

Max Frank Limited – Terms and Conditions of Sale

1. INTERPRETATION

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

Business Day:	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
Company:	Max Frank Limited registered in England and Wales with company number 06309165 whose registered office is at Whittle Road, Meir, Stoke on Trent, Staffordshire, ST3 7HF.
Company Materials	has the meaning set out in condition 7.1.6.
Conditions:	these terms and conditions as amended from time to time in accordance with condition 14.8.
Contract:	the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Conditions
Customer:	the person, firm or company who purchases the Goods and/or Services from the Company.
Force Majeure Event:	has the meaning given to it in condition 14.1.1
Goods:	the goods (or any part of them) set out in the Order.
Intellectual Property Rights:	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Order:	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order or the Customer's acceptance of the Company's quotation as the case may be.
Services:	any design services (including the preparation or supply of any plans, drawings, data sheets or other information) recommendation or advice provided or made available by the Company relating to the selection, specification or use of any Goods or their fitness or suitability for any purpose.
Specification:	any specification for the Goods and/or Services either provided by the Company or otherwise agreed to in writing by the Company with the Customer.

1.2. Construction

In these Conditions, the following rules apply:

- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 1.2.1.1. a reference to a party includes its successors or permitted assigns;
 - 1.2.1.2. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - 1.2.1.3. any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - 1.2.1.4. a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Customer to purchase Goods from the Company in accordance with these Conditions.
- 2.2. The Order shall only be accepted or deemed to be accepted when the Company issues a written confirmation of the Order at which point and on which date the Contract shall come into existence.
- 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or any other contract between the Company and the Customer for the supply of the Goods and/or Services.
- 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 trade, custom, practice or course of dealing.
- 2.5. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 days from its date of issue subject to earlier withdrawal by the Company.
- 2.6. 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. DELIVERY

- 3.1. If the Company has agreed to arrange for transport to an address specified by the Customer (subject to condition 3.5) delivery of the Goods shall take place when the Goods are made available at such address immediately prior to them being unloaded. Otherwise, the Customer shall collect the Goods from the address notified by the Company within any period of time agreed by the parties (or otherwise within a reasonable time determined by the Company) and in which case (subject to condition 3.5) delivery will take place when the Goods are loaded on to the vehicle arranged by the Customer.
- 3.2. For export orders for Goods to be delivered outside of the United Kingdom, unless otherwise agreed by the Company in writing, the delivery terms shall be Ex Works (EXW) (Incoterms 2010) and the Customer shall be responsible for freight, insurance and all duties and for complying with any legislation or regulations governing the importation of the Goods into the country of destination (including obtaining relevant licences, permits and permissions).
- 3.3. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. If the date quoted for delivery is not met by the Company (except where due to any Force Majeure Event) the Customer shall be entitled to give written notice at any time after that date making time for delivery of the essence on (but not before) any date (being a Business Day) which is not less than 14 days after (but not including) the date of any such notice being received by the Company. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or by the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4. If the Company fails to deliver the Goods by the expiry of any period in relation to which time has been made of the essence by any notice given under condition 3.3 above, any liability of the Company for loss of the Customer in respect of such failure or delay 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 Company 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 by the Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 3.5. If the Customer fails to collect and take delivery of the Goods within any period of time agreed by the parties (or otherwise within a reasonable time determined by the Company) or fails to accept delivery or perform its obligations under condition 3.9 for facilitating delivery of the Goods when the Goods are made available for delivery to the Customer, then (except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods) the Company may store the Goods until delivery actually takes place and may charge the Customer for all related costs and expenses (including insurance and/or re-delivery).

