

**THE SYMPHONY GROUP PLC**  
**TERMS & CONDITIONS OF SALE - SUPPLY AND INSTALLATION**

The Customer's attention is in particular drawn to the provisions of Condition 16

**1 Interpretation**

1.1 In these Conditions the following words have the following meanings:

**Appliances** means goods manufactured and guaranteed by a third party, including but not limited to refrigerators, freezers, dishwashers, washers, dryers, microwaves, ovens, hobs and hoods.

**Business Day** means a day other than a Saturday, Sunday or Public Holiday in England and Wales.

**Certificate of Practical Completion** means the certificate signed by the Customer following Practical Completion to acknowledge delivery and satisfactory installation of the Goods as set out in clause 4.12.

**Company** means The Symphony Group plc, company number 01022506, registered office Pen Hill Estate, Park Spring Road, Barnsley S72 7EZ.

**Contract** means any contract between the Company and the Customer for the sale and purchase of the Goods and/or Services, incorporating these Conditions.

**Customer** means the person, firm or company who in the course of his, her or its business purchases the Goods and/or Services from the Company.

**Data Protection Legislation** means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

**Delivery Point** means the place where delivery of the Goods is to take place under Condition 4 of these Conditions.

**Goods** means the Products and Appliances agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

**Information** means any information relating to the Company.

**Installation Service Specification** means the installation service specification provided by the Company to the Customer from time to time.

**Intellectual Property Rights** means any copyright, any database rights, any patents, designs, trademarks and service marks (whether registrable or otherwise), any domain names, moral rights, rights in commercial information and technical information (including know-how) and any other intellectual property rights, whether registrable or not, and including the right to make applications for registration of the same in any country.

**Materials** means any and all drawings, descriptive matter, specifications, survey reports, plans, diagrams, illustrations and other documents and materials in whatever form developed, created or produced by or on behalf of the Company and provided or made available by the Company to the Customer (or customers of the Customer).

**Practical Completion** means a state in which the Goods have been installed in accordance with the Installation Service Specification in all respects and are free from apparent defects save for any minor items of incomplete work or minor defects, the existence, completion or rectification of which would not prevent or interfere with the use or enjoyment of the Goods.

**Products** means any Goods apart from Appliances.

**Programme** means the programme for the installation of the Goods in accordance with the Installation Service Specification provided by the Company to the Customer from time to time.

**Service** means the provision of any service by the Company to the Customer in accordance with these Conditions.

**Trade Marks** means such trade marks (whether registered or unregistered) of the Company as are notified to the Customer by the Company from time to time.

1.2 In these Conditions, unless the context otherwise requires:

- (a) a reference to a statute or a statutory provision shall be construed as including a reference to any subordinate legislation (as defined by Section 21(1) of the Interpretation Act 1978) made from time to time under that statute or provision; and
- (b) a reference to a statute, statutory provision or subordinate legislation (as so defined) shall be construed as including a reference to that statute, provision or subordinate legislation as in force at the date of any Contract and as from time to time modified or consolidated, superseded, re-enacted or replaced whether with or without modifications; and
- (c) words importing a gender include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case wherever resident and for whatever purpose) and vice versa.

**2 Formation of Contract**

2.1 Any order sent to the Company by the Customer shall be accepted entirely at the discretion of the Company and, if so accepted, will only be accepted upon these Conditions.

2.2 Any order sent to the Company by email or through the Company's extranet facility shall only be deemed capable of acceptance by the Company if such email is received by the Company complete, in its original form and uncorrupted.

2.3 Subject to any variation under clause 2.6 the Contract will be on these Conditions to the exclusion of all other terms and conditions including any terms and conditions which the Customer purports to apply under any invitation to tender, purchase order, confirmation of order, specification or other document.

2.4 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.5 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate. Any variation to an order requested by the Customer must be in writing and its acceptance is entirely at the discretion of the Company.

2.6 These Conditions apply to all Contracts and any variation to these Conditions and any representations about the Goods and/or Service shall have no effect unless expressly agreed in writing and signed by a Director of the Company. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.

