



AXESS4ALL LIMITED
TERMS AND CONDITIONS OF
SALE OF GOODS AND SERVICES

1. Interpretation

1.1 In these Conditions, unless the context otherwise requires the following expressions shall have the following meanings:

“COMPANY”	means AXESS4ALL LIMITED (registered in England under number 5309173) whose registered office is at Unit 3F, Hamilton Industrial Park, Waterside Road, Leicester, Leicestershire, LE5 1TL;
“CONDITIONS”	means the standard terms and conditions of sale set out in this document and any other terms and conditions specified by the Company on its Quotation or acknowledgement of order;
“CONSUMER”	means a customer with whom the Company contracts and who is a natural person acting for purposes which are outside his business;
“CONTRACT”	means any contract for the supply of the Goods and/or the provision of Services by the Company to the Customer incorporating these Conditions;
“CUSTOMER”	means the individual, firm, company, Consumer or other party with whom the Company contracts;
“GOODS”	means the goods and/or materials which the Company has agreed to supply under the Contract;
“INTELLECTUAL PROPERTY RIGHTS”	means any and all trademarks, rights in design, get up, trade, business or domain names, copyrights, future copyrights, patents, rights in databases (whether registered or not), and any applications to register or rights to apply for registration of any of the foregoing, rights in inventions, know-how, trade secrets, and other confidential information and all other intellectual property rights of a similar or corresponding nature which may now or in the future subsist in any part of the world;
“MASTERBOARD”	the control panel required for operation of Goods which are platform lifts;
“PREMISES”	the premises at which the Company agrees to perform any Services or where the Company is not providing Services, the premises at which any Goods are to be installed;
“PRICE”	means the price of the Goods and/or Services as set out in clause 6 below;
“QUOTATION”	the quotation issued by the Company to the Customer in connection with the supply of the Goods and/or Services;
“SERVICES”	those services which the Company has agreed to provide under the Contract as set out in Clause 4;
“WRITING”	includes telex, cable, facsimile transmission, email and comparable means of communication.

- 1.2 Any reference in these Conditions to a statute or any provision of a statute shall unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, re-enacted, consolidated, modified, replaced or extended.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 References to clauses are to clauses of these Conditions, unless stated otherwise.
- 1.5 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

2. Contract Terms, Variations and Representations

- 2.1 The Contract shall be subject to these Conditions and except as provided in clause 2.3 no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into a Contract except on the basis of these Conditions.
- 2.2 Unless otherwise agreed in writing pursuant to clause 2.3, the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or pre-contract negotiations) or any inconsistent terms implied by law or trade custom, practice or course of dealing.
- 2.3 These Conditions apply to all of the Company's sales and any variation to these Conditions (including in respect of the Goods and/or Services to be supplied) and any representations about the Goods and/or the Services shall have no effect unless expressly agreed in writing by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 For the avoidance of doubt, where the Company has not given a written acknowledgement of the Customer's order these Conditions will nonetheless apply to the Contract.

3. Quotations

- 3.1 No order in pursuance of any Quotation or otherwise shall be binding on the Company unless and until such order is made in writing and made by post or by facsimile and is accepted by the

- 3.2 Any Quotation given by the Company relating to the price of the Goods and/or Services and the time or period for delivery of the Goods and/or Services or otherwise is based on the relevant conditions and information known to the Company at the time and the condition of the Premises at the time, on the assumption that all drawings, plans and specifications as approved by the Customer are correct and does not constitute an offer. Unless previously withdrawn or otherwise agreed in writing, any Quotation shall be valid for a period of 30 days, or if different, for the period stated in the Quotation. However all Quotations and orders are subject to withdrawal or alteration in whole or in part by the Company at any time. For the avoidance of doubt the most recent Quotation sent by the Company to the Customer shall take precedence over any others sent by the Company and shall, if accepted, form the basis of the order. Should the Customer vary its order at any time, the Company hereby reserves the right to issue a new Quotation which shall take precedence over any previous Quotations.
- 3.3 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including without limitation the cost of delivery to and collection of Goods from the Customer, of all labour and materials used whether in carrying out installation of the Goods or removing installed Goods or otherwise), damages, charges and expenses incurred by the Company as a result of cancellation.
- 3.4 Each order for Goods and/or Services by the Customer shall be deemed to be an offer by the Customer to purchase Goods and/or Services on these Conditions. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods and/or Services to the Customer.
- 3.5 The quantity and description of the Goods and/or Services and any specification for them shall be as set out in the Quotation or in the acceptance of order issued by the Company and the Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 3.6 Except when incorporated in the Quotation by specific reference all representations specifications, drawings, particulars of weight, shapes, descriptions, illustrations, prices and other advertising material contained in the Company's catalogues or brochures or website or otherwise are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services

