notice within a reasonable time of discovery (and no more than 5 business days) that some or all of the Goods do not comply with the warranty set out in clause 7.1 (**Defect Notice**). Such Defect Notice must include a description of the relevant defect, and the number and type of Goods affected,

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and,

7.3.3 the Supplier is given a reasonable opportunity of examining such Goods; and

7.3.4 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,

the Supplier shall, at its option, repair or replace the Defective Good(s), or refund the price of the Defective Good(s) in full.

7.4 The Supplier shall not be liable for any Goods' failure to comply with the warranty in clause 7.1 if:

7.4.1 the Customer fails to provide either a:

7.4.1.1 Defective Delivery Report in accordance with clause 7.2; or

7.4.1.2 Defect Notice in accordance with clause 7.3.2.

7.4.2 the Customer makes any further use of such Goods after giving the applicable notice in accordance with clause 7.2 or 7.3.2;

7.4.3 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

7.4.4 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

7.4.5 the Customer alters or repairs such Goods without the written consent of the Supplier;

7.4.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

7.4.7 the Goods differ from their description or any Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards under clause 4.3.

7.5 Except as provided in this clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.

7.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

8. **TITLE AND RISK**

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- 8.1 The risk in the Goods and any Sourced Goods shall pass to the Customer on Completion of Delivery.
- 8.2 Subject to clause 8.4, title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for:
- 8.2.1 the Goods; and
 - 8.2.2 any other goods that the Supplier has supplied to the Customer in respect of which payment has become due,
- and title to the Goods shall pass at the time of payment of all such sums.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 8.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.2.1 to clause 15.3; and
 - 8.3.5 give the Supplier such information relating to:
 - 8.3.5.1 the Goods, as the Supplier may require from time to time; and
 - 8.3.5.2 the ongoing financial position of the Customer.
- 8.4 Subject to clause 8.5, the Customer may use the Goods in the ordinary course of its business but may not resell or otherwise use the Goods before the Supplier receives payment for the Goods. However, if the Customer does resell the Goods before that time in breach of this clause 8.4:
- 8.4.1 it does so as principal and not as the Supplier's agent; and
 - 8.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 8.5 At any time before title passes to the Customer the Supplier may:

- 8.5.1 by notice in writing, terminate the Customer's right under clause 8.4 to resell the Goods or use them in the ordinary course of its business;
- 8.5.2 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 8.5.3 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 (including, if necessary, dismantling any Goods which have been assembled).

8.6 The Customer shall indemnify the Supplier against any Losses incurred by the Supplier in recovering the Goods under clause 8.5.3. If, once the Supplier recovers the Goods under clause 8.5.3, the resale value of the Goods is greater than any outstanding amount owed to the Supplier by the Customer, any costs and expenses payable by the Customer under the indemnity in this clause 8.6, plus reasonable storage and selling costs, shall be deducted from the excess amount and the Customer shall only be liable for any shortfall.

9. **SUPPLY OF SERVICES**

- 9.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 9.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Documents, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement the Supplier is subject to, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 9.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

10. **CUSTOMER'S OBLIGATIONS**

- 10.1 The Customer shall:
 - 10.1.1 ensure that the terms of the Order and any information it provides to the Supplier is complete and accurate;
 - 10.1.2 co-operate with the Supplier in all matters relating to the Goods, Sourced Goods and the Services;
 - 10.1.3 provide or procure the Supplier, its employees, agents, consultants and subcontractors, with access to the premises, office accommodation and other facilities as reasonably required by the

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Supplier to deliver the Goods, Sourced Goods and/or provide the Services including clear access to facilitate the unloading of the Goods and/or Sourced Goods, and free access to open floor areas of the premises during the usual working hours of the Customer, to the exclusion of any other supplier, agent, consultant or subcontractor of the Customer (**Other Provider(s)**);

