

MiTek Industries Ltd

CONDITIONS OF SALE

1. GENERAL

1.1 In these Conditions of Sale ("**Conditions**"), the following definitions apply:

- a) **MiTek Industries Ltd**, is called "**the Company**" and the individual, firm, company or other party with whom the Company contracts is called "**the Customer**";
- b) "**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- c) "**Contract**" means the contract between the Company and the Customer for the supply of the Goods and/or Services which shall be deemed to incorporate these Conditions;
- d) "**Date of Delivery**" means the date on which the Goods are to be delivered in accordance with Condition 4 below;
- e) "**Force Majeure Event**" means any circumstances beyond the reasonable control of the Company including strikes, lock-outs or other industrial action (whether involving the workforce of the Company or any other party), inability to obtain materials or labour, power or machinery breakdown or failure, failure of a utility service or transport network, act of God, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, storm, default of suppliers or subcontractor, fire, flood, war, riot, civil commotion
- f) "**Goods**" means the Goods, articles and materials (or any part of them) which are to be supplied by the Company pursuant to the Contract;
- g) "**Goods Specification**" any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Company;
- h) "**Machinery**" means the machinery sold by the Company, excluding any computer hardware;
- i) "**Order**" means an order placed by the Customer for the supply of the Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Company's quotation, or overleaf, as the case may be;
- j) "**Order Confirmation**" means the written communication from the Company to the Customer which confirms acceptance of the Order and the Place of Delivery and Date of Delivery;
- k) "**Place of Delivery**" means the place to which the Goods are to be delivered in accordance with the Order Confirmation, or as subsequently agreed between the parties in writing.
- l) "**Services**" the Services supplied by the Company to the Customer as set out in the Service Specification, which shall include any design or other services to be provided by the Company pursuant to the Contract whether in relation to the supply of Goods or otherwise; and
- m) "**Service Specification**" the description or specification for the Services provided in writing by the Company to the Customer.

1.2 In these Conditions, the following rules apply:

- a) reference to any statute or statutory provision shall be construed as a reference to such statute or statutory provision as amended, modified, re-enacted or replaced from time-to-time;
- b) a reference to writing or written includes faxes and e-mails but not in respect of notices, where Condition 25 shall apply;
- c) 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;
- d) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and
- e) a reference to a party includes its successors or permitted assigns.

2. ORDERING

2.1 The Order constitutes an offer by the Customer to purchase the Goods from the Company in accordance with these Conditions. Any quotation or estimate given by the Company is an invitation to the Customer to make an offer only and no Order placed in pursuance of a quotation

or estimate or otherwise shall be binding on the Company unless and until it is accepted by the Company.

- 2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point the Contract shall come into existence.
- 2.3 The Contract shall incorporate and be subject to these Conditions, and shall form the entire agreement between the parties to the exclusion of all other terms and conditions, including:
 - a) any such terms that are purported to be included or applied by the Customer including those implied by trade, custom, practice or course of dealing;
 - b) any terms contained in the confirmation of the Order, purchase order or other document of the Customer; and
 - c) any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's marketing materials or websites in respect of which the Customer acknowledges are produced for the sole purpose of giving an approximate idea of the Goods described in them.
- 2.4 The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

3. PRICES

- 3.1 Unless otherwise provided in the Contract, the price for Goods:
 - a) shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in the Company's published price list as at the Date of Delivery;
 - b) includes the cost of cases or other packing materials;
 - c) includes the cost of carriage to the Place of Delivery; and
 - d) does not include the cost of off-loading the Goods at the Place of Delivery which shall be arranged by and paid for by the Customer

PROVIDED THAT Condition 3.1(c) shall not apply where the relevant Order does not meet minimum order quantities or is for Machinery parts. For such Contracts, the cost of carriage shall be payable by the Customer and added to the contract price. In the event that the Customer requests express delivery, the Customer will be required to pay an additional charge.

