STOKE STONEWORKS LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

Updated December 2022

The Customer's attention is particularly drawn to the provisions of clause 12 *(Limitation of liability)*

1. Interpretation

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

1.1 **Definitions**:

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

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

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

Controller, processor, date subject, personal data, personal data breach, processing and **appropriate technical measures**: as defined in the Data Protection Legislation.

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

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 15.1.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier (as envisaged in clause 3.3).

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

Order: the Customer's order for the supply of Goods, as set out in the Customer's purchase order or sent electronically, or the Customer's written or electronic acceptance of the Supplier's quotation, as the case may be.

Supplier: Stoke Stoneworks Limited (registered in England and Wales with company number 12520674), registered office: New Eyam Road Stoke, Grindleford, Hope Valley, Derbyshire, United Kingdom, S32 2HW.

Supplier Materials: has the meaning given in clause 7.1(c).

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (*(EU) 2016/679*); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (*2002/58/EC*) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended.

1.2 **Interpretation**:

(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 and permitted assigns.

(c) 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.

(d) 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.

(e) A reference to **writing** or **written** includes fax and but not email.

2. Basis of contract

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

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (or, if earlier, when the Supplier delivers the Goods) at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods contained in the Supplier's catalogues, brochures or on its websites are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.

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

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on its websites are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. A quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 days from its date of issue (unless an alternative validity period is specified in the quotation).

3. Goods Specification

3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Goods Specification.

3.2 The Customer acknowledges that the Goods are a natural product, and fluctuations and variations will occur in relevant characteristics, including colour, composition and finish. The Supplier shall not be liable for any loss caused by such variations which do not diminish the quality of the Goods.

3.3 Prior to commencing production of the Goods, the Supplier shall provide a Goods Specification to the Customer for acceptance and approval in writing (usually via email). The Customer acknowledges that the Supplier is unable to assess the appropriateness or suitability of the Goods Specification and that it is the Customer's sole responsibility to ensure that the Goods Specification is accurate in all respects including that the colour, composition and finish of the Goods is suitable for the Customer's requirements before production. The Supplier is not obliged to make changes requested by the Customer to the Goods Specification once this has been approved by the Customer, and any such changes requested by the Customer shall not be effective unless confirmed in writing by the Supplier.

3.4 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

3.5 The Customer acknowledges the requirement to increase the quantity and/or volume of Goods ordered to take due account of wastage caused both by the natural characteristics of the Goods (for example, up to 10% of any Order quantity may be unusable due to chips or breakages caused by packing or transportation, or due to blemishes, surface variations and/or discolouration) and also to take due account of wastage during the installation process (up to a further 10% of any Order quantity may be wasted due to cutting Goods to fit during the installation process). It is the Customer's responsibility to ensure that the quantity and/or volume of Goods ordered is sufficient to take such wastage into account.

4. Delivery of Goods

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the relevant Customer and Supplier order reference numbers, the type and quantity of the Goods (including the Supplier's 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

(b) if the Supplier requires the Customer to return any packaging material 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.

4.2 Where it has been agreed that the Goods will be delivered by the Supplier to the Customer's location, the Supplier shall arrange for the delivery of 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 Goods are ready. Alternatively, where it has been agreed that the Customer will collect the Goods from the Supplier's location, delivery will be effected by the Customer collecting the Goods from the Supplier's premises at New Eyam Road Stoke, Grindleford, Hope Valley, Derbyshire, United Kingdom, S32 2HW or such other location as may be advised by the Supplier before delivery (**Collection Location**) within 3 Business Days of the Supplier notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or (as the case may be) upon completion of loading of the Goods at the Collection Location.

4.4 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 a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 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 a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instructions related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting from the proceeds its reasonable storage and selling costs of the Goods, charge the Customer for any shortfall below the price of the Goods under the Contract.

4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods 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 Goods was delivered.

4.9 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.

Non-Delivery, shortages and damaged Goods

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

4.11 All Goods supplied by the Supplier must be examined and checked upon receipt by the Customer, and any Goods shortages, discrepancies and damage revealed by such examination promptly reported to the Supplier.