described in them and will not form a representation or be part of the Contract. Any typographical, clerical or other error or omission in any such materials or in sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company. Furthermore, the Company reserves the right to correct any clerical or typographical errors made by its employees, its sub-contractors or agents at any time.

3.7 **Without prejudice to clause 2.1 and 2.3 any advice or recommendation given by the Company, its employees, its sub-contractors or agents to the Customer or its employees, its sub-contractors or agents as to the storage, application, installation, use or repair of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.**

3.8 Unless otherwise agreed in Writing by the Company, the Customer may not vary its order and/or specification for Goods and/or Services and the Customer shall be responsible for ensuring that the Goods and/or Services required are acceptable for their purposes.

4. Services

4.1 The Services to be provided by the Company under this Contract (if requested by the Customer) are as follows:-

4.1.1 the installation of the Goods and the carrying out of all work done in or in connection with the testing, delivery, erection, modification or repair of Goods in accordance with the Contract; and

4.1.2 any other works set out in Schedule 1 of these Conditions (if any).

4.2 Where the Contract provides for Services to be performed by the Company, the Company will supply the necessary supervisory personnel, skilled and unskilled labour and hand tools for the performance of the Services as specified in the Quotation;

4.3 **For the avoidance of doubt, the Services shall not include the provision of advice (including in relation to any planning permission requirements) or services or the installation of any goods or carrying out of any work in, or in connection with, the design, manufacture, development, production, processing, treatment, testing, delivery, erection, repair or servicing of any goods in relation to structural matters or electro-mechanical matters in respect of the Premises. For the avoidance of doubt the Services shall not include any work required for the recessing of floors or the provision or creation of supporting walls for the Goods. In respect of such services, the Customer shall be responsible for procuring the services of the relevant specialist for such work and shall be responsible for indemnifying the Company for any proceedings, costs, losses, expenses, liabilities, injury, death or damages arising from the provision of services from such person or persons.**

4.4 The Customer acknowledges that the Company does not have expertise in assessing the suitability and structural soundness of the Premises in respect of the Goods and/or Services to be provided pursuant to these Conditions. Prior to the commencement of the provision of Goods and/or Services pursuant to these Conditions, the Customer shall therefore:-

4.4.1 (at its own cost) prepare and maintain the Premises for the supply of the Services including but not limited to the installation of the Goods) and shall comply with any requirements set out by the Company in any specifications, plans or drawings issued by the Company;

4.4.2 ensure the provision of access to electricity and other relevant services required for installation of the Goods;

4.4.3 be responsible for identifying, monitoring, removing and disposing of any hazardous materials from the Premises and obtaining and maintaining all necessary consents, licenses, permits, building regulations approval and surveys required for the delivery and installation of the Goods and/or performance of the Services, in accordance with all applicable laws, before and during the supply of the Services at those Premises;

4.4.4 ensure that the Premises are in a suitable condition and structurally sound; and

4.4.5 ensure that all building regulations and necessary consents, permits and licences have been complied with.