**3 Specification**

3.1 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Service described in them. They do not form part of the Contract.

3.2 The Company reserves the right to substitute other suitable components or materials when the component or materials specified are not readily available and to adopt any resultant modifications in construction, design or specification which it reasonably considers necessary.

**4 Delivery**

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place when the Goods are clear of the delivery vehicle at the destination specified by the Customer.

4.2 When the Company has, in its reasonable opinion delivered and installed the Goods in a satisfactory manner in accordance with these Conditions, it shall notify the Customer of Practical Completion and the Customer shall be required to sign a Certificate of Practical Completion. In the event that the Customer refuses to sign the Certificate of Practical Completion other than because of a bona fide dispute which is being addressed in accordance with Condition 18, the Customer shall be deemed to have signed the Certificate of Practical Completion 10 days following notification by the Company of Practical Completion.

4.3 The Company may deliver the Goods in any Contract in instalments. Each instalment of the Goods delivered shall be a separate Contract and if the Customer rejects one instalment in accordance with these Conditions it shall not thereby reject all instalments.

- 4.4 Any dates specified by the Company for delivery of the Goods and/or provision of the Services are intended to be an estimate only and time for their delivery or provision shall not be of the essence of the Contract. If no dates for delivery or provision are specified by the Company, delivery or provision will be within a reasonable time.
- 4.5 Subject to other provisions of these Conditions the Company will not be liable for any indirect or consequential loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods.
- 4.6 If for any reason the Customer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate access, instructions, documents, licences or authorisations:
- the Company reserves the right to charge and the Customer shall forthwith pay to the Company an abortive delivery charge of 50% of the invoice value of the Goods with a minimum charge of £250 per plot or such other figure as may from time to time be notified to the Customer in accordance with the Company's then current delivery policy;
  - risk in the Goods will pass to the Customer;
  - the Goods will be deemed to have been delivered; and
  - the Company may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.7 Unless agreed in writing to the contrary, the Customer will provide at its expense at the Delivery Point adequate and appropriate access, equipment and manual labour for unloading the Goods.
- 4.8 For the avoidance of doubt, from delivery of the Goods until installation, the Customer shall properly cover and protect any of the Goods liable to damage by exposure to the weather and shall take all reasonable precautions to protect the Goods against loss, damage or theft from any cause.
- 5 Non-delivery**
- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company by the Customer in accordance with the Company's defects policy notified to the Customer from time to time and in any event within two days of the date when the Customer ought reasonably to be aware of such non-delivery.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods.
- 6 Risk and title**
- 6.1 The Goods are at the risk of the Customer from the time of their delivery.
- 6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- the Goods and/or Services; and
  - all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Goods has passed to the Customer, the Customer must:
- hold the Goods on a fiduciary basis as the Company's bailee and trustee;
  - store the Goods (at no cost to the Company) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
  - not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
  - hold the proceeds of the insurance referred to in clause 6.3(d) on trust for the Company and not mix them with any other money nor pay the proceeds into an overdrawn bank account.
- 6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- any sale shall be effected in the ordinary course of the Customer's business at full market value; and
  - any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 6.5 The Customer's right to possession of the Goods shall terminate immediately if:
- the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
  - the Customer suffers or allows any execution whether legal or equitable to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other Contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - the Customer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from the Company.
- 6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession is terminated, to recover them.
- 7 Intellectual Property Rights**
- 7.1 The Company grants to the Customer a non-exclusive right to use the Trade Marks in relation to the Products and provided that any such use shall be strictly in accordance with the provisions of this Condition 7 and with any instructions as to their use as the Company may issue from time to time.
- 7.2 The Customer shall:
- use the Trade Marks only to advertise and promote the sale of the Products and shall restrict such use to use on point of sale material, brochures, catalogues, websites and posters;
  - use the Trade Marks only in the format specified by the Company, include the ® symbol ( if the Trade Mark is registered ) or the ™ symbol (if the Trade Mark is unregistered ) alongside the Trade Marks at all times, and include, on any brochures, catalogues or website on which the Trade Marks are used, the text "Trade Mark is a registered trade mark of The Symphony Group plc" (if the Trade Mark is registered ) or "Trade Mark is a trade mark of The Symphony Group plc" (if the Trade Mark is unregistered);
  - use the Trade Marks only in the manner of a trade mark, and not use the Trade Marks (or any similar name or marks) in connection with any goods, products or services except for the Products or for any purpose other than the sale and/or promotion of the Products;
  - not use the Trade Marks at any time during or after the termination of the Contract as part of any corporate, business or firm name, nor use in relation to the Products any name, mark or trademark (whether registered or not) except the Trade Marks;
  - in displaying the Trade Marks, not use other names, marks or wording in a manner which would be likely to lead third parties to believe that the Trade Marks are owned by any person, firm or corporation other than the Company
  - not use the Trade Marks in any manner which in the reasonable opinion of the Company is prejudicial to the image of the Company nor knowingly do or suffer to be done any act or thing which will in any way bring into disrepute, impair or adversely affect the Trade Marks or the rights of the Company therein or the validity of any registrations thereof

