



**KME STEELWORKS LTD**

**TERMS & CONDITIONS FOR BESPOKE GOODS & SERVICES**

The Customer’s attention is particularly drawn to the provisions of clause 13 (Limitation of Liability)

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in these Conditions together with those terms defined further below.

**1.1 DEFINITIONS:**

- "Business Day"** a day other than a Saturday, Sunday or public holiday in Northern Ireland, when banks in Belfast are open for business.
- "Conditions"** these terms and conditions as amended from time to time in accordance with clause 17.8.
- "Contract"** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions and as set out at clause 2.2.
- "Contract Price"** means the price of the Goods pursuant to clause 9.1 and/or the price of the Services pursuant to clause 9.2 as the case may be together with the cost of delivery pursuant to clause 9.3 (if applicable).
- "Controller, processor, data 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 and/or Services 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 which apply to a party relating to the use of personal data and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party. Reference to European Union legislation shall mean such legislation that is directly applicable or directly effective in the UK and is a reference to it as it applies in Northern Ireland from time to time including as retained, amended, extended, re-enacted.
- "Goods"** the goods (or any part of them) set out in the Order, being bespoke goods manufactured for the sole purposes of the Customer.
- "Goods Specification"** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
- "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.

<b>"Order"</b>	the Customer's order for the supply of Goods and/or Services, as set out in the purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.
<b>"Services"</b>	being the design and manufacturing services of the Supplier in connection with the production of the Goods be and as set out in the Service Specification.
<b>"Service Specification"</b>	the description or specification for the Services provided in writing by the Supplier to the Customer.
<b>"Supplier"</b>	KME Steelworks LTD incorporated and registered in Northern Ireland with company number NI036080 and registered office address PO Box BT27 5SR, 1 The Green Tullynacross Road, Lambeg, Lisburn, BT27 5SR.
<b>"Supplier's Premises"</b>	shall mean 1 The Green Tullynacross Road, Lambeg, Lisburn, BT27 5SR or other such address as notified to the Customer by the Supplier from time to time.
<b>"UK Data Protection Legislation"</b>	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 **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

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

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.

Any words following the terms **including**, **include** 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.

A reference to **writing** or **written** includes fax and email.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.2 The Contract shall be made up of the following:

2.2.1 these Conditions;

2.2.2 the Supplier's quotation for the Order, subject to variation in accordance with these Conditions;

2.2.3 an Order or any variation thereto duly accepted by the Supplier in accordance with clause 2.5; and

2.2.4 the Goods Specification and/or Service Specification as the case may be.

If there is any conflict or ambiguity between the terms of the documents listed in this clause 2.2, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

- 2.3 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.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 If the Customer notifies the Supplier that they wish to change the Order, the Goods Specification and/or the Services Specification after acceptance thereof by the Supplier, said amended Order or Specification shall be strictly subject to the approval and written acceptance of the Supplier. The Customer shall be liable for all additional costs arising from said amendments.
- 2.7 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. GOODS**

- 3.1 The Goods are described in the Goods Specification.

To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.1 shall survive termination of the Contract.

- 3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in advance of amending the Goods Specification in any such event.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required owing to a manifest error in the Goods Specification, and the Supplier shall notify the Customer in advance of amending the Goods Specification.

### **4. DELIVERY**

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the contract number and the type of Goods being delivered. If delivery is to be by instalments, the outstanding Goods remaining to be delivered will also be noted on the delivery note.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready. The Customer shall be solely responsible for unloading of the Goods at the Delivery Location and for the siting of the Goods in the requisite location. The Customer shall indemnify and hold harmless the Supplier against all liabilities claims or costs arising as a result of the Supplier or its subcontractor assisting the Customer in the unloading or other removal of the Goods at the Delivery Location and the siting of the Goods in position.
- 4.3 The Customer may choose to collect the Goods from the Supplier's Premises or other such location as set out in the Order within 3 Business Days of the Supplier notifying the Customer that the Goods are ready. The Customer shall be solely responsible for the loading of the Goods onto the Customer's vehicle and shall indemnify and hold the Supplier harmless against all liabilities, claims or costs arising as a result of the Supplier assisting the Customer in the loading or other removal of the Goods at the point of delivery.

