

# EDBURTON

## EDBURTON CONTRACTORS LIMITED

### TERMS AND CONDITIONS FOR THE SALE AND SUPPLY OF GOODS AND SERVICES

PLEASE NOTE, THESE TERMS AND CONDITIONS CONTAIN SOME PROVISIONS WHICH ARE APPLICABLE TO ONLY BUSINESS CUSTOMERS, SOME WHICH ARE APPLICABLE TO ONLY CONSUMERS AND THE REMAINDER WHICH ARE APPLICABLE TO BOTH BUSINESS CUSTOMERS AND CONSUMERS.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CONDITIONS 12 AND 13 (LIMITATION OF LIABILITY) AS APPLICABLE.

#### 1. INTERPRETATION

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

##### 1.1 Definitions:

**Additional Services:** any services supplied by the Supplier to the Customer in addition to the Services

**Business Customer:** the person or firm who purchases the Goods and/or Services from the Supplier for purposes relating to their trade, business, craft or profession, whether acting personally or through another person acting in that customer's name or on that customer's behalf.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**CDM Regulations:** The Construction (Design and Management)

Regulations 2015 and any approved code of practice and guidance issued in relation thereto.

**Commencement Date:** has the meaning given in condition 3.3.

**Conditions:** these terms and conditions as amended from time to time in accordance with condition 20.8.

**Consumer:** an individual who purchases the Goods and/or Services from the Supplier for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.

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

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Customer:** a Business Customer or a Consumer, as the context requires.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Delivery Location:** has the meaning given in condition 5.2.

**Force Majeure Event:** has the meaning given to it in condition 17.

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

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Principal Designer:** the person appointed by or on behalf of the Customer in accordance with the CDM Regulations (if applicable)

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier:** Edburton Contractors Limited.

**Supplier Materials:** has the meaning given in condition 8.1.8.

##### 1.2 Interpretation:

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

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

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

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

1.2.5 A reference to **writing** or **written** includes email.

#### 2. SUPPLIER INFORMATION AND CONTACT DETAILS

2.1 The Supplier is a limited company registered in England and Wales with company registration number 00771790. Its registered office is at 10 Queen Street Place, London, United Kingdom, EC4R 1AG.

2.2 Consumers can contact the Supplier by telephoning 01903 813665 or by writing to [info@edburtoncontractors.com](mailto:info@edburtoncontractors.com) or The Old Brickworks, Shoreham Road, Henfield, West Sussex BN5 9SE.

2.3 If the Supplier has to contact the Consumer it will do so by telephone or by writing to the email address or postal address provided to the Supplier in the Order.

2.4 For details as to how notices to and from a Business Customer may be served, refer to condition 20.2.

#### 3. BASIS OF CONTRACT

3.1 Any quotation given by the Supplier shall not constitute an offer, and is valid for a period of 30 Business Days from its date of issue.

3.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

3.3 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**).

3.4 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 or on its website 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.

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

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

3.7 The Customer acknowledges and agrees that the Supplier has no knowledge and has made no enquiry or investigation in respect of the physical conditions (including sub-surface conditions) or any other conditions of or affecting the site on which the Goods are to be delivered/used/located and that the Goods are supplied to the Customer on this basis.

3.8 The Supplier will provide any Additional Services to the Customer by mutual agreement (both parties acting reasonably) with the charges for such Additional Charges being calculated in accordance with clause 9.3

#### 4. GOODS

4.1 The Goods are described in the Goods Specification.

4.2 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 any such event.

#### 5. DELIVERY OF GOODS

5.1 The Supplier shall ensure that:

5.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

5.1.2 it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Customer's expense.

5.2 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.

5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.5 The following shall only apply to a Business Customer.

5.5.1 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Business Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Business Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

5.5.2 If the Business Customer fails to accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods the Supplier shall: (a) store the Goods until delivery takes place, and charge the Business Customer for all related costs and expenses (including insurance); and (b) have no liability to the Business Customer for late delivery.

5.6 The following shall only apply to a Consumer.

5.6.1 If no one is available at the Delivery Location to take delivery, the Supplier will leave the Consumer a note informing them of how to rearrange delivery or collect the Goods from a local depot.