- (g) immediately inform the Company of any infringement or suspected infringement of the Trade Marks or any application by anyone for the registration of any mark that is similar to or the same as the Trade Marks of which the Customer becomes aware;
  - (h) provide the Company with samples of any and all packaging, labelling, advertising and promotional material which the Customer proposes to issue or use in relation to the Products, in advance of issuing or using such material, and shall not without the Company's prior approval issue or use such material;
  - (i) do all such things as may be necessary to assist the Company in the protection of the Trade Marks, provided that the Customer shall not take any step towards the institution of any proceedings against any alleged infringer including the issue of any warning notices or other such communications or take any action to resist any such threat; and
  - (j) at the Company's request execute such agreements in respect of the use of the Trade Marks as the Company may reasonably require.
- 7.3 All trade mark rights and goodwill in the Trade Marks, including those deriving from use of the Trade Marks upon or in connection with the Products or any other merchandise by the Customer, shall as between the Company and the Customer (and the customers of the Customer) vest and remain vested exclusively in the Company.
- 7.4 The Company reserves the right to terminate the rights granted under this Condition 7 at any time.
- 7.5 All Intellectual Property Rights in and to the Materials and the Products shall, as between the Company and the Customer (and the customers of the Customer) vest and remain vested in the Company.

## **8 Confidentiality**

- 8.1 Subject to clause 8.2, each party shall, and shall use all reasonable endeavours to procure that its officers and employees shall, keep confidential all confidential information relating to the other party (and its business affairs) that it obtains in connection with this Contract or the negotiations leading up to it. Each party shall only use such information in the proper performance of its obligations and exercise of its rights under this Contract and shall not divulge any of such information to any other person without the prior written consent of the other, unless required to disclose the information by law, any competent regulatory body or pursuant to an applicable rule, Court proceedings (or any other person to whom a dispute is referred in accordance with this Contract) to which that party is a party.
- 8.2 Where the Customer receives a request for Information under the Freedom of Information Act 2000 it shall promptly and no later than seven days from receipt thereof, inform the Company of the request and consult with the Company regarding disclosure of the Information. Where the Company notifies the Customer that it does not wish such Information to be disclosed and the Customer nevertheless decides to disclose it, the Customer shall notify the Company of this prior to any such disclosure taking place.
- 8.3 The obligations of this Condition 8 shall survive the termination of this Contract and shall continue unless and until any of the relevant confidential information enters the public domain through no fault of the relevant party or its officers and employees.
- 8.4 For the avoidance of doubt, the Customer agrees that the Company may include the Customer's name in any published list of the Company's customers.