- 4.4 In those circumstances where the Supplier is to deliver the Goods as set out at clause 4.2, Delivery shall be completed on the completion of the unloading of the Goods at the Delivery Location. In those circumstances where the Customer is to collect the Goods as set out at Clause 4.3, Delivery shall be completed on the completion of loading of the Goods at the Delivery Location.
- 4.5 Pursuant to clause 9.3 and clause 9.6, delivery of the Goods shall not take place until the balance payment of the Contract Price is discharged in full and clear funds.
- 4.6 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, Coronavirus 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.
- 4.7 If the Customer fails to accept (or take in the circumstances set out at clause 4.3) delivery of the Goods within 3 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, Coronavirus Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

## 5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- 5.1.1 conform in all material respects with their description and any applicable Goods Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Notwithstanding clause 5.1 above, in the event that Customer has elected to purchase Goods that have been used (**Used Goods**), the Supplier warrants that on delivery, and for a period of 90 days from the date of delivery (**Used Goods warranty period**), the Used Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979. Reference to Goods within the Conditions shall include reference to Used Goods, save for where otherwise identified in clause 5.8 and clause 5.10.
- 5.3 The Customer acknowledges that owing to the bespoke nature of the Goods, snagging and commissioning issues (**Snagging Issues**) may arise following installation. The Customer agrees that such Snagging Issues do not amount to a defect with the Goods amounting to a breach of warranty pursuant to clause 5.1 or clause 5.2. In the event that such Snagging Issues arise, the Customer shall issue a written notice to the Supplier as soon as possible following deliver of the Goods and in any event no later than 10 Business Days following said delivery, specifying the Snagging Issues with sufficient detail (**Snagging Issues Notice**).
- 5.4 Upon receipt of the Snagging Issues Notice, the Supplier will endeavour to resolve and make good the Snagging Issues, subject to:
- 5.4.1 the Snagging Issues being capable of rectification;
- 5.4.2 the Customer accepting in writing the Supplier's proposed method of addressing the Snagging Issues within 10 Business Days of receipt of said proposed method; and
- 5.4.3 the cost incurred to the Supplier in resolving the Snagging Issues is no more than 50% of the Contract Price.
- 5.5 In the event the Goods are in breach of the warranty set out at clause 5.1 or clause 5.2, the Customer shall issue a written notice to the Supplier as soon as it has become apparent that some or all of the Goods do not comply with the applicable warranty, specifying the suspected defect with sufficient detail (**Warranty Notice**). If the Customer fails to give a Warranty Notice during the applicable warranty period in accordance with this clause 5.5, it shall be deemed they have accepted the Goods.

- 5.6 Subject to clause 5.7 and clause 5.8, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- 5.6.1 the Customer provides the Warranty Notice in accordance with clause 5.5 during the applicable warranty period;
  - 5.6.2 the Supplier is given a reasonable opportunity of examining such Goods; and
  - 5.6.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost or, at the option of the Supplier, return detailed photographic evidence of the subject Goods.
- 5.7 The Customer acknowledges that the investigations of the Supplier contemplated at clause 5.6.2 and clause 5.6.3 do not equate to acceptance of any liability of the Supplier in respect of the suspected defect the subject of the Warranty Notice.
- 5.8 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.8.1 the Customer makes any further use of such Goods after issuing a Warranty Notice in accordance with clause 5.5;
  - 5.8.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 5.8.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
  - 5.8.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 5.8.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 5.8.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.9 The Supplier shall not be liable for the Used Goods' failure to comply with the warranty in clause 5.2 if:
- 5.9.1 the Customer makes any further use of such Used Goods after issuing a Warranty Notice in accordance with clause 5.5;
  - 5.9.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Used Goods or (if there are none) good trade practice;
  - 5.9.3 the Customer alters or repairs such Used Goods without the written consent of the Supplier; or
  - 5.9.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 5.10 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods or Used Goods' failure to comply with the warranty set out in clause 5.1 or clause 5.2 as the case may be.
- 5.11 The terms of 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 Supplier receives payment in full and cleared funds for the entire Contract Price of 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.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 maintain the Goods in its possession in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf; and

6.3.2 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.3.2 to clause 14.3.12.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.3.2 to clause 14.3.12, then, without limiting any other right or remedy the Supplier may have the Supplier may at any time:

6.4.1 require the Customer to deliver up all Goods in its possession; and

6.4.2 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. SUPPLY OF SERVICES

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified by the Customer and approved by the Supplier, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order and any information it provides in the Goods Specification and/or Services Specification is complete, accurate and sufficiently detailed;

8.1.2 co-operate with the Supplier in all matters relating to the Goods and/or Services;

8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

8.1.5 inspect the Goods upon notification from the Supplier that the Goods are ready for inspection;

8.1.6 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;

8.1.7 comply with all applicable laws, including health and safety laws;

8.1.8 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

8.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification.

8.2 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**):

8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 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.