- 3.2 Unless otherwise provided in the Contract, the charges for Services shall be on a time and materials basis and the charges shall be calculated in accordance with the Company's standard daily fee rates, as set out in the Company's "Schedule of Service Fees", as published on the Company's website as at the Date of Delivery. The Schedule of Service Fees set out the Company's standard day rates and working hours and the overtime rates that will apply for any Services which are provided outside of the standard working hours. The Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including, but not limited to, travel, hotel, subsistence and any associated expenses.
- 3.3 If the Customer requests any variation or modification in the design, specification, materials or drawings of the Goods and/or Services after the date of the Order Confirmation, and if such variations or modifications are accepted by the Company, the cost of change shall be borne by the Customer.
- 3.4 The Company 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 Company that is due to:
 - a) 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 or in transport costs);
 - b) any request by the Customer to change the Date of Delivery, 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 Company adequate or accurate information or instructions in respect of the Goods.
- 3.5 The price of the Goods and Services is exclusive of Value Added Tax, which will be charged at the rate applicable at the appropriate tax point.

4. DELIVERY AND RISK

- 4.1 The Place of Delivery shall be stated on the Order Confirmation or as agreed between the parties in writing.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Place of Delivery and the risk in respect of all Goods shall pass to the Customer on completion of delivery. For the avoidance of doubt, where the Customer is collecting the Goods from the Company the 'Place of Delivery' shall be the Company's premises for the purpose of the Contract and delivery shall be completed when the Customer or its agent arrives at the Company's premise ready to upload the Goods.
- 4.3 The Company shall be entitled to make delivery of the Goods by instalments and to invoice the Customer for each instalment dispatched. 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.
- 4.4 Any Date of Delivery of the Goods are approximate only, and the time of delivery is not of the essence. If the Company fails to deliver the Goods, and where the parties have not agreed that the Company is to be the exclusive supplier of 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 Company shall have no liability for any failure to deliver or delay in delivering the Goods to the extent that such failure or delay is caused by a Force Majeure Event or 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.
- 4.5 Where damage to or loss of the Goods occurs before delivery to the Customer, the Company shall replace or (at its discretion) repair free of charge any damaged or lost Goods in which event the time for delivery of the damaged or lost Goods shall be extended for such period as the Company shall reasonably require for such replacement or repair **PROVIDED THAT:**
 - a) the Customer gives written notice of such damage or loss with reasonable particulars thereof to the Company and to the carrier (if other than the Company) within 3 Business Days of the receipt of the Goods or in the case of total loss within 2 Business Days of receipt of the Company's or the carrier's delivery advice or to the notification of dispatch, and
 - b) if requested by the Company, the Customer returns any damaged Goods to the Company's works within one month of receipt of the Goods.
- 4.6 Save as expressly provided in this Condition 4, the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the Goods in transit to the Place of Delivery.

5. TITLE

- 5.1 Title to the Goods shall remain vested in the Company until the price of the Goods and/or Services and all other money due from the Customer to the Company on any other account has been paid or satisfied in full.
- 5.2 Until the title to the Goods pass to the Customer:-
 - a) The Company may at any time without prior notice to the Customer repossess and resell the Goods if any of the events specified in Condition 19 occur or if any sum owed by the Customer to the Company under this or any such other Contract is not paid on the due date for payment. For the purpose of exercising its rights under this Condition 5.2(a) the Company, its employees or agents (together with all vehicles and plant considered by the Company to be necessary) shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon the Customer's premises and/or other locations where any of the Goods are situated.
 - b) The Customer shall store and maintain the Goods in a proper manner without charge to the Company and ensure that they are clearly identified as belonging to the Company. The Company shall be entitled to examine the Goods in storage at any time during normal business hours.
 - c) The Customer shall keep the Goods insured against all risks for their full price on the Company's behalf from the Date of Delivery.
 - d) Any proceeds of sale of the Goods by the Customer and the benefit of any such contract of sale shall to the extent of all sums owing or due to the Company from the Customer be for the account of the Company and be held in trust for the Company absolutely and such proceeds

shall be kept in a separate designated trust account and shall not be used by or for the benefit of the Customer.