- 3.6. If after any period of time agreed by the parties for the Customer to collect or take delivery of the Goods (or otherwise within a reasonable time determined by the Company) the Customer has not accepted or taken delivery of the Goods, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 3.7. The Customer shall not be entitled to reject the Goods and shall be deemed to have accepted them as complying in all respects with the Order relating to them unless:
- 3.7.1. any discrepancy, defect, shortfall or other dispute relating to them is notified in writing by the Customer to the Company within 48 hours of delivery; and
- 3.7.2. the Company has not, after investigation by it, rectified any actual discrepancy, defect or shortfall which exists within 7 days (or such other period if longer as the parties may agree) of such notice being received by it.
- 3.8. The Company 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.
- 3.9. If the Company is to be responsible for transport to an address specified by the Customer, the Company shall be entitled to make delivery at any time between the hours of 8.00am and 6.00pm on any Business Day and the Customer shall be responsible for ensuring at all such times that suitable access, equipment and labour is available to unload the Goods and for notifying when the Order is placed (or as soon as possible thereafter) any special requirements for delivery of goods or for access to the delivery location and for providing any necessary or appropriate documents, licences or authorisations or instructions.
- 4. QUALITY OF GOODS**
- 4.1. The Company warrants subject to conditions 4.2, 4.3 and 4.4 that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- 4.1.1. conform in all material respects with their description and any applicable Specification;
- 4.1.2. be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 4.2. The Customer shall be solely responsible for determining whether the Goods are fit for the particular purpose which it (or its customers) intend to use the Goods and the Company shall (subject to condition 11.1) have no liability in respect of the fitness for purpose or use of the Goods.
- 4.3. Subject to condition 4.4, if:
- 4.3.1. the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 4.1;
- 4.3.2. the Company is given a reasonable opportunity of examining such Goods; and
- 4.3.3. the Customer (if reasonably asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.4. The Company shall not be liable for the Goods' failure to comply with the warranty in condition 4.1 if:
- 4.4.1. the Customer makes any further use of such Goods after giving a notice in accordance with condition 4.3;
- 4.4.2. the defect arises because the Customer (or its agents, representatives, employees or sub-contractors, customer or any relevant third party) failed to follow the Company's oral or written instructions as to the storage, assembly, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 4.4.3. the defect arises as a result of the Company following any drawing, design or specification supplied by or on behalf of the Customer;
- 4.4.4. the Customer or any third party alters or repairs such Goods without the written consent of the Company; or
- 4.4.5. the defect arises as a result of fair wear and tear, wilful damage, negligence (other than on the part of the Company), or abnormal working conditions.
- 4.5. The Company reserves the right to vary the design and specification of the Goods in order to effect improvements in accordance with any quality standard applicable in relation to the same.
- 4.6. The Company may at its discretion at any time supply the Customer with any higher grade Goods in substitution for but at the same price per unit or quantity to those under any Order and the relevant Order shall be deemed to have been varied accordingly.
- 4.7. Except as provided in this condition 4, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 4.1.
- 4.8. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under condition 4.3 in respect of which the warranty in condition 4.1 shall apply for the unexpired duration of the warranty period in relation to the original Goods.
- 5. TITLE AND RISK**
- 5.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2. Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- 5.2.1. the Goods; and
- 5.2.2. any other goods that the Company has supplied to the Customer in respect of which payment has become due.
- 5.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
- 5.3.2. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 5.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
- 5.3.5. notify the Company immediately if it becomes subject to any of the events listed in conditions 12.1.1 to 12.1.11 (inclusive); and
- 5.3.6. give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in conditions 12.1.1 to 12.1.11 (inclusive), or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6. SERVICES**
- 6.1. Where the Company agrees to provide any Services to the Customer in relation to any Order for any Goods:
- 6.1.1. those Services will be carried out ancillary to the supply of the Goods and will be provided without any charge for those Services
- 6.1.2. the Customer shall be solely responsible for its own project designs and design requirements including determining whether:
- 6.1.2.1. the Goods are fit for the particular purpose which it (or its customers) intend to use the Goods (as provided under condition 4.2);
- 6.1.2.2. and for reviewing any Specification provided for the Goods for determining their fitness or suitability in relation to its own project designs and/or design requirements.