5.6.2 If the Consumer does not collect the Goods from the Supplier as arranged or if, after a failed delivery to the Consumer, the Consumer does not re-arrange delivery or collect them from a delivery depot, the Supplier will contact the Consumer for further instructions and may charge them for storage costs and any further delivery costs. If, despite the Supplier's reasonable efforts, the Supplier is unable to contact the Consumer or re-arrange delivery or collection the Supplier may terminate the Contract and condition 16 will apply.

5.6.3 The Consumer has legal rights if the Supplier delivers any Goods late. If the Supplier misses the delivery deadline for any Goods then the Consumer may treat the Contract as at an end straight away if any of the following apply: (a) the Supplier has refused to deliver the Goods; (b) delivery within the delivery deadline was essential (taking into account all the relevant circumstances); or (c) the Consumer informed the Supplier before the Supplier accepted the Order that delivery within the delivery deadline was essential.

5.6.4 If the Consumer does not wish to treat the Contract as at an end straight away, or does not have the right to do so under condition 5.6.3, the Consumer can give the Supplier a new deadline for delivery, which must be reasonable, and the Consumer can treat the Contract as at an end if the Supplier does not meet the new deadline.

5.6.5 If the Supplier chooses to treat the Contract as at an end for late delivery under condition 5.6.3 or condition 5.6.4, the Consumer can cancel the Order for any of the Goods or reject Goods that have been delivered. If the Consumer wishes, they can reject or cancel the Order for some of those Goods (not all of them), unless splitting them up would significantly reduce their value. After that the Supplier will refund any sums the Consumer has paid to the Supplier for the cancelled Goods and their delivery. If the Goods have been delivered to the Supplier, they will have to return them to the Supplier or allow the Supplier to collect them, at the Supplier's cost.

5.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

#### 6. QUALITY OF GOODS AND SUPPLY OF SERVICES

6.1 The Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (**Warranty Period**), the Goods shall:

6.1.1 conform in all material respects with their description;

6.1.2 be free from material defects in design, material and workmanship; and

6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979). The following clause 6.2 to 6.7 (inclusive) shall apply only to Business Customers.

6.1.1 Subject to condition 6.2.2, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if: (a) the Business Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 6.1; (b) the Supplier is given a reasonable opportunity of examining such Goods; and (c) the Business Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Business Customer's cost.

6.1.2 The Supplier shall not be liable for the Goods' failure to comply with the warranty in condition 6.1 if: (a) the Business Customer makes any further use of such Goods after giving a notice in accordance with condition 6.2.1; (b) the defect arises because the Business 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; (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Business Customer; (d) the Business Customer alters or repairs such Goods without the written consent of the Supplier; (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.1.3 Except as provided in this condition 6, the Supplier shall have no liability to the Business Customer in respect of the Goods' failure to comply with the warranty set out in condition 6.1.

6.1.4 In respect of all matters governed by the CDM Regulations, the Supplier shall comply with any instructions of the Principal Designer at no cost to the Customer and notify the Customer of any such instructions prior to implementation.

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

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

6.4 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.5 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.

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

6.7 The following shall only apply to a Consumer.

6.8.1 If a Consumer has any questions or complaints about the Goods and/or Services, please contact the Supplier using the Supplier's contact details in condition 2.2. Alternatively, the Consumer may speak to one of the Supplier's staff at the Supplier's premises.

6.8.2 The Supplier is under a legal duty to supply Goods and/or Services that are in conformity with the Contract. For information about a Consumer's legal rights, please refer to the Citizens Advice website which is hosted at [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk). Nothing in these Conditions will affect a Consumer's legal rights.

6.8.3 If a Consumer wishes to exercise their legal rights to reject the Goods they must either return them in person to where the Consumer bought them, or allow the Supplier to collect them.

## 7 TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 5.3.

7.2 Without prejudice to clause 7.1, title to the Goods shall not pass to the Customer until:

7.2.1 if a Consumer, the Supplier receives payment in full (in cleared funds) for the Goods; or

7.2.2 if a Business Customer, the earlier of: (a) the Supplier receiving payment in full (in cleared funds) for the Goods; or (b) the Business Customer reselling the Goods, in which case title to the Goods shall pass to the Business Customer at the time specified in condition 7.3.2.