6. PERFORMANCE AND FORCE MAJUERE

- 6.1 The Company will use its reasonable endeavours to meet any Date of Delivery or dates for dispatch of the Goods and for the supply or completion of the Services (as the case may be) as stated in the Contract, but such date or dates shall be estimates only and time shall not be of the essence.
- 6.2 If the Company is prevented or hindered from performing the Contract or any part thereof by any Force Majeure Event, the Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of the Force Majeure Event. If the Force Majeure Event continues more than three consecutive calendar months, either party shall be entitled by notice in writing to the other party to immediately terminate the Contract and in such circumstances the Customer shall pay at the Contract rate for all Goods and Services supplied and materials used by the Company to the actual date of such termination.
- 6.3 When expedited delivery or completion is agreed to by the Company and necessitates overtime or other additional costs, the Customer shall reimburse the Company of the amount of such overtime payment or other costs. Where postponement of delivery or completion is agreed by the Company the Customer shall, if required by the Company pay all costs and expenses (including a reasonable charge for storage and insurance of the Goods and interest on the contract price) occasioned thereby but the Goods shall be held at the Customer's risk as from the time of postponement.
- 6.4 If performance of the Contract is suspended at the request of or delayed through default of the Customer including lack of, incomplete or incorrect instruction or refusal; to collect or accept delivery of the Goods or Services for a period of 14 days, the Company shall be entitled to payment of the contract rate for Services already performed, Goods supplied or ordered and any other additional costs thereby incurred including storage insurance and interest PROVIDED THAT if the Customer fails to collect or accept delivery, the Company shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell or at its option destroy the Goods and to apply the proceeds of sale thereof if sold and the scrap value if destroyed towards payment of all sums due to the Company under the Contract.
- 6.5 The Company shall be entitled without the prior approval of the Customer to assign, sub-contract or sub-let its rights and obligations under the Contract, but the Customer shall not be so entitled without the prior approval of the Company.

7. ACCEPTANCE

- 7.1 Without prejudice to the Customer's right under Condition 13, the Customer shall be deemed to have accepted the Goods as being in conformity with the Contract and shall be bound to pay for them, unless written notice of rejection thereof is received by the Company within 3 Business Days of delivery. Save in the circumstances referred to in Condition 13, Goods accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have shall be deemed to have been waived.
- 7.2 If after notice of rejection has been given, the Customer deals with the Goods as owner thereof or if any conduct of the Customer is inconsistent with such rejection or with the ownership of the Goods, the Customer's notice of rejection shall be deemed to have been withdrawn and the Customer shall be required to pay for them.

8. CREDIT REFERENCES

- 8.1 Each Contract shall be subject to the Company being satisfied as to the Customer's credit references (which unless otherwise stated shall be one bank reference and two trade references). The Customer consents to the Company obtaining such references.

9. PAYMENT

- 9.1 In respect of Contracts for Machinery and unless the Contract otherwise provides, payment by the Customer shall be made as follows:
 - a) on the placing of the Order for the Goods by the Customer, 50 per cent of the contract price of such Machinery;
 - b) on delivery to the Customer and (where applicable) installation by the Company or its agent , a further payment of 40 per cent of the contract price; and
 - c) on final completion of the installation and commissioning, the remaining 10 per cent of the contract price.