- 10.1.4 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 complete and accurate in all material respects;
- 10.1.5 be the entity responsible for the Other Provider(s):
 - 10.1.5.1 including for instructing, paying, monitoring, liaising with and chasing the Other Provider(s). If the Supplier requires any information from the Other Provider(s), the Customer shall procure the Other Provider(s) provide such information to the Supplier promptly when requested, or the Customer shall obtain the relevant information and shall promptly inform the Supplier of such information when requested; and
 - 10.1.5.2 if any Other Provider(s) damage any of the Goods or Sourced Goods, the Customer acknowledges and accepts that:
 - (a) this does not relieve the Customer from its obligations under these Conditions; and
 - (b) the Customer shall be responsible for pursuing the Other Provider(s) in relation to any loss it suffers in connection with such damaged Goods.
- 10.1.6 prepare the Customer's premises for the supply of the Goods, Sourced Goods and/or Services;
- 10.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 10.1.8 comply with all applicable laws, including health and safety laws;
- 10.1.9 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- 10.1.10 comply with any additional obligations as set out in the Goods Documents and/or Services Documents.

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10.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, or any act or omission of any Other Provider(s), or failure by the Customer to perform any relevant obligation (including if such failure is connected with any failure of any Other Provider(s)) **(Customer Default)**:

10.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend supply of the Goods or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

10.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10.2; and

10.2.3 the Customer shall indemnify the Supplier against all Losses suffered or incurred by the Supplier arising directly or indirectly from the Customer Default.

11. CHARGES AND PAYMENT

11.1 The price for Goods:

11.1.1 shall be the price set out in the Goods Documents; and

11.1.2 unless otherwise set out in the Goods Documents or agreed by the Supplier in writing, shall be exclusive of:

11.1.2.1 all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer;

11.1.2.2 all costs and charges of assembling, erecting and installing the Goods which shall be invoiced to the Customer where the Supplier has agreed to provide such services as part of the Services.

11.2 The charges for the Services shall be as set out in the Services Documents and shall be subject to any savings incentive bonus which the Customer is obliged to pay to the Supplier as set out in the Services Documents.

11.3 The Supplier reserves the right to:

11.3.1 increase the price of the Goods and the charges for the Services, by giving notice to the Customer at any time before delivery or supply, to reflect any increase in the cost of the Goods or the charges for the Services to the Supplier that is due to:

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- 11.3.1.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 11.3.1.2 any Requested Change, including but not limited to changing the delivery date(s), quantities or types of Goods or Services ordered, or the Goods Specification or the Services Specification; and/or
 - 11.3.1.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 11.4 Prior to the Supplier accepting any Order under clause 2.5.1.1, if requested by the Supplier in writing, the Customer shall pay the full Contract Price to the bank account nominated in writing by the Supplier:
 - 11.4.1 immediately on submission of any Order, and if required by the Supplier, in cleared funds; or
 - 11.4.2 in advance of delivery of the Goods or supply of the Services, and if required by the Supplier, that funds are cleared prior to delivery of the Goods or supply of the Services (as applicable); or
 - 11.4.3 as otherwise stated in writing by the Supplier.
- 11.5 If the Supplier does not make a written request under clause 11.4:
 - 11.5.1 in respect of Goods and Standard Installation Services, the Customer shall pay:
 - 11.5.1.1 30% of the:
 - (a) Contract Price for the Goods; and/or
 - (b) Contract Price for the Standard Installation Services,immediately on submission of the Order to the bank account nominated in writing by the Supplier; and
 - 11.5.2 the Supplier shall invoice the Customer for the balance of the Contract Price on or at any time after Completion of Delivery; and/or
 - 11.5.3 in respect of Consultancy Services, the Supplier shall invoice the Customer as set out in the Drawdown Fee Document.
- 11.6 Subject to clause 3.4 and excluding where clauses 5.2.2.2, 11.4 or 11.5 apply, and unless otherwise agreed in writing by the Supplier, the Customer shall pay each invoice submitted by the Supplier:

11.6.1 within 30 days of the date of the invoice; and

11.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.

11.7 Time for payment shall be of the essence of the Contract.

11.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

11.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is at or below 0%.