7.3 The following shall only apply to a Business Customer.

7.3.1 Until title to the Goods has passed to the Business Customer, the Business Customer shall: (a) store the Goods separately from all other goods held by the Business Customer so that they remain readily identifiable as the Supplier's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery; (d) notify the Supplier immediately if it becomes subject to any of the events listed in condition 15.2.2 to condition 15.2.4; and (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.3.2 Subject to condition 7.3.3, the Business Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Business Customer resells the Goods before that time: (a) it does so as principal and not as the Supplier's agent; and (b) title to the Goods shall pass from the Supplier to the Business Customer immediately before the time at which resale by the Business Customer occurs.

7.3.3 If before title to the Goods passes to the Business Customer, the Business Customer becomes subject to any of the events listed in condition 15.2.2 to condition 15.2.4, then, without limiting any other right or remedy the Supplier may have: (a) the Business Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and (b) the Supplier may at any time: (i) require the Business Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and (ii) if the Business Customer fails to do so promptly, enter any premises of the Business Customer or of any third party where the Goods are stored in order to recover them.

## 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 Service Specification and the Goods Specification are complete and accurate;

8.1.2 co-operate with the Supplier in all matters relating to the Services;

8.1.3 if a Business Customer, provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Business 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 prepare the Customer's premises for the supply of the Services;

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 all or any 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 condition 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 of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods.

9.2 The charges for Additional Services shall be calculated on a time and materials basis:

9.3.1 the charges shall be calculated in accordance with the Supplier's daily fee rates; and

9.3.2 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 Additional Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

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 the latest available figure for the percentage increase in the Retail Prices Index; and

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 factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.5 In respect of Goods, the Supplier shall invoice the Customer on or at any time after the date of the Order.

9.6 The Customer shall pay each invoice submitted by the Supplier:

9.6.1 within 14 days of the date of the invoice; and

9.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.7 The Supplier's pricing will always make clear if the price of the Goods and/or Services is inclusive or exclusive of amounts in respect of value added tax (VAT). If the Supplier's supply of Goods and/or Services is a taxable supply for VAT purposes, which it generally will be, the Supplier will charge the VAT inclusive price to Consumers or, for Business Customer, the Supplier will add VAT at the applicable rate to the VAT-exclusive price and charge the gross price. In either case, if the rate of VAT changes between the date of the Order and the date the Supplier supplies the Goods and/or Services, the Supplier will adjust the rate of VAT, unless the Customer has already paid for the Goods (including delivery costs) and/or Services in full before the change in the rate of VAT takes effect.

9.8 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 condition 15 (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 at 4% above the Bank of England's base rate from time to time per annum will accrue each day under this clause 9.8, but at 4% a year for any period when that base rate is below 0%.

9.9 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).

9.10 It is always possible that, despite the Supplier's best efforts, some Goods may be incorrectly priced. The Supplier will normally check prices before accepting the Order so that, where the Goods' correct price at the date of the Order date is less than the stated price, the Supplier will charge the lower amount. If the Goods' correct price at the date of the Order date is higher than the price stated in the Supplier's price list, the Supplier will contact the Customer for its instructions before the Supplier accepts the Order. If the Supplier accepts and processes the Order where a pricing error is obvious and unmistakable and could reasonably have been recognised by the Customer as a mispricing, the Supplier may end the Contract, refund the Customer any sums it has paid and require the Customer to return the Goods at the Supplier's expense.

## 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 Subject to the payment by the Customer of all sums properly due under the Contract, the Supplier grants to the Customer, or to the extent the Supplier is able to procure the same shall procure the direct grant to the Customer of, a licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by condition 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 CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of six years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by condition 11.2.