- 9.2 In respect of all Goods other than Machinery, unless the Contract otherwise provides the Company shall be entitled to invoice the Customer for the contract price on the date that the Goods are dispatched. In respect of Services, the Company shall be entitled to invoice the Customer weekly in arrears.
- 9.3 Subject to Conditions 9.1 above and Condition 9.4 below, and unless the Contract otherwise provides, the contract price for the Goods and/or Services shall be payable not later than the last working day of the month following date of issue of the invoice.
- 9.4 The Company reserves the right to alter the payment terms applicable to the Customer, based upon the Customer's previous payment performance. This may include requiring that the Customer pay for and Goods and/or Services in advance of delivery.
- 9.5 Where Goods and/or Services are delivered or performed by instalments, the Customer shall be obliged to pay for each instalment separately upon the terms set out in this Condition 9.
- 9.6 The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company upon the expiration of 7 days' notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition the Company shall be entitled without liability wholly or partially to cancel the Contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company.
- 9.7 Where payment is made by the Customer on or before the due date, the Customer shall be entitled to a discount as currently published by the Company or as agreed in the Contract.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any set off, counterclaim, deduction or withholding except as required by law. 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.
- 9.9 The Company shall be entitled to charge interest on any part of the Contract price not paid by its due date at the rate of 4 per cent above the Base Lending Rate of Lloyds Bank prevailing from time to time during such period. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

10. DRAWINGS AND SPECIFICATIONS

- 10.1 Unless the Contract expressly specifies that any figures or statements in the Contract or in the Company's catalogues, sales literature or in any relevant drawing or other documents supplied by the Company as to the performance of the Goods are guaranteed to be accurate, such figures and statements shall be approximate. The Company gives no guarantee or representation that the Goods will in all cases be identical with the illustrations, weights and dimensions specified in such catalogues and literature drawings or other documents due to improvements and modifications to the Goods or the Goods Specification that may be made from time to time. The Company will notify the Customer in writing of any material alterations to any Goods Specifications and the Customer shall be deemed to have accepted such alterations unless notice in writing to the contrary is received by the Company within 7 days of the Company's notice to the Customer.
- 10.2 If in the Contract the Company expressly guarantees the accuracy of such performance, figures or statements (whether subject to specific margins or otherwise), then in the event that the Goods after delivery installation or commissioning fail to achieve and comply with the same, the Company shall thereafter be entitled to a reasonable period and to reasonable facilities to enable it to bring the Goods up to the guaranteed standard of performance and the contractual time for delivery of the Goods or the installation or commission thereof shall be extended for such reasonable period.
- 10.3 The Company is only responsible for the Goods and not for any products into which they are incorporated. The Company does not accept any responsibility for the aesthetic appearance or quality of manufacture of roof trusses or Posi-Joists and shall not be liable for the stability or structural adequacy of any unit of which the truss or Posi-Joist may become part or into which it may be incorporated.
- 10.4 The Company shall be under no liability howsoever arising in respect of the warranty set out in Condition 13.1 below unless all of the following conditions are complied with:
 - a) The Company's design must be read and applied in conjunction with the relevant up-to-date technical literature of the Company;
 - b) At each joint of the truss or Posi-Joist, MiTek connector plates or Posi-Struts of the type specified must be used and each dimension of the specified size of plate must not be less than that indicated in the Company's design. Any substitution of connector plates for those specified

in the Company's design must take proper account of MiTek connector plates values and ratings. All plates must be oriented as indicated in the Company's design; and

- c) Due consideration must be given to the recommendations of the Trussed Rafter Association, or such other trade association as may be relevant from time to time.

11. TESTS

If the Contract provides for testing and inspection of the Goods and/or Services, such testing and inspection shall be conclusive. If required in writing, arrangements will be made for the Customer's representative to be present of such test and inspection. The Customer shall be deemed to have accepted the Goods and Services as satisfactory after the completion of such testing and inspection.