- 6.1.3. the Services will be provided in accordance with any Specification for the Goods and/or Services in relation to any Order in all material respects but the Company shall (subject to condition 11.1) otherwise have no liability to the Company in relation to the provision of the Services (whether under any warranty otherwise implied by law or in respect of any statement or representation);
- 6.1.4. the provisions of condition 11.2.2 shall apply to any liability of the Company in relation to the supply of the Services.
- 6.2. The Company shall use its reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3. The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 7. CUSTOMER'S OBLIGATIONS**
- 7.1. The Customer shall:
- 7.1.1. ensure that the terms of the Order and the information it provides in relation to any Specification are complete and accurate;
- 7.1.2. co-operate with the Company in all matters relating to the Services;
- 7.1.3. provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
- 7.1.4. ensure that the Company is provided with such information, data, documents, drawings and materials as are reasonably required by the Company to supply the Services that such information is accurate and complete in all material respects and is sufficient for the purpose of assessing the requirements of the Customer;
- 7.1.5. 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;
- 7.1.6. keep and maintain all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 7.2. If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 7.2.1. the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- 7.2.2. the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition 7.2; and
- 7.2.3. the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 8. CHARGES AND PAYMENT**
- 8.1. The price for Goods shall be as set out in the Company's confirmation of the Order or otherwise by the Company in writing. A surcharge notified by the Company to the Customer at the time of the Order being accepted by the Company shall be applied to any low value Orders for Goods from the Company. Unless otherwise agreed by the Company in writing, the price of the Goods is exclusive of all costs and charges of insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods. If the Customer has any particular requirements in relation to the packaging of the Goods it shall be the Customer's responsibility to notify the Company of the same when the Order is placed and the Company shall use its reasonable endeavours to comply with such requests at the cost of the Customer but shall not be required to comply with such requirements unless specifically agreed by the Company in writing.
- 8.2. The Company shall be entitled to charge the Customer for any expenses reasonably incurred by any individuals whom the Company engages who are requested at any time by the Customer to attend any site or premises of the Customer where the Company agrees to any request, in connection any Order placed (or to be placed) by the Customer, including (but not limited to) daily time rates, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties used or required by the Company and for the cost of any materials.
- 8.3. The Company reserves the right to:
- 8.3.1. increase the price of the Goods by giving notice to the Customer at any time before delivery or performance, to reflect any increase in the cost of the Goods to the Company that is due to:
- 8.3.1.1. any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.3.1.2. any request by the Customer to change the delivery date(s), quantities or types of Goods and Services ordered, or the Specification in respect of the Goods or Services; or
- 8.3.1.3. any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods or Services.
- 8.4. The Company shall invoice the Customer on or at any time after completion of delivery of the Goods provided that the Company may also on notice require in its discretion payment for Goods in advance when the Order is placed or at any time prior to delivery or performance in whole or in part in respect of costs and expenses incurred or to be incurred by the Company in performing the Contract or to protect the Company against the risk or possibility of non-payment or for export or new customers, or otherwise as the Company may reasonably see fit.
- 8.5. The Customer shall pay each invoice submitted by the Company:
- 8.5.1. (subject to the right of the Company to require earlier payment under condition 8.4) by the end of the calendar month immediately following the month in which the invoice is raised; and
- 8.5.2. in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.
- 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**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods 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 Company (including but not limited to any statutory remedy for late payment), if the Customer fails to make any payment due to the Company under the Contract by the due date for payment (**Due Date**), the Company shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current National Westminster Bank Plc base lending 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 Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned exclusively by the Company.
- 9.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 9.3. All Company Materials are the exclusive property of the Company.
- 9.4. The Customer shall promptly notify the Company without delay of any claim that the Goods infringe the Intellectual Property Rights of any third party and shall at the company's expense provide such assistance as the Company reasonably requests in connection with the defence of any proceeding or the protection of the Company's Intellectual Property Rights.
- 9.5. If bespoke Goods are manufactured by the Company to the Customer's specification or design, the Company may charge to the Customer the cost of any special equipment or tooling manufactured or purchased by the Company for the manufacture of such Goods in an agreed amount. The equipment or tooling shall, unless otherwise agreed by the Company in writing, remain the property of the Company and the Customer shall indemnify and keep indemnified the Company against any claim that the bespoke Goods infringe the Intellectual Property Rights of any third party.
- 9.6. All Intellectual Property Rights in relation to the Goods (and any bespoke Goods supplied in accordance with condition 9.5) shall be the exclusive property of the Company.
- 9.7. The provisions of this condition 9 shall survive termination of the Contract.

10. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This condition 10 shall survive termination of the Contract and for the period of 12 months immediately thereafter.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1. Nothing in these Conditions shall limit or exclude the Company's liability for:
 - 11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2. fraud or fraudulent misrepresentation;
 - 11.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 11.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 11.1.5. defective products under the Consumer Protection Act 1987.
- 11.2. Subject to condition 11.1:
 - 11.2.1. the Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, depletion of goodwill, loss of opportunity, loss of contracts in each case whether direct or indirect or any claims for consequential compensation whatsoever (howsoever caused) arising under or in connection with the Contract; and
 - 11.2.2. the Company's total liability to the Customer in respect of all losses and liabilities arising under or in connection with the Contract in relation to the supply of the Goods and/or any Services (together), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not (unless otherwise specifically agreed by the Company in writing) exceed the lower of:
 - 11.2.2.1. the price for the Goods to be delivered by the Company under the Contract; or
 - 11.2.2.2. the level of insurance in respect of claims of the nature of the claim in question maintained by the Company.
- 11.3. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4. The provisions of this condition 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 12.1.1. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 12.1.2. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.1.3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.1.4. the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 12.1.5. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 12.1.6. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 12.1.7. a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 12.1.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 12.1.9. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in conditions 12.1.1 to 12.1.8 (inclusive);
 - 12.1.10. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - 12.1.11. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 12.2. Without limiting its other rights or remedies, the Company may terminate the Contract:
- 12.2.1. by giving the Customer 3 months' written notice;
 - 12.2.2. with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.3. Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if:
- 12.3.1. the Customer fails to make pay any amount due under this Contract on the due date for payment; or
 - 12.3.2. the Customer becomes subject to any of the events listed in conditions 12.1.1 to 12.1.11 (inclusive), or the Company reasonably believes that the Customer is about to become subject to any of them.
13. **CONSEQUENCES OF TERMINATION**
On termination of the Contract for any reason:
- 13.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Goods supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 13.2. the Customer shall return all of the Company Materials which have not been fully paid for. If the Customer fails to do so, then the Company 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;
 - 13.3. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 13.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
14. **GENERAL**
- 14.1. Force majeure:
- 14.1.1. For the purposes of this Contract, **Force Majeure** Event means an event beyond the reasonable control of the Company 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 Companies or subcontractors.
 - 14.1.2. The Company 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.
 - 14.1.3. If the Force Majeure Event prevents the Company from providing any of the Goods and/or Services for more than 180 days, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 14.2. Assignment and subcontracting:
- 14.2.1. The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
 - 14.2.2. The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.3. Notices:
- 14.3.1. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
 - 14.3.2. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
 - 14.3.3. This condition 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract (except for any Order, written confirmation of Order and any copy of these terms and conditions each of which shall for all purposes be deemed given in writing by either party to the other where sent by email to any business email address of the other) shall not be validly served if sent by e-mail.
- 14.4. Waiver and cumulative remedies:
- 14.4.1. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
 - 14.4.2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 14.5. Severance:
- 14.5.1. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - 14.5.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 14.6. No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.7. Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.8. Variation: Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by an authorised representative of the Company.
- 14.9. Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.