For the avoidance of doubt, it shall not be the responsibility of the Company to obtain the necessary approvals, permits licenses, comply with building regulations or advise on the suitability or structural condition of the Premises and the Customer shall commission a survey of the Premises from a qualified surveyor to establish whether the Goods and/or Services to be provided under this Contract are appropriate under all the circumstances. The Customer shall indemnify the Company against all proceedings, costs, losses, expenses, liabilities, injury, death or damage arising out of any failure by the Customer to comply with this clause 4.5 and/or as a result of any defects in the structure of the Premises.

4.5 **The Company shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Premises and that have been communicated to it, provided that it shall not be liable under this Contract if, as a result of such observation, it is in breach of any of its obligations under this Contract.**

4.6 In respect of the Services, the Customer shall comply with all relevant legislation in relation to the Services, the installation of the Company's Goods, the use of the Goods in so far as any necessary licenses, consents and legislation relate to the Customer's Premises, staff and equipment and in all cases on or before the commencement date of the provision of the Services.

5. Specifications, Instruction or Design

5.1 If the Goods are to be made or the Services are performed by the Company in accordance with a specification, instruction or design submitted by the Customer or any third party on behalf of the Customer then:

5.1.1 the suitability, accuracy and completeness of any terms of any order, the specification, instruction or design will be the Customer's responsibility;

5.1.2 the Customer will indemnify the Company against any infringement or alleged infringement of any third party Intellectual Property Rights and any loss, damage or expense which the Company may incur by reason of any such infringement or alleged infringement in any country;

5.1.3 the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the Goods being made and/or the Services being performed to such specification, instruction or design.

5.2 The Company reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or EC requirements or, where the Goods and/or Services are to be supplied to the Company's specification, which do not materially affect their quality or performance and the Company may charge the Customer extra for such changes.

5.3 The Customer shall supply details of briefs and specifications and any necessary information relating to the Goods and/or Services in reasonable time to enable the Company to complete design development and production in respect of the Goods and/or Services within the time period estimated by the Company pursuant to clause 8.3.

5.4 Where appropriate detailed plans and drawings and/or prototypes of the Goods and/or Services will be issued for the Customer's approval after the receipt of the Customer's brief and/or specifications.

5.5 **Any plans, drawings, and/or prototypes, descriptions, illustrations, dimensions or particulars submitted by the Company to the Customer pursuant to clause 5.4 are approximate only and are only issued for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They must not be taken as binding in detail and the Company will not be liable for any error or omission.**

5.6 Any drawing, photographic material of any description, catalogue, literature, leaflets, blueprints, Quotations and all or any other documents produced for the purpose of producing the Goods and/or providing the Services and all Intellectual Property Rights in the same shall remain the exclusive property of the Company and shall not be copied or otherwise reproduced by the Customer without first obtaining the consent of the Company in Writing.

6. Price of the Goods

6.1 Without prejudice to clause 3.2 the price of the Goods and/or the Services shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price which has been agreed between the parties prior to formation of the Contract and for which the Company invoices the Customer in accordance with clause 7.1 of these Conditions.

6.2 **The Company reserves the right and shall be entitled to, by giving notice to the Customer at any time before delivery of the Goods and/or performance of the Services, increase the Price to take account of any increase in the cost of their provision to the Company which is due to any factor beyond the control of the Company, including, without limitation, currency regulation, any increase in the costs to the Company of labour, purchasing or supplying goods, materials or services or other costs of manufacture or installation, (including but not limited to any such increase arising from any error, inadequacy or change to any specification, instructions, information or design provided by the Customer and whether requested by the Customer, another third party or otherwise), any change in delivery dates or quantities, or any delay caused by any instructions or failure of the Customer to give the Company adequate information or instructions or any change in taxes, customs duties, freight charges, insurance premiums or exchange rates, and such increased prices ruling at the date of dispatch or performance by the Company shall be substituted for the previous Contract Price.**