12. CONTRACTS FOR SERVICES

- 12.1 If the Contract is for or includes Services to be performed by the Company (whether of design, installation, commission, repair, rectification, improvement or otherwise), then, unless the Contract otherwise provides the following additional provisions shall apply:-

- a) The Company shall be obliged to carry out such Services only during normal working hours. If the Company agrees to any overtime, such overtime shall be paid for by the Customer in addition to the contract price in accordance with Condition 3.2; and
- b) If the Services are to be performed at the premises of the Customer or at his request at the premises of any other person, then the Customer undertakes to provide or to procure the provision free of charge of:
- (i) proper and safe storage and protection of all goods, tools, plant and equipment and materials on site;
 - (ii) free and safe access to the site and to the point of which the Services are to be performed;
 - (iii) all facilities and services necessary to enable such Services to be performed safely and expeditiously; and
 - (iv) if such Services include the installation of any goods, all builders work, foundations, cutting away and making good required and the ready availability of all plant and equipment so as to permit such goods to be tested forthwith on completion of such Services;

and the Customer shall pay to the Company the amount of any expenses incurred by the Company by reason of any breach by the Customer of any of its obligations in this Condition 12.1 but without prejudice to the Company's right to recover any loss thereby occasioned.

- 12.2 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, and the Company shall notify the Customer in any such event.
- 12.3 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

13. WARRANTY

- 13.1 Subject to Condition 10.4 above the Company warrants that where the Services include the design of roof trusses and Posi-Joists, the structural design of such trusses and Posi-Joists shall be in accordance with all current building regulations, at present including Eurocode 5 and British Standard 5268 Part III as amended, modified or updated from time to time. The Company gives no other warranty as to the design of the roof trusses and Posi-Joists.

- 13.2 Unless the Contract provides otherwise, where any Goods or Services (or any part thereof) are shown to the reasonable satisfaction of the Company, to be defective by reason of faulty materials or workmanship or design, within a period of 6 months from the date of their original despatch or supply (fair wear and tear excepted) the Company shall at its sole discretion:-

- a) deliver replacement Goods and/or supply further Services to the Customer free of charge; and/or
- b) refund to the Customer the Contract price of such Goods and/or Services; and/or
- c) require the Customer to retain the Goods and/or Services and grant to the Customer a reasonable allowance in respect of such defects,

PROVIDED THAT:-

- d) the Customer notifies the Company in writing within fourteen days of becoming aware of any such defect; and
- e) if so required by the Company, the Customer arranges for the defective Goods to first be returned to the Company's premises;
- f) the Goods have been properly and correctly stored and/or used by the Customer;
- g) the liability of the Company under this paragraph 13.2 shall be accepted by the Customer in substitution for and to the exclusion of any other claims for direct loss which the Customer has or may have; and
- h) the Customer takes all reasonable steps to mitigate any loss.

14. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

14.1 Subject to Condition 14.2:

- a) the Company shall not under any circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any claims for economic loss, loss of production, loss of profit, loss of opportunity, loss of bargain or any indirect or consequential injury loss arising out of or in connection with the Contract; and
- b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Goods and/or Services which are provided to be defective.

14.2 Nothing in these Conditions shall limit or exclude the liability of the Company in respect of:-

- a) death or personal injury caused by the negligence of the Company, its employees or agents; or
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- e) defective products under the Consumer Protection Act 1987.

14.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15. INSURANCE

15.1 Where the Goods and/or Services are to be supplied on site, they shall at all times from their arrival on site be at the sole risk of the Customer. If any part of the Goods and/or Services that are to be supplied on site is lost, damaged or destroyed through any cause other than as a direct result of the Company's negligence, the Company shall be entitled to charge as a variation to the Contract for the restoration of any Goods and/or Services so lost, damaged or destroyed.

15.2 The Customer shall for the benefit of itself and the Company and in their joint names insure and keep insured with such reputable insurers as the Company shall approve, the full value of the Goods and/or Services and the cost of any relevant professional fees or services against every kind of loss damage or destruction from the time that the Goods arrive on site or the Services first commence on site. The Customer shall produce to the Company on demand the policy or policies under which such insurance is effected together with the latest premium receipts. If the Customer shall default in effecting such insurance the Company may effect the same on behalf of the Customer and the cost thereof shall be reimbursed by the Customer to the Company on demand.