## **9 Installation**

- 9.1 Subject to the provisions of Condition 10 the Company shall install the Goods in the Customer's premises in accordance with the Installation Service Specification.
- 9.2 The Company shall install the Goods in accordance with all statutory requirements, building regulations or conditions of the National House Building Council Buildmark Scheme or any equivalent scheme applying to the installation of the Goods at the date of installation.
- 9.3 Provided that the Customer shall provide to the Company a duly authorised variation order, access in accordance with Condition 10 and reasonable time for providing additional installation or other Services to the Customer, the Company shall provide to the Customer installation and other Services in addition to those set out in the Installation Service Specification in accordance with the Programme for providing such additional Services.
- 9.4 Where Goods have been delivered to the Delivery Point and the premises are not ready for installation on the date or within the period agreed with the Customer, the Company may raise invoices to be paid in accordance with Condition 14:
- (a) upon delivery for a sum equal to the value of the Goods delivered; and
  - (b) upon Practical Completion for the balance of the outstanding Contract price and any additional costs incurred to achieve Practical Completion.
- 9.5 Subject to clauses 9.6 and 9.7 the Customer shall be responsible for and shall make arrangements for the connection of the Goods to gas, water and electricity services and the Customer shall ensure that the Goods are properly connected to such services and shall be responsible for making good any defects arising from such connections. The Company shall not be liable for any loss or damage or injury arising from any such defects or connections made by or on behalf of the Customer unless made by the Company.
- 9.6 The Company may, on condition that it gives its written agreement to a written request of the Customer, connect the Goods to water or electricity services, provided such connections are only cable or flex connections to existing sockets or control boxes previously fitted by a technically qualified electrician. The Customer acknowledges that the Company's fitters and sub-contractors may not be technically qualified electricians and/or plumbers, and are only qualified to carry out the work as set out in this Condition.
- 9.7 Unless specifically agreed in writing by a Director of the Company, the Company will not undertake connection of Appliances to gas services.

## **10 Access**

The Customer shall provide or procure for the Company complete and unconditional access to and from all and any of the Customer's or other premises to which the Goods are to be delivered or in which the Goods are to be installed or the Services to be provided in accordance with the Programme.

## **11 Programme**

The Company shall install the Goods in the Customer's or other premises within a reasonable time and no later than seven working days from the provision of access in accordance with Condition 10 above.

## **12 Surveys**

Where the Company has agreed to carry out a survey to provide a quotation:

- (a) the survey will only be for the purpose of measuring the room and proposing a suitable layout of the Goods;
- (b) the Company reserves the right to make a separate charge for this Service;
- (c) the Company will only undertake a survey after a list of desired objectives has been agreed with the Customer;
- (d) the surveyor will try to accommodate the desired objectives of the Customer in proposing a suitable layout such as the number and cubic capacity of the cabinets, the height of worktops and the general configuration;
- (e) the final layout incorporating any amendments made by the Customer shall be approved by the Customer before any Products are manufactured;
- (f) neither the Company nor the surveyor are qualified to, and cannot, suggest or allow for structural changes or changes to the electrical, gas, plumbing or heating services;
- (g) it is the Customer's responsibility to verify that the position of existing plumbing, heating, gas and electrical services are available or can be relocated to meet the proposed layout; and
- (h) it is the Customer's responsibility to ensure the suitability of the walls and floor for the fixing of cabinets;
- (i) the Company is unable to, and accordingly will not, survey rooms with unfinished walls or other surfaces;
- (j) the Company can arrange appointments to survey properties with tenants on a direct basis but will only make two visits to gain access to the property. Thereafter the responsibility for gaining access to the property rests with the Customer; and
- (k) surveys will only be undertaken between 9.00 am and 5.00 pm on a Business Day and the surveyor may refuse to enter a property for whatever reason, including but not limited to reasons of health and safety.