- 6.3 The Price is exclusive of any value added tax, and if relevant all taxes, duties and other government charges and all costs or charges in relation to insurance of the Goods whilst on the Premises, all of which amounts the Customer will pay in addition when it is due to pay for the Goods and/or Services.
7. **Terms of Payment**
- 7.1 Except as otherwise agreed in Writing between the Customer and the Company, the Company shall be entitled to invoice the Customer immediately for the Goods and/or Services on the date of or at any time after the Customer places its order and the Company will be permitted to submit invoices for the Goods and/or Services and payment shall be made by the Customer in one lump sum (on the date specified by the Company in writing) or in the following installments at the Company's sole discretion:-
- 7.1.1 25% of the Price on the date on which the Customer places its order;
- 7.1.2 65% of the Price shall be payable 30 days prior to delivery of the Goods and/or performance of the Services; and
- 7.1.3 the remainder 10% upon completion of the delivery and/or installation of the Goods.
- 7.2 Except for Goods which are lift parts for which payment of the total price shall be made on delivery, where the Company does not specify dates for payment, or whether payment may be by installments, the Customer shall pay the total price in one lump sum and in any event (where applicable) any charges under clause 8.5.1 within 30 days from the date of the Company's invoice and the Company shall be entitled to recover the Price, notwithstanding that delivery of the Goods and/or performance of the Services may not have taken place and/or that the property in the Goods has not passed to the Customer. The time for payment of the Price shall be of the essence of the Contract and the Customer shall not withhold payment for any reason whatsoever whether in relation to the Contract or any other contract with the Company, including but not limited to where the parties are in dispute in relation to the Contract or any part thereof (except where otherwise agreed by the Company in writing). Receipts for payment will be issued only upon request.
- 7.3 No payment shall be deemed to have been received until the Company has received cleared funds from the Customer.
- 7.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 7.4.1 suspend any future performance of the Contract (including any delivery of the Goods) or any other Contract with the Customer;
- 7.4.2 appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 7.4.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of five (5%) per cent per annum above National Westminster Bank base rate from time to time or at the rate applicable under the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 7.5 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 7.6 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 7.7 The Customer will pay to the Company any extra costs (including without limitation, storage costs for any Goods) that the Company will incur as a result of the variation delay or suspension of work arising from any act or omission of the Customer's or any other contractor employed by the Customer, or by any other circumstances for which the Company is not responsible.
8. **Delivery**
- 8.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at an address stated on the Quotation, or acknowledgement of order and by the mode of delivery and the carrier specified by the Company. The Customer shall be deemed to have taken delivery of the Goods when the Goods are made available for offloading or handing over to the Customer at the Premises.
- 8.2 Where the Company provides Services the Customer undertakes to provide at its expense vehicular access at the place of delivery which is suitable for use as specified by the Company and is safe, clear, flat and unobstructed from the delivery offloading point to the area of installation and that delivery can be effected by normal doors without the use of window tackle or other specialised equipment except as specified by the Company ("Clear Access"). The Company reserves the right to charge the Customer extra if such Clear Access is not provided to the Company's satisfaction.