## 9. CHARGES AND PAYMENT

- 9.1 The price for Goods shall be the price set out in the Order (subject to any variations thereto in accordance with clause 9.4) and shall be exclusive of all costs and charges in respect of transport of the Goods, which shall be invoiced to the Customer in accordance with clause 9.3.
- 9.2 The charges for Services shall be calculated on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order;
- 9.2.2 the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 7.00 am to 5.00 pm worked on Business Days. The Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred within this clause 9.2.2; and
- 9.2.3 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence, materials and any associated expenses.
- 9.3 The charges for delivery shall be calculated at such time there is sufficient information in respect of the requirements for delivery. The Supplier shall invoice the delivery charges prior to delivery. Delivery shall not take place until such time the delivery charges are paid in full and clear funds by the Customer to the Supplier, unless otherwise agreed by the Supplier in writing.
- 9.4 The Supplier reserves the right to:
- 9.4.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- 9.4.2 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 information supplied by or on behalf of the Customer in respect of the Order and/or Goods Specification being insufficient, incorrect inaccurate or misleading, which gives rise for the need for a change to the Order and/or Goods Specification;
  - (b) the Customer notifying the Supplier of any amendment in relation to any Order, which shall include but not limited to a change to the Goods Specification, dimensions of the Goods and/or quantity of the Goods set out in the Order, the delivery date or method of delivery; 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.
- 9.5 In respect of Goods, the Customer shall pay a deposit equivalent to 50% of the Contract Price (**Deposit**) upon receipt of an invoice from the Supplier, which shall be issued once the Supplier confirms acceptance of the Order. The works in respect of the manufacturing of the Goods shall not commence until Deposit has been paid in full and clear funds to the Supplier.
- 9.6 The Customer shall pay the balance payment owing in respect of the Goods upon receipt of an invoice from the Supplier, which shall be issued following completion of the works in respect of the Goods. The Customer shall discharge the balance payment in full and clear funds to the Supplier, prior to delivery of the Goods.
- 9.7 In respect of Services, unless otherwise notified by the Supplier, the Customer shall pay a deposit equivalent to 50% of the Contract Price estimate at the time of the Order (Deposit) upon receipt of

an invoice from the Supplier, which shall be issued once the Supplier confirms acceptance of the Order. The works in respect of the Services shall not commence until the Deposit has been paid in full and clear funds to the Supplier.

- 9.8 The Supplier shall invoice for the balance sum owing in respect of the Services immediately prior or upon delivery of the Services.
- 9.9 The Customer shall pay each invoice submitted by the Supplier within 14 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 in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.
- 9.10 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.11 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.11 will accrue each day at 4% a year above the Northern Bank Limited base rate from time to time.
- 9.12 If 60 days after the due date of payment under the Contract the Customer fails to make such payment, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs together with interest owing pursuant to clause 9.11 above, 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 as the case may be.
- 9.13 In the event that the Supplier in its sole discretion agrees a credit account with the Customer, the Supplier reserves the right to withdraw or reduce said credit account at any time. All credit terms so agreed by the Supplier shall be subject to successful credit checks against that Customer by the Supplier and further the approval of the Supplier's credit insurers.
- 9.14 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 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 for the purpose of providing the Services to the Customer.

## **11. DATA PROTECTION**

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. In this clause 11, **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. This clause 11 does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.
- 11.2 The parties acknowledge that the Customer is the controller and the Supplier is the processor.



- 11.3 Without prejudice to the generality of clause 11.1, 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.
- 11.4 Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 11.4.1 process that personal data in accordance with its privacy policy or on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data;
- 11.4.2 ensure that it has in place appropriate technical and organisational measures, 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;
- 11.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 11.4.4 only transfer any personal data outside of the European Economic Area where the following conditions are fulfilled:
- (a) appropriate safeguards are provided in relation to the transfer;
  - (b) the data subject had enforceable rights and legal remedies; and
  - (c) the Supplier complies with its obligations under the Applicable Laws by providing an adequate level of protection to any personal data transferred.
- 11.4.5 notify the Customer without undue delay on becoming aware of a personal data breach;
- 11.4.6 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
- 11.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 11.5 The Supplier will use the personal data given by the Customer to:
- 11.5.1 to prepare a quotation in respect of the goods and services the Supplier provides in response to the Customer's request prior to entering the Contract;
- 11.5.2 record the Customer as a new Customer of the Supplier to facilitate the performance of the Contract;
- 11.5.3 manage the Supplier's relationship with the Customer to facilitate the performance of the Contract;
- 11.5.4 to provide information about the Goods and Services and facilitate the supply of the Goods and Services pursuant to the Contract and in the Supplier's legitimate interest in promoting their business;
- 11.5.5 for commercial purposes, including reviewing the creditworthiness of the Customer for the Supplier's legitimate interest in safeguarding the Supplier's commercial concerns;
- 11.5.6 operational purposes, such as improving efficiency, training purposes and quality control for the Supplier's legitimate interests in improving the provision of their good and services; and
- 11.5.7 all other matters as required for the performance of the Contract.

## **12. CONFIDENTIALITY**

- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
  - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 13. LIMITATION OF LIABILITY

The Customer's attention is particularly drawn to this clause.