### 13 Price

- 13.1 Unless otherwise agreed by the Company in writing the price of the Goods and/or Service shall be the price set out in the Company's quotation or in the Company's price list published on the date of the provision of the Service or of the delivery or deemed delivery of the Goods, whichever is the greater. The Company shall notify the Customer of any change in the price of the Goods and/or Service from time to time.
- 13.2 The price of the Goods and/or Service shall be exclusive of any value added tax and inclusive of all costs or charges in relation to loading, moving, carriage and insurance all of which amounts the Customer will pay when it is due to pay for the Goods and/or Service.
- 13.3 For the avoidance of doubt, the Company reserves the right to vary the price of the Goods and/or Service to take into account changes in exchange rates, raw material prices, any additional expenses incurred as a result of the Customer's instructions, variations to order, lack of instructions or delay and any other costs to the Company of supplying the Goods and/or Service which are outside the control of the Company.

### 14 Payment

- 14.1 Unless otherwise agreed by the Company in writing, payment of the price of the Goods and/or Service is due on the last Business Day of the month following the month in which the Goods are delivered or deemed to be delivered or in which the Service is provided.
- 14.2 Time for payment shall be of the essence.
- 14.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 14.4 The Company reserves the right at any time:
- (a) to require the Customer to lodge a cash deposit, letter of credit or other form of security as required by the Company for the payment of all amounts due or to become due under the Contract; or
  - (b) to require the Customer in some other manner to prove to the satisfaction of the Company that it will fulfil all its obligations under the Contract and make payment on the due date(s).
- 14.5 Should the Customer fail or refuse to provide such security or proof within five Business Days of such request, the Company reserves the right without notice and without incurring liability of any kind to suspend performance of the Contract or to terminate the Contract and receive any payment then due and to recover from the Customer any loss suffered by the Company by reason of such suspension or termination.
- 14.6 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provisions.
- 14.7 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, or otherwise unless the Customer has a valid order of an English court requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 14.8 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of the Lloyds Bank plc accruing on a daily basis until payment is made, whether before or after any judgement. Without prejudice to the foregoing, alternatively the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 at its discretion.
- 14.9 Any claim by the Customer that any items included in any invoice are not properly chargeable must be submitted in writing to the Company within 30 days of the receipt of the invoice by the Customer, failing which the Customer shall be deemed to have accepted the invoice.

### 15 Quality

- 15.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 24 months from the date of delivery or Practical Completion as appropriate, the Products will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 15.2 The Company shall not be liable for the breach of the warranty in clause 15.1 unless the Customer gives written notice in accordance with 15.2(a), (b), (c) and (d) below (**Notice**) of the defect:
- (a) to the Company in accordance with the Company's defects policy notified to the Customer from time to time; and
  - (b) to the Company for all other defects within 10 Business Days of the time when the Customer discovers or ought to have discovered the defect; and
  - (c) to the carrier, if the defect is as a result of damage in transit, within two Business Days; and
  - (d) the Company is given a reasonable opportunity after receiving Notice of examining such Products and the Customer (if asked to do so by the Company) returns such Products to the Company's place of business at the Company's cost for the examination to take place there.
- 15.3 The Company shall not be liable for the breach of the warranty in clause 15.1 if:
- (a) the Customer makes any further use of such Products after giving Notice; or
  - (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products (or if there are none, good trade practice); or
  - (c) the Customer alters or repairs such Products without the written consent of the Company.
- 15.4 Subject to clauses 15.2 and 15.3, if any of the Products do not conform with the warranty in Condition 15.1 the Company shall at its option repair or replace such Products (or the defective part) or refund the price of such Products at the pro-rata contract rate provided that, if the Company so requests the Customer shall at the Company's expense return the Products or the part of such Goods which is defective to the Company.
- 15.5 If the Company complies with clause 15.4 it shall have no further liability for breach of the warranty in clause 15.1 in respect of such Products.
- 15.6 Any Products replaced or repaired by the Company will be guaranteed on these terms for the unexpired portion of the 24 month period.
- 15.7 The Customer acknowledges that:
- (a) any Appliances sold under the Contract are offered with a consumer guarantee from their manufacturer (**Guarantor**), which takes effect at the time the Appliances are delivered as a contractual obligation owed by the Guarantor under the conditions set out in the guarantee statement and any associated advertising; and
  - (b) it agrees that the Company will not be liable for any defect in such Appliances unless such defect was due to damage in transit, in which case clause 15.2 (c) shall apply.