- 8.3 Any dates quoted or specified by the Company for delivery of the Goods and/or performance of the Services are approximate only and time for delivery and/or performance shall not be of the essence or be made of the essence by notice. If no dates for delivery and/or performance are so specified, delivery will be within a reasonable time subject to clause 12.1. The Goods may be delivered by and/or the Service may be performed by the Company in advance of the quoted delivery/installation date upon giving reasonable notice to the Customer.
- 8.4 **Subject to the other provisions of these Conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss,) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or the performance of the Services (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.**
- 8.5 Where the Company only sells Goods which are lift parts, if the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity ordered, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
- 8.6 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the installments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 8.7 Where the Company only sells Goods which are lift parts, the Customer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 8.8 If for any reason the Customer fails to take or will not accept delivery 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 instructions, documents, Clear Access, licenses or authorisations then without prejudice to any other right or remedy available to the Company:
- 8.8.1 the Company may store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance) and the Company will be entitled to invoice the Customer for such costs and expenses monthly in arrears;
- 8.8.2 save where clause 8.8.4 applies the risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence) at the point when delivery would have taken place if the Customer had taken delivery and complied with its obligations in this Agreement;
- 8.8.3 save where clause 8.8.4 applies, the Goods will be deemed to have been delivered;
- 8.8.4 the Company may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 8.9 In the absence of prior written agreement between the Company and the Customer the Company shall be allowed Clear Access to the Premises to perform the Services and the Customer shall furnish the Company without charge and within a reasonable time with all information available to it relating to the Services and/or Premises and shall give such assistance and at its own expense provide such facilities at the Premises including but not limited to the provision of access light electricity security and other services as shall reasonably be required by the Company to enable it to exercise its obligations under the Contract.
9. **Non-Delivery and Short Delivery**
- 9.1 The quantity of any consignment of Goods as recorded by the Company upon dispatch 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.
- 9.2 The Company shall not be liable for any loss of Goods or damage in transit (where the Company agrees to deliver the Goods to the Customer's place of business at the Company's risk) or for non-delivery or short delivery of the Goods or non-performance of the Services (even if caused by the Company's negligence) unless written notice is given to the Company within 3 days of the date when the Goods would in the ordinary course of events have been received or the Services performed.
- 9.3 **Any liability of the Company arising pursuant to clause 9.2 shall be limited to replacing or (at the Company's discretion) repairing the Goods and/or delivering the Goods and where applicable performing the Services within a reasonable time and/or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods and/or Services.**
10. **Risk and Title**