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

11.2.1 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 condition 11; and

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

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 12 LIMITATION OF LIABILITY: BUSINESS CUSTOMERS ONLY

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

12.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

12.2.1 death or personal injury caused by negligence;

12.2.2 fraud or fraudulent misrepresentation; and

12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.3 Subject to condition 12.2, the Supplier's total liability to a Business Customer shall not exceed the value of the Goods and Services supplied under the Contract. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

12.4 This condition 12.4 sets out specific heads of excluded loss and exceptions from them:

12.4.1 Subject to condition 12.2, the types of loss listed in condition 12.4.2 are wholly excluded by the parties.

12.4.2 The following types of loss are wholly excluded: (a) Loss of profits; (b) Loss of sales business; (c) Loss of agreements or contracts; (d) Loss of anticipated savings; (e) Loss of use or corruption of software, data or information (f) Loss of or damage to goodwill or (g) Indirect or consequential loss.

12.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in condition 6. 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 this agreement.

12.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

12.7 This condition 12 shall survive termination of the Contract.

## 13 LIMITATION OF LIABILITY: CONSUMERS ONLY

13.1 If the Supplier fails to comply with these Conditions, it is responsible for loss or damage the Consumer suffers that is a foreseeable result of the Supplier's breach of the Contract or it failing to use reasonable care and skill, but it is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both the Supplier and the Consumer knew it might happen, for example, if the Consumer discussed it with the Supplier during the sales process.

13.2 The Supplier does not exclude or limit in any way its liability to the Consumer where it would be unlawful to do so. This includes liability for death or personal injury caused by the Supplier's negligence or the negligence of its employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the Goods and/or Services.

13.3 If the Supplier is providing Services in the Consumer's property, it will make good any damage to the Consumer's property caused by the Supplier while doing so. However, the Supplier is not responsible for the cost of repairing any pre-existing faults or damage to the Consumer's property that the Supplier discovers while providing the Goods and/or Services.

13.4 If the Consumer uses the Goods and/or Services for any commercial, business or re-sale purpose the Supplier will have no liability to the Consumer for any loss of profit, loss of business, business interruption, or loss of business opportunity.

## 14 CONSUMER'S RIGHT TO TERMINATE THE CONTRACT

14.1 A Consumer may end the Contract at any time before the Company has delivered the Goods or begun performance of the Services and the Consumer has paid for them, but in some circumstances the Supplier may charge the Consumer for doing this, as described below. The Consumer always has rights where a product is faulty or mis-described.

14.2 If the Consumer is ending the Contract for a reason set out in this Condition 14.2 the Contract will end immediately and the Supplier will refund the Consumer in full for any Goods which have not been provided or provided properly or Services that have not been performed and the Consumer may also be entitled to further compensation. The reasons are:

14.2.1 the Supplier has told the Consumer about an upcoming change to the Goods or Services or these Conditions which the Consumer does not agree to;

14.2.2 the Supplier has told the Consumer about an error in the price or description of the Goods or Services and the Consumer does not wish to proceed;

14.2.3 there is a risk that supply of the Goods or performance of the Services may be significantly delayed because of a Force Majeure event;

14.2.4 the Supplier has suspended supply of the Goods or performance of the Services for technical reasons, or the Supplier notifies the Consumer that it is going to suspend them for technical reasons, in each case for a period of more than 2 months; or

14.2.5 the Consumer has a legal right to end the Contract because of something the Company has done wrong.

14.3 If the Consumer is not ending the Contract for one of the reasons set out in condition 14.2, the Contract will not end until 30 days after the day on which the Consumer contacts the Supplier. The Supplier will refund any advance payment the Consumer has made for the Goods or Services which will not be provided to the Consumer.

14.4 If the Consumer ends the Contract after Goods have been dispatched to the Consumer and (because the Supplier cannot recall them) they are delivered to the Consumer, the Consumer must return them to the Supplier. If the Consumer is ending the Contract because the Supplier has told the Consumer of an upcoming change to the Goods, Services or these Conditions, an error in pricing or description, a delay in delivery due to a Force Majeure event or because the Consumer is exercising their legal rights to end the Contract because of something the Supplier has done wrong then the Supplier will pay the costs of return. In all other circumstances the Consumer must pay the costs of return.

## 15 TERMINATION

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

15.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within fourteen days after receipt of notice in writing to do so;

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

15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or  
15.2.4 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.