### 16 Limitation of liability

- 16.1 Subject to Condition 15, the following provisions set out the entire financial liability of the Company (including any liability for the act or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of these Conditions; and
  - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 16.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 16.3 Subject to clauses 16.2 and 16.4, the Company shall have no liability to the Customer in the event that the Products infringe any Intellectual Property Rights of a third party. Subject to clauses 16.2 and 16.4, the Company gives no warranty that the Products will not so infringe and all conditions, warranties, stipulations or other statements whatsoever relating to such infringement or alleged infringement if any, whether express or implied at common law or statute or otherwise are excluded from the Contract.
- 16.4 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation or for any breach by the Company of Section 12 of the Sale of Goods Act 1979.
- 16.5 Subject to clauses 16.2 and 16.4:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty, misrepresentation, restitution, or otherwise), arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b) the Company shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 17 Termination

- 17.1 Either party shall be entitled to terminate the Contract without liability to the other party forthwith upon written notice to the other party:
- (a) if the other party becomes bankrupt, insolvent, compounds with its creditors or shall have distress or execution levied upon its property or is wound up or goes into liquidation (except for the purposes of a bona fide reconstruction) or shall have a receiver administrative receiver or administrator appointed of the whole or any part of its assets or shall suffer the appointment of any similar person under the laws of its domicile; or
  - (b) the other party ceases or threatens to cease to carry on business; or
  - (c) the other party is in material breach of its obligations under the Contract and fails to remedy the breach (when capable of remedy) within 30 days of notice from the other party specifying the breach.
- 17.2 The exercise of any rights granted to either party under clause 17.1 shall not prejudice or affect any right of action or remedy which may have already accrued or may accrue thereafter to the other party.

## 18 Resolution of disputes

- 18.1 The parties agree to co-operate with each other in an amicable manner with a view to achieving the successful operation of the Contract.
- 18.2 If any dispute arises out of the Contract, the parties will attempt to resolve it by mediation in accordance with the Centre for Dispute Resolution's (CEDR's) Model Mediation Procedure then in force.
- 18.3 Nothing in clauses 18.1 or 18.2 precludes any party from commencing or continuing proceedings in any court at any time;
- (a) for an order (whether interim or final) to restrain any other party from doing any act or to compel any other party to do any act; or
  - (b) for a judgement for a liquidated sum to which there is no arguable defence; or
  - (c) the purpose of which is to prevent a claim from becoming time-barred due to the expiry of any statutory or contractual limitation period.
- 18.4 In the event that the Contract falls within the scope of the Housing Grants, Construction and Regeneration Act 1996, either party may refer any dispute or difference to adjudication under the procedures set out in the Scheme for Construction Contracts (England and Wales) 1998.
- 18.5 In the event that resolution of any dispute is not achieved under clauses 18.1, 18.2 or 18.4 each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with this Contract.

## 19 Assignment

- 19.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 19.2 The Company may assign the Contract or any part of it to any person, firm or company.

## 20 Force majeure

The Company reserves the right to defer the date of delivery of the Goods and/or provision of the Service or to cancel the Contract or reduce the volume of the Goods and/or scope of the Service ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, changes in legislation, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, either party shall be entitled to give notice in writing to the other to terminate the Contract.