4.12 The Supplier shall not be liable for any non-delivery or shortages of Goods, or discrepancies in the quantity of Goods supplied (even if caused by the Supplier's negligence) unless written notice is given to the Supplier within 2 Business Days of the date when the relevant Goods would in the ordinary course of events have been received. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.13 The Supplier shall not be liable for any Goods damaged in transit (where delivered by the Supplier) or errors with Goods supplied (even if caused by the Supplier's negligence) unless written notice is given to the Supplier within 2 Business Days of the date of delivery or collection (as the case may be).

4.14 Any liability of the Supplier for non-delivery or shortages of Goods, or for damage or errors to Goods for which the Supplier is responsible shall be limited to replacing any affected Goods within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods.

Safety Precautions relating to the Goods

4.15 The Customer is responsible for ensuring that appropriate health and safety precautions are taken when unpacking, handling, cutting and installing the Goods, including the wearing and use of appropriate personal protective equipment such as protective footwear and gloves, respiratory equipment and eye protection. The Goods may be heavy, and Goods packaging may include steel or plastic straps under tension for security during transit, and the Customer acknowledges and agrees to adhere to any safety and handling instructions noted on the packaging of the Goods, and also to adopt appropriate safe lifting, handling and unpacking practices at all times to avoid injury to personnel. The Customer shall ensure that all personnel (including those of the end customer) are made aware of and comply with the requirements of this clause 4.15.

5. Quality of Goods

5.1 The Supplier warrants to the Customer that on delivery the Goods shall:

(a) conform in all material respects with their description and any applicable Goods Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

(a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

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

(c) the Customer provides reasonable co-operation to the Supplier to allow the Supplier to collect the Goods or (where agreed between the parties, or if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

(a) the Customer did not undertake a reasonable inspection of the Goods before installation, and the failure to comply with the warranty would have been apparent on such an inspection;

(b) the Customer (or the end customer) installs or makes use of the Goods;

(c) the defect arises because the Customer (or the end 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;

(d) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer ;

(e) the Customer (or the end customer) alters or repairs such Goods without the written consent of the Supplier;

(f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage, environmental or working conditions; or

(g) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 In circumstances where the Customer has given notice to the Supplier (in accordance with clause 5.2(a)), but does not provide reasonable co-operation to the Supplier to allow the Supplier to collect the Goods, the Supplier shall (upon written notice to the Customer) be entitled to make a reasonable charge to the Customer for repeat attempts made to collect the Goods from the Customer, or alternatively to require the Customer to return the Goods to the Supplier's place of business at its own cost.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 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.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods 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 Goods;

(c) 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;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d)(inclusive); and

(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause clause 13.1(d)(inclusive), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy the Supplier may have:

(a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession that 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 Goods are stored in order to recover them.

7. Customer's obligations

7.1 The Customer shall:

(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

(b) comply with all applicable laws, including health and safety laws; and

(c) keep and maintain 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.

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

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of any of its obligations until the Customer remedies the Customer Default, to the extent the Customer Default prevents or delays the Supplier's performance of those obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. Charges and payment

8.1 The price of the Goods shall be the price set out in the Order (subject where applicable to clause 8.2) or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

8.2 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(a) 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);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(c) 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.

8.3 Subject to clause 8.5, the Supplier shall invoice the Customer on or at any time after completion of delivery of the Goods.

8.4 Subject to clause 8.5, the Customer shall pay each invoice submitted by the Supplier:

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

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

8.5 The Customer is entitled to a credit account with the Supplier only at the discretion of the Supplier, and the Supplier reserves the right to invoice the Customer and require payment in full by the Customer in respect of any Goods prior to delivery.

8.6 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**) and

any applicable duties and other levies payable on the Goods. 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 (together with any duties and other levies) as are chargeable at the same time as payment is due for the supply of the Goods.