- 10.1 The risk of damage to or loss of the Goods shall pass to the Customer:
- 10.1.1 on delivery; or
- 10.1.2 the date on which the Customer defaults (which expression shall have the meaning set out in clause 10.2); or
- 10.1.3 the date on which the Goods being ready for delivery, delivery or performance of the Contract is postponed at the Customer's request
- whichever shall first occur. For the avoidance of doubt delivery of the Goods shall be deemed to be completed before off-loading of the Goods.
- 10.2 For the purpose of clause 10.1.2 "defaults" shall mean if the Customer fails to take delivery of the Goods on the due date or fails to provide an address for delivery of the Goods as required or fails to provide Clear Access or fails to allow or make arrangement for the Services to be performed on the due date.
- 10.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer and Services performed.
- 10.4 Until such time as ownership of the Goods has passed to the Customer, the Customer must:
- 10.4.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 10.4.2 keep the Goods (at no cost to the Company) separate from all other goods of the Customer or any third party and properly stored, protected and insured in such a way that they remain readily identifiable as the Company's property;
- 10.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 10.4.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and on request the Customer shall produce the policy of insurance to the Company; and
- 10.4.5 hold the proceeds of the insurance referred to in clause 10.4.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 10.5 Until such time that ownership in any of the Goods has passed from the Company to the Customer and in any event if the Customer's right to possession terminates pursuant to clause 10.7 below, the Company shall be entitled at any time to require the Customer to deliver up the Goods and in particular the Masterboard to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and/or installed and repossess the Goods and if this is not possible, remove the Masterboard and the Customer grants, and procures the grant of, to the Company, its agents and employees, an irrevocable licence at any time to enter any premises where the Goods are, or may be stored and/or installed, for this purpose. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 10.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 10.7 The Customer's right to possession of the Goods shall terminate immediately if:
- 10.7.1 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 of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), 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
- 10.7.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his property or obtained against him, or fails to observe or perform any of his 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
- 10.7.3 the Customer encumbers or in any way charges any of the Goods; or
- 10.7.4 On the occurrence of a Default Event (as detailed in clause 17.3 below).
- 11. Warranties and Liability**
- 11.1 Technical information in relation to the Goods provided by the Company in any Quotation or acknowledgment of order or otherwise is based on information provided by the manufacturer of the Goods and the Company does not warrant the accuracy of such information and accepts no liability in respect of such information.**
- 11.2 The Company warrants for a period of 12 months from the date of delivery of the Goods and/or performance of the Services and, where both are being provided, if this is not simultaneous, whichever is the later) that (subject to the other provisions of these Conditions) upon delivery or performance (as appropriate):**
- 11.2.1 The Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and**
- 11.2.2 The Goods and/or Services comply in all material respects with the specification for such Goods and/or Services.**
- 11.3 Subject to the other provisions of these Conditions, the Company warrants that the Services will be performed with all reasonable care and skill.**
- 11.4 The Company shall not be liable for breach of any of the warranties in clauses 11.2 and 11.3 unless:**
- 11.4.1 the Customer gives written notice (whether or not delivery is refused by the Customer) to the Company of the defect (and if the defect is as a result of damage in transit and if the Company has any liability) to the carrier within 7 days of delivery or performance or (where the defect was not apparent on reasonable inspection) within 7 days after discovery of the defect but in any event no later than the expiry date of the warranty period set out in clause 11.2 above; and**
- 11.4.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and/or Services which are defective and for this purpose the Customer shall provide authority for the Company's representatives or agents to enter on to its premises to inspect any defective Goods and Services within 14 days of a request being made by the Company.**
- 11.5 The Company shall not be liable for a breach of any of the warranties in clauses 11.2 and 11.3 and shall be under no liability under any other warranty, condition or guarantee if:**
- 11.5.1 any defect in the Goods and/or Services arises from any drawing, design, instructions or specification supplied by the Customer;**
- 11.5.2 any defect arises from fair wear and tear, wilful damage, negligence, or abnormal working conditions or because of a failure by a third party to install Goods correctly (where the Customer is purchasing only Goods) or because the Customer has used the Goods inappropriately (including exceeding any loads limits) or has failed to follow the Company's instructions (whether oral or in writing), including but not limited to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;**
- 11.5.3 the Customer has failed to pass on to the end user or a third party engaged to install the Goods, the Company's instructions (whether oral or in writing) and the end user or a third party engaged to install the Goods, has failed to follow, the Company's instructions, including but not limited to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice**
- 11.5.4 any defect arises from, as a result of or as a consequence of the general condition or any defect in the structure of the Premises or any premises or structures on which the Goods are affixed;**
- 11.5.5 the total price for the Goods and/or the Services has not been paid by the due date for payment;**
- 11.5.6 any parts, materials or equipment are not manufactured by the Company, in which case the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company;**
- 11.5.7 the Customer makes any further use of such Goods after giving notice under clause 11.4;**
- 11.5.8 the Customer and/or third party on its behalf misuses, alters, process or repairs such Goods and/or Services without the written consent of the Company.**
- 11.6 Subject to clauses 11.4 and 11.5 if any of the Goods and/or Services do not conform with any of the warranties in clauses 11.2 and 11.3 the Company shall at its option either repair or**