## 21 Anti-Slavery

- 21.1 In performing its obligations under the Contract, the Company shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including (but not limited to) the Modern Slavery Act 2015 (**Anti-Slavery Laws**); and
  - (b) have and maintain throughout the term of Contract its own policies and procedures to ensure its compliance; and
  - (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
  - (d) require that each of its direct subcontractors and suppliers shall comply with Anti-Slavery Laws.
- 21.2 The Company warrants that
- (a) neither the Company nor any of its officers, employees or other persons associated with it:
    - (i) have been convicted of any offence involving slavery and human trafficking; and
    - (ii) to the best of its knowledge, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 21.3 The Company shall implement due diligence procedures for its direct subcontractors, and suppliers, to ensure that there is no slavery or human trafficking in its supply chains.
- 21.4 The Company shall notify the Customer as soon as it becomes aware of:
- (a) any breach, or potential breach, of any Anti-Slavery Law; or
  - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract or the provision of goods or services to the Company.
- 21.5 The Company shall:
- (a) maintain a complete set of records to trace the supply chain of all Goods and/or Services provided to the Customer in connection with the Contract and provide copies to the Customer immediately on request; and
  - (b) implement annual audits of its compliance and its direct subcontractors' and suppliers' compliance with Anti-Slavery Laws.
- 21.6 The Customer may terminate the Contract with immediate effect by giving written notice to the Company if the Company commits a breach of any Anti-Slavery Law.

## 22 Anti-bribery and corruption

- 22.1 The Customer shall:
- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - (b) comply with the Company's Anti-bribery and Corruption Policy, as the Company may update from time to time (**Relevant Policy**);
  - (c) promptly report to the Supplier any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this agreement;
  - (d) not do, or omit to do, any act that will cause or lead the Company to be in breach of any of the Relevant Requirements.
- 22.2 The Customer shall indemnify the Company against any losses, liabilities, damages, costs including (but not limited to) legal fees and expenses incurred by, or awarded against, the Company as a result of any breach of this Condition 22 by the Customer.
- 22.3 The Customer shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by it in connection with Contract and the steps taken by it to comply with the Relevant Requirements and the Relevant Policy in each case during the previous six years. The Company shall ensure that such records and books of accounts are sufficient to enable the Customer to verify the Company's compliance with its obligations under this Condition 22. Access to such records (when copies of them shall be permitted to be made) shall be provided to the Company or its third party representative on reasonable notice to the Customer from the Company.
- 22.4 The Customer warrants and represents that:
- (a) neither the Customer nor any of its officers, or employees:
    - (i) have been convicted of any offence involving bribery or corruption; or
    - (ii) to the best of its knowledge, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements.

- 22.5 The Customer shall promptly notify the Company if, at any time during the term of the Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 22.4 at the relevant time.
- 22.6 Breach of this Condition 22 shall be deemed a material breach of the Contract which will permit the Company to terminate immediately by service notice in writing of its intention to do so.
- 22.7 If the Company terminates this agreement for breach of this Condition 22, the Customer shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.
- 22.8 Regardless of any other provision in this agreement, the Customer shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.

### **23 Data protection and data processing**

- 23.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Condition 21, **Applicable Laws** means (for so long as and to the extent that they apply to the Company) 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 any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.
- 23.2 The Company will process Personal Data in accordance with its Data Protection Policy and otherwise in accordance with the terms of this Condition 23.
- 23.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Company is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 23.4 Without prejudice to the generality of Condition 23, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under the Contract:
- (a) process that Personal Data only on the written instructions of the Customer unless the Company is required by Applicable Laws to otherwise process that Personal Data. Where the Company is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Company shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Company has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
    - (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  - (e) the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data.

### **24 General**

- 24.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 24.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provisions shall continue in full force and effect.
- 24.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 24.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 24.5 The parties to the Contract do not intend at any time that the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 24.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

### **25 Notices**

- 25.1 All notices to be given to a party under the Contract must be in writing and delivered by hand or sent by prepaid first class post or sent by facsimile transmission:
- (a) (in case of notices to the Company) to its registered office or such a change of address as shall be notified to the Customer by the Company; or
  - (b) (in the case of notices to the Customer) to its registered office or to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer.
- 25.2 Notices addressed to the Company shall be marked for the attention of the Commercial Manager.
- 25.3 Notices shall be deemed to have been received:
- (a) if sent by prepaid first class post, two Business Days after posting (exclusive of the day of posting);
  - (b) if delivered by hand on the day of delivery;
  - (c) if sent by facsimile transmission on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.