- 13.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 and defective products under the Consumer Protection Act 1987.
- 13.2 Subject to clause 13.1, the restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract and the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort, breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the Contract Price.
- 13.3 Subject to clause 13.2, this clause 13.4 sets out the specific heads of loss wholly excluded by the parties:
- 13.3.1 loss of profits;
  - 13.3.2 loss of use or corruption of software, data or information;
  - 13.3.3 loss of or damage to goodwill; and
  - 13.3.4 indirect or consequential loss.
- 13.4 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of and shall expire 12 (twelve) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13.6 This clause 13 shall survive termination of the Contract.

### 14. TERMINATION

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than four months' written notice.
- 14.2 In the event that the Customer serves notice to terminate the Contract without cause pursuant to clause 14.1 or in respect of a Force Majeure Event or Coronavirus Event pursuant to clause 16.5, the Supplier may retain the Deposit and any further balance payments in such proportions (or in full) to sufficiently discharge all costs to the Supplier of the manufacture and design of the Goods and/or Services at the date of such termination by the Customer (**Termination Costs**). In the event that there are any balance funds held by the Supplier following deduction of the Termination Costs from the Deposit and/or other payment, the Supplier shall refund said balance funds to the Customer.
- 14.3 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:
- 14.3.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

- 14.3.2 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 in the case of the other party 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 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or in the case of the other party 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 IA 1986 in the event the other party (being a partnership) has any partner to whom any of the foregoing apply;
  - 14.3.3 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 any of its creditors other than (being 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;
  - 14.3.4 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, limited liability partnership or partnership) other than 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;
  - 14.3.5 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
  - 14.3.6 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 14.3.7 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - 14.3.8 should the other party be an individual and is the subject of a bankruptcy petition, application or order;
  - 14.3.9 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 the other party's assets and such attachment or process is not discharged within 14 days;
  - 14.3.10 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 clause 14.3.2 to clause 14.3.9 (inclusive);
  - 14.3.11 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
  - 14.3.12 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.
- 14.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
  - 14.4.2 there is a change of control of the Customer, within the meaning given in section 1124 of the Corporation Tax Act 2010.
- 14.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.3.2 to clause 14.3.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract:

15.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and 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;

15.1.2 the Customer shall return all of the Supplier Materials and any 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.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry 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.

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

## 16. FORCE MAJEURE

16.1 Force majeure event means any circumstance not within a party's reasonable control including, without limitation:

16.1.1 acts of God, flood, drought, earthquake or other natural disaster;

16.1.2 epidemic or pandemic;

16.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

16.1.4 nuclear, chemical or biological contamination or sonic boom;

16.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

16.1.6 collapse of buildings, fire, explosion or accident;

16.1.7 any labour or trade dispute, strikes, industrial action or lockouts;

16.1.8 non-performance by suppliers or subcontractors; and

16.1.9 interruption or failure of utility service (**Force Majeure Event**).

16.2 A coronavirus event means a delay caused by, or arising from or in relation to a coronavirus epidemic or pandemic beyond a party's reasonable control that prevents or delays the manufacture and/or delivery of the Goods and delivery of the Services under the Contract, or the performance of any other obligations under the Contract, as a result of, without limitation:

16.2.1 any recommended or mandatory measures introduced by local, regional or central government, intended to prevent or delay the spread of coronavirus;

16.2.2 absences or unavailability of a party's staff causing unavoidable disruption; and

16.2.3 any disruption of, or interruption to, supply chains necessary for the manufacture of the Goods, delivery of the Goods or supply of the Services (**Coronavirus Event**).

16.3 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event or Coronavirus Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.4 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

- 16.5 The Affected Party shall as soon as reasonably practicable after the start of the Force Majeure Event or Coronavirus Event, notify the other party of the applicable event and the effect said event will have on its ability to perform any of its obligations under the Contract.
- 16.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three months, the party not affected by the Force Majeure Event may terminate the Contract by giving four weeks' written notice to the Affected Party.
- 16.7 If the Coronavirus Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three months, the party not affected by the Coronavirus Event may terminate the Contract by giving four weeks' written notice to the Affected Party

## 17. GENERAL

### 17.1 Assignment and other dealings

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

### 17.2 Notices.

- 17.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) 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
  - (b) sent by fax to its main fax number or sent by email to the address specified identified by either party at the outset of the Contract.
- 17.2.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (b) 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
  - (c) 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 (c), 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.
- 17.2.3 This clause 17.2 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.

- 17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 17.3 shall not affect the validity and enforceability of the rest of the Contract.

- 17.4 **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.

- 17.5 **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.

17.6 **Entire agreement.**

17.6.1 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.

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

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

17.7 **Third party rights.**

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

17.8 **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).

17.9 **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 Northern Ireland.

17.10 **Jurisdiction.** Each party irrevocably agrees that the courts of Northern Ireland 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.