- replace the Goods and/or re-perform the Services (or the defective part) free of charge or, at the Company's sole discretion, refund to the Customer the price of such Goods and/or Services at the pro rata Contract rate.
- 11.7 If the Company complies with clause 11.6 it shall have no further liability for a breach of any of the warranties in clauses 11.2 and 11.3 in respect of such Goods and/or Services.
- 11.8 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these Conditions for the unexpired portion of the 12 month warranty period referred to in condition 11.2
- 11.9 No warranty is given as to the length of working life of the Goods nor that they will be suitable for any specific purpose or conditions, notwithstanding that such purposes and conditions have been made known to the Company. For the avoidance of doubt, no warranty is given as to the suitability of the Goods for carriage of goods, materials, equipment, furniture or other such similar items.
- 11.10 Where the Company exercises its rights to remove the Goods (or any part thereof) pursuant to clause 10.5 above, the Company shall use all reasonable endeavours to minimize any damage to the premises from which the Goods are removed. Subject to the foregoing and clause 12.3 the Company gives no warranty as to the manner or consequences of such removal and the Company shall have no liability in respect thereof.
12. **Limitation of Liability**
- 12.1 Subject to clauses 3.7, 4, 5, 8, 9 and 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 12.1.1 any breach of these Conditions or the Contract;
- 12.1.2 any use made or resale by the Customer of any of the Goods or Services, or of any product incorporating any of the Goods; and
- 12.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 Save as expressly provided in these Conditions, and except where the Goods and/or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) 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 and Section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation or for liability to Consumers for defective products under the Consumer Protection Act 1987.
- THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 12.4**
- 12.4 Subject to and without prejudice to clauses 3.7,4.3, 8.4, 9.3, 11.2, 11.3, 11.6, 11.7 and 12.1:
- 12.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty or where the Goods and/or Services breach, infringe or make unauthorised use of third party rights), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall not exceed the price of the Goods delivered and/or Services performed under this Contract; and
- 12.4.2 the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any loss of profits or for any indirect, special or consequential loss or damage (whether for loss of business, depletion of goodwill or otherwise), costs or expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or the Services in accordance with the Contract or at all) or the use or resale of the Goods by the Customer; and
- 12.4.3 the Company accepts no responsibility or liability where the Goods and/or Services cannot be provided as a result of any act or omission of the Customer and in such event the Customer shall still be liable to pay the Company for the Goods and/or Services as if the same had been duly delivered and/or performed.
- 12.4.4 Nothing in these Conditions shall affect the statutory rights of Consumers.
13. **Indemnity**
- 13.1 Except where the Customer is a Consumer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, and all interest, penalties and legal and other reasonable professional costs and expenses) (each a "Claim") suffered or incurred by the Company arising out of or in connection with:
- 13.1.1 Any claim made against the Company by a third party arising out of or in connection with the provision of the Services or the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Customer, its employees, agents, subcontractors or other third parties engaged to provide installation or repair services in connection with the Goods.
- 13.1.2 Any claim made against the Company by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods or the installation or repair of the Goods, to the extent that the defect in the Goods or defective installation or repair of the Goods, is attributable to the acts or omissions of the Customer, its employees, agents, subcontractors or other third parties engaged to provide installation or repair services in connection with the Goods.
14. **Force Majeure**
- 14.1 The Company reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of the Goods and/or Services ordered by the Customer and shall not be liable to the Customer or be deemed to be in breach of the Contract 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, war or national emergency, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock outs, strikes or other labour disputes, (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or late delivery or performance or non-delivery or non-performance by suppliers or subcontractors, import or export regulations or embargos, power failure or breakdown in machinery and acts, restrictions, regulations, bylaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority Provided that, if the event in question continues for a continuous period in excess of 6 months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
15. **Intellectual Property**
- 15.1 In the absence of contrary written agreement between the Customer and the Company, as between the Customer and the Company all the Intellectual Property Rights in the Goods, the Services and in any drawings, software (except for Goods, drawings and/or software owned by any third party) or other documentation or materials supplied by the Company to the Customer shall vest in and remain vested in the Company and upon receipt of a written request from the Company the Customer agrees to execute any document the Company deems necessary to give effect to this clause.
- 15.2 The Customer acknowledges that all Intellectual Property Rights in any drawings, specifications, documents and materials are and will remain the property of the Company (except for drawings, specifications, documents and materials owned by any third party) and that the Customer shall not acquire any title, right or interest in any such Intellectual Property Rights.
- 15.3 The Company shall have no liability in respect of any claims and actions against the Customer for infringement of any Intellectual Property Rights arising from the use of Goods, where any such infringement is due to:
- 15.3.1 the Company having followed a design or instruction or any other document or information furnished or given by the Customer; or
- 15.3.2 the use of or installation of such Goods in a manner or for a purpose or in a country not specified or disclosed to the Company in writing prior to the Contract being made; or
- 15.3.3 any infringement which is due to the use of such Goods in association or combination with any other article not supplied by the Company.
- 15.4 The Customer on its part represents and warrants to the Company that any design, or instruction or any other document or information furnished or given by the Customer shall not be such as will cause the Company to infringe any Intellectual Property Rights of a third party in the execution of the Customer's order. The Customer agrees to indemnify the Company and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Company, or for which the Company may become liable, with respect to any claim that any Intellectual Property Rights of a third party have been infringed.
16. **Availability of Materials, Licences etc**
- 16.1 All Contracts arising out of orders accepted by the Company will be