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

12. INTELLECTUAL PROPERTY RIGHTS

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

12.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

12.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 12.2.

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

13. CONFIDENTIALITY

13.1 Subject to clause 13.3, each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

- 13.2 Each party may disclose the other party's confidential information:
- 13.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 If the parties have entered into any form of non-disclosure or confidentiality agreement, the parties hereby acknowledge and agree that, to the extent that such agreement contains confidentiality restrictions that are more onerous than those set out in this clause 13, such restrictions shall continue in full force and effect and prevail over the provisions of this clause 13.
- 13.4 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
14. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 14.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 14.1.1 death or personal injury caused by negligence;
 - 14.1.2 fraud or fraudulent misrepresentation; and
 - 14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to clause 14.1 and clause 14.3, the Supplier's total liability to the Customer shall not exceed £5,000,000. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 14.3 The following types of loss are wholly excluded by the Supplier:
- 14.3.1 loss of profits;
 - 14.3.2 loss of sales or business;
 - 14.3.3 loss of agreements or contracts;
 - 14.3.4 loss of anticipated savings;

- 14.3.5 loss of use or corruption of software, data or information;
- 14.3.6 loss of or damage to goodwill; and.
- 14.3.7 indirect or consequential loss.
- 14.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 14.6 This clause 14 shall survive termination of the Contract.
- 15. **TERMINATION**
- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than three months' written notice.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 15.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - 15.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - 15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 15.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 15.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;

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15.3.2 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

15.3.3 there is a change of Control of the Customer.

15.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods and/or Sourced Goods under the Contract or any other contract between the Customer and the Supplier if:

15.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment;

15.4.2 the Customer fails to remedy any material breach within the time period specified in clause 15.2.1; and/or

15.4.3 the Customer becomes subject to any of the events listed in clause 15.2.2 to clause 15.3 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract:

16.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services, Sourced Goods and/or Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

16.1.2 the Customer shall return all of the Supplier Materials and any Deliverables, Sourced Goods and/or 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.

16.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

17. FORCE MAJEURE

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17.1 Excluding where clause 18 applies, neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

17.2 For the avoidance of doubt, a Force Majeure Event shall include but not be limited to none, delayed or defective performance by the Supplier's suppliers or subcontractors, but shall not include a Customer Default caused by a failure, act or omission of any Other Provider(s).

17.3 In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

18. PANDEMIC

18.1 The parties agree that the Supplier shall not be in breach of performing its obligations under this Contract if the Supplier is prevented, hindered, suspended or delayed from performing its obligations due to the Covid-19 pandemic, or any subsequent wave of that pandemic, or any related pandemic (**Pandemic**).

18.2 If clause 18.1 applies, the Supplier's obligations shall be suspended, and the time for performance of its obligations shall be extended until confirmed in writing by the Supplier. The corresponding obligations of the Customer shall be suspended, and the time for performance of its obligations extended, to the same extent as the Supplier under this clause 18.2.

19. GENERAL

19.1 Assignment and other dealings

19.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

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

19.2 Notices.

19.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

19.2.2 Any notice shall be deemed to have been received:

19.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

19.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

19.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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

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

19.5 **No partnership or agency.** nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, and excluding where clause 5 applies, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.6 **Entire agreement and conflict**

19.6.1 The:

19.6.1.1 Contract (comprising the Goods Documents and/or Services Documents, Order and these Conditions); and

19.6.1.2 any other formal agreement entered into by the parties relating to the supply of Goods and Services (including any agreement referred to under clause 13.3) (**Formal Agreement**),

constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.6.1.3 If there is any conflict between the documents referred to in clause 19.6.1 a document higher on the list shall have priority over a document ranking lower on the list:

- (a) Formal Agreement;
- (b) Order;
- (c) Resource Schedule;
- (d) Drawdown Fee Document;
- (e) Furniture Schedule;
- (f) Quotation; and
- (g) Conditions.

19.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

19.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

19.7 **Third parties rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

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

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