16. CUSTOMER'S PROPERTY

All property supplied to the Company by or on behalf of the Customer shall be deemed to be entirely at the Customer's risk and the Company shall not be liable for any loss of damage to such property whilst in the possession of the Company or in transit unless such loss or damage is due directly to the negligence of the Company, its employees or agents. The Customer shall insure all such property for all risks.

17. LIEN

Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall in respect of all debts of the Customer to the Company have a general lien on all goods and property belonging to the Customer in its possession (whether worked on or not) and shall be entitled upon the expiration of fourteen days' notice to the Customer to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

18. HEALTH AND SAFETY

- 18.1 The attention of the Customer is drawn to the provisions of Section 6 of the Health and Safety at Work etc Act 1974, the Supply of Machinery (Safety) Regulations 2008 and the Supply of Machinery (Safety) (Amendment) Regulations 2011. The Company will make available such information as is appropriate relating to the Goods and other materials supplied as is in its possession to ensure that as far as it reasonably practicable the Goods are safe and without risk to health when properly used.
- 18.2 The Customer hereby undertakes to take such measures as are communicated in writing to the Customer by the Company and to take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when properly used. The Goods and materials shall not be regarded as properly used when they are used without regard to any relevant information or advice relating to their use which has been communicated to the Customer pursuant to this Condition 18.
- 18.3 The Company shall not be liable to the Customer in any civil proceedings brought by the Customer against the Company under any Health and Safety Regulations made pursuant to the Health and Safety at Work etc Act 1974 where such exclusion of liability is permitted by law. The Customer shall indemnify and keep indemnified the Company in respect of any liability, monetary, penal penalty or fine in respect of or in connection with the Goods or Services incurred directly or indirectly by the Company under the Health and Safety at Work etc Act 1974 or any regulations orders or directions made thereunder.
- 18.4 When the Company is required to perform Services or deliver Goods at the Customer's premises, or any other third party premises as directed by the Customer, the Company shall ensure the Company's employees and subcontractors are provided with a safe working environment and shall inform the Company's employees and subcontractors of all health and safety rules and regulations and any other reasonable security requirements that apply. The Customer shall further ensure that any equipment of the Customer that the Company is to use is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements.

19. INSOLVENCY AND BREACH OF CONTRACT

- 19.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if any of the following events occur:-
- a) the other party commits any breach of the Contract and fails to remedy such breach (if capable of remedy) within thirty days after receipt of notice in writing, requesting such breach to be remedied; or
 - b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of 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;
 - e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the

whole or any part of its assets and such attachment or process is not discharged within 14 days;

- g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 19.1(b) to Condition 19.1(i) (inclusive);
- k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- l) the other party's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

19.2 Without limiting its other rights or remedies, the Company may:

- a) terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment; and
- b) immediately suspend further performance of the Contract and of any other contract between the Company and the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in Condition 19.1(b) to 19.1(m), or the Company reasonably believes that the Customer is about to become subject to any of them.

19.3 On termination of the Contract for any reason:

- a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice at the Contract rate for all work done, materials used and Goods delivered up to and including the date of termination, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall return all of the Company's materials and any deliverables 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;
- c) 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
- d) Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

20. SEVERANCE

If at any time any one or more of these Conditions (or any paragraph, sub-paragraph or and part thereof) is held to be or becomes invalid, illegal or unenforceable, the relevant part shall be deemed deleted and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be in any way affected or impaired.

21. WAIVER

A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. VARIATION.

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Company.

23. NO PARTNERSHIP OR AGENCY.

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

24. THIRD PARTIES.

A person who is not a party to the Contract shall not have any rights to enforce its terms.

25. NOTICES.

- 25.1 Any notice given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier .
- 25.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 25.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 25.3 The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action

26. LAW AND JURISDICTION

These Conditions and each and every Contract made incorporating these Conditions and any dispute or claim arising out of or in connection with such Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in all respects in accordance with the laws of England and the Company and the Customer irrevocably submit to the exclusive jurisdiction of the English courts.