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

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

15.3.2 there is a change of control of the Business Customer.

15.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods 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 condition 15.2.2 to condition 15.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

#### **16 CONSEQUENCES OF TERMINATION**

16.3 On termination of the Contract:

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

16.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16.4 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.

16.5 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.

#### **17 FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (which for the avoidance of doubt shall include any delay or failure as a consequence of Brexit).

#### **18 ANTI-BRIBERY: BUSINESS CUSTOMERS ONLY.**

18.1 This condition applies to Business Customers only.

18.2 Each party shall comply with applicable Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws and with any its own policies relating to prevention of bribery and corruption (as updated from time to time), and each shall ensure that: (a) all of that party's personnel; (b) all others associated with that party, and (c) all of that party's sub-contractors, involved in supplying Goods and/or performing the Services or with the Contract so comply. The expressions **adequate procedures** and **associated** shall be construed in accordance with the Bribery Act 2010 and documents published under it.

18.3 Without limitation to condition 18.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

#### **19 DISPUTE RESOLUTION: BUSINESS CUSTOMERS ONLY**

19.1 This condition applies to Business Customers only.

19.2 If any dispute arises between the parties out of, or in connection with, the Contract, the matter shall be referred to a director (or a person of similar standing) of each party who shall use their reasonable endeavors to resolve it.

19.3 No party may commence any court proceedings in relation to any dispute arising out of the Contract until it has attempted to settle the dispute in accordance with clause 19.2

19.4 Any dispute or difference arising under this Contract may be referred to adjudication in accordance with the following provisions:

(a) Part I of the Scheme for Construction Contracts (England and Wales) Regulations (SI 1998 No. 649) Amendment (England) Regulations 2011 (SI2011/2333) (the "Scheme") shall apply.

(b) The nominating body referred to in the Scheme shall be the President or Vice President of the Chartered Institute of Arbitrators.

(c) The Adjudicator's decision is binding until the dispute or difference is finally determined by the English Courts as provided in condition 20.9.

(d) The Adjudicator shall be obliged to give reasons in writing for his decision and to declare any interest in the subject matter of the adjudication or the parties and shall deliver his decision to the parties within two (2) days from the date of making his decision.

#### **20 GENERAL**

##### **20.1 Assignment and other dealings**

20.1.1 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.

20.1.2 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.

##### **20.2 Notices: Business Customers only.**

20.2.1 Any notice or other communication given to a party under or in connection with this 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 email to the address specified in condition 2.2.

20.2.2 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) 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 condition 20.2.2, 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.

20.2.3 This condition 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.

**20.3 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 condition shall not affect the validity and enforceability of the rest of the Contract.

**20.4 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.

**20.5 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.

##### **20.6 Entire agreement: Business Customers only**

20.6.1 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.

20.6.2 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 or negligent misrepresentation based on any statement in the Contract.

20.6.3 Nothing in this condition shall limit or exclude any liability for fraud.

##### **20.7 Third parties' rights.**

20.7.1 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.

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

**20.8 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).

##### **20.9 Governing law and Jurisdiction**

20.9.1 If a Business Customer, (a) the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales; and, (b) each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

20.9.2 If a Consumer, the Contract is governed by English law and the Consumer can bring legal proceedings in respect of the Goods and/or Services in the English courts. If the Consumer lives in Scotland, the Consumer can bring legal proceedings in respect of the Goods and/or Services in either the Scottish or the English courts. If the Consumer lives in Northern Ireland, the Consumer can bring legal proceedings in respect of the Goods and/or Services in either the Northern Irish or the English courts.

##### **20.9 Data Protection**

20.9.1 The Supplier and any Business Customer undertake to comply with applicable data protection legislation including all applicable laws and regulations relating to the processing of personal data or privacy or any amendments and re-enactments thereof, and shall procure that their respective employees, agents and subcontractors shall observe the provisions of the same.

**20.9.2** The Supplier and any Business Customer will enter into the Supplier's standard agreement in relation to data processing in the form of the document produced to the Business Customer by the Supplier on or before the Commencement Date.

#### **EDBURTON CONTRACTORS LIMITED**