subject to availability of materials and to the Company being able to obtain any necessary authorisation or licences including but not limited to software licences and the same remaining valid. If the performance of the Contract requires the Company to have any permit or licence from any government or other authority or third party at home or overseas, the order will be conditional on such permit or licence being available at the required time and the Customer will use its best endeavours to assist the Company to obtain such licence. Where the Goods and/or Services being supplied include software which is owned by a third party, it will be the responsibility of the Customer to enter into and pay for a software licence with the third party provider of the software. Where the software to be used in connection with the Goods or Services is owned by the Company, the Company will grant to the Customer a non-exclusive licence to use such software on terms to be specified by the Company in Writing.

17.

Termination

- 17.1 For the purposes of this clause a "Default Event" shall mean any such event as is described in clause 17.3.
- 17.2 If there shall be a Default Event the Company may, within a reasonable time thereafter, defer or cancel any further deliveries of the Goods and/or provision of the Services, stop any Goods in transit and treat the Contract of which these Conditions form part as terminated but without prejudice to its rights to the full Price for the Goods delivered and the Services performed and damages for any loss suffered in consequence of such termination. Where the Goods have been delivered and the Services performed but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 17.3 A Default Event shall be any of the following:
- 17.3.1 failure by the Customer to make any payment when it becomes due;
- 17.3.2 the Customer commits a material breach of any terms and conditions of the Contract and if such breach is not remediable or is remediable and the Customer fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- 17.3.3 any circumstances where the Customer's right to possession of Goods would terminate as set out in clause 10.7 above; or
- 17.3.4 an encumbrancer takes possession, or a receiver is appointed, or
- 17.3.5 the Customer ceases, or threatens to cease, to carry on business; or
- 17.3.6 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 17.4 All rights and obligations of the parties shall cease to have effect immediately upon termination of the Contract except that termination shall not affect:
- 17.4.1 the accrued rights and obligations of the parties at the date of termination; and
- 17.4.2 the coming into force or the continuance in force of any provision which is expressly or implied intended to come into or continue in force on or after termination.

18.

Assignment and Sub-contracting

- 18.1 The Customer shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of the Company.
- 18.2 The Company may assign, transfer or sub-contract the Contract or any part of it to any person, firm or company.
- 18.3 Where the Company agrees to provide the Goods and/or Services, the Company reserves the right to employ a sub-contractor of its choice for that purpose at any time.

19.

Data Protection

- 19.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment records may be submitted to a credit reference agency, banks, credit insurers and other responsible organisations outside the Company's business and personal data will be processed by or on behalf of the Company in connection with the Goods and Services.

20.

Confidentiality and the Company's Property

- 20.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 20.2 All materials, equipment and tools, drawings, specifications and

data supplied by the Company to the Customer shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

- 20.3 This clause 20 shall survive termination of the Contract, however arising.

21.

General

- 21.1 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.
- 21.2 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.
- 21.3 The parties to this Contract do not intend that any term of this 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.
- 21.4 No waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall be considered or be deemed as a waiver of any subsequent breach or default of the same and will in no way affect the other terms of the Contract.
- 21.5 If any provision of these Conditions (or any other conditions or other terms which may be agreed in writing between the Company and the Customer) is held by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly invalid, unenforceable, illegal, void, voidable or unreasonable for any reason it shall to the extent of such invalidity, unenforceability, illegality, voidness, voidability, unreasonable or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 21.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

22.

Communications

- 22.1 All communications between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- 22.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- 22.1.2 (in the case of communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) 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.
- 22.2 Communications shall be deemed to have been received:
- 22.2.1 if sent by pre-paid first class post, four days (excluding Saturdays, Sundays and Bank and Public Holidays) after posting (exclusive of the day of posting);
- 22.2.2 if delivered by hand, on the day of delivery;
- 22.2.3 if sent by facsimile transmission on a working day prior to 4 p.m. at the time of transmission and otherwise on the next working day.
- 22.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.