8.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the then current Barclays Bank plc base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

8.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9. Intellectual property rights

9.1 The supply of Goods by the Supplier shall not confer any right upon the Customer to use any of the Supplier's trade marks (except in the re-sale of the Goods in the packaging supplied by the Supplier), or any of the Supplier's patents, design rights or other industrial or Intellectual Property Rights, and at all times such patents, trade marks, design rights and other industrial or Intellectual Property Rights shall remain the absolute property of the Supplier (or its suppliers).

9.2 All Supplier Materials are the exclusive property of the Supplier. All written information, drawings, artwork, images and diagrams (excluding the Goods themselves) prepared by the Supplier in relation to the supply of Goods and the copyright therein and all other items owned by the Supplier and used in the production of the Goods shall remain the property of the Supplier and shall be returned by the Customer on demand. All such information shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Supplier.

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

10. Data protection

10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 10, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.

10.4 Without prejudice to the generality of clause 10.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

(d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

(e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a personal data breach;

(g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

10.5 The Customer consents to the Supplier appointing third-party processors of personal data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 10.

10.6 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

11. Confidentiality

11.1 Each party undertakes that it shall not at any time during the life of the Contract, and for a period of five 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 or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

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

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information are subject to obligations of confidentiality corresponding to those which bind that party under this clause 11; and

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

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12. Limitation of liability: The customer's attention is particularly drawn to this clause.

12.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

12.2 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; and

(d) defective products under the Consumer Protection Act 1987.

12.5 Subject to clause 12.4, the Supplier's total liability to the Customer in respect of all breaches of duty under the Contract shall not exceed the cap. In relation to this clause 12.5:

(a) **cap**. The cap is an amount equal to one hundred percent (100%) of the total charges; and

(b) **total charges**. The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of Goods actually supplied by the Supplier, whether or not invoiced to the Customer.

12.6 Subject to clause 12.4, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

(a) loss of profit; or

(b) loss of goodwill; or

(c) loss of business; or

(d) loss of business opportunity; or

(e) loss of anticipated saving; or

(f) loss or corruption of data or information; or

(g) special, indirect or consequential damage,

suffered by the other party that arises under or in connection with the Contract.

12.7 Without limiting any other provisions of this clause 12, the Customer acknowledges and agrees that the Supplier shall not have any liability:

(a) in respect of any third party claims, including from the Customer's customer(s) (the **end customer**) arising from or in relation to the Order or Contract, save and except where (and to the extent) this has been agreed in advance in writing by the Supplier; and

(b) for any costs, expenses or claims whatsoever that are incurred in relation to delays in installation of the Goods (including any costs and expenses relating to employees, consultants, sub-contractors or workmen engaged by the Customer or the end customer to install the Goods).

12.8 This clause 12 shall survive termination of the Contract.

13. Termination

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

(a) 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;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract or (at its discretion) suspend further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:

(a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or

(b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d)(inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them,

and in either such case, all outstanding sums payable by the Customer in respect of Goods shall then become immediately due to the Supplier.

13.3 Unless the Customer is entitled to terminate the Contract in any of the circumstances identified in clause 13.1, the Contract (or any Goods or instalments of Goods comprised in the Contract) may only be cancelled by the Customer with the Company's prior written consent.

14. Consequences of termination

14.1 On termination of the Contract:

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

(b) the Customer shall return all of the Supplier Materials and 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.

14.2 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.

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

15. Force majeure

15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.3 If the Force Majeure Event prevents the Supplier from providing any of the Goods for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16. General

16.1 **Assignment and other dealings**

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

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

16.2 **Notices.**

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(i) sent by fax to its main fax number, or sent by email to the other party's designated email address specified by that party in any written order documentation relating to the Contract.

(b) Any notice shall be deemed to have been received:

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

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

(iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(a) 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.

16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

16.4 **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.

16.5 **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, 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.

16.6 **Entire agreement**.

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

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

(c) Nothing in this clause shall limit or exclude any liability for fraud.

16.7 **Third party rights.**

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

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.8 **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).

16.9 **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.

16.10 **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.