

Below details the terms and conditions for Sunray Engineering Limited for the sale of goods and services.

NOTE: The following SUNRAY ENGINEERING LIMITED General Terms and Conditions shall apply to all quotations and sales orders, unless otherwise specifically agreed in writing by both parties:

**1. In these Terms and Conditions (the "Conditions") the following words shall have the following meanings:**

- a) The "Buyer" means the person, firm or company who purchases the Goods and/or Services from the Seller under the Contract.
- b) The "Seller" means Sunray Engineering Limited and/or its subsidiaries and/or associates.
- c) The "Contract" means any agreement between the Seller and the Buyer for the sale and purchase of the Goods, or for the supply of Services incorporating these conditions.
- d) The "Goods" means any goods, or products agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).
- e) The "Pre-existing Materials" means all documents, information and materials provided by the Seller relating to the Services which existed prior to the commencement of the Contract including data, reports and specifications.
- f) The "Scheme" means Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.
- g) The "Services" means the Services to be provided by the Seller under the Contract as set out therein.
- h) The "Sellers Equipment" means any equipment, including tools, systems, cabling or facilities, provided by the Seller or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Buyer.
- i) "Working Day" means any day (except Saturday, Sunday, bank holiday or Christmas shut down period).
- j) "Writing" includes fax and email. "Written" shall be construed accordingly.

**2. Application of terms**

- a) Subject to any variation under Condition 2 (b) the Contract shall be on these Conditions to the exclusion of all other conditions and any contract arising with the Seller (whether collateral to any other contract or otherwise) shall be deemed to be subject to them.
- b) These Conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in Writing and signed by a duly authorised representative of the Seller.

**3. Description**

- a) The Seller shall not be bound by or liable for any statement, representation, condition, warranty, or term express or implied (whether statute or otherwise) or any variation of any contract which is not contained in a document duly signed on the Seller's behalf.
- b) All drawings, photographs, descriptive matter, weights, dimensions, specifications, brochures, figures as to performance, catalogues, price lists, and all advertising matter issued by the Seller are by way of identification only and their use shall not in any circumstances render any sale, a sale by description, nor form part of any contract nor constitute any representation, unless previously agreed in Writing.

**4. Commencement and Duration of the Services**

- a) The Services supplied under the Contract shall be provided by the Seller to the Buyer in accordance with the date specified therein.

**5. Price for the Goods and Services**

- a) Unless otherwise agreed by the Seller in Writing, the price for the Goods shall be the price set out in the Seller's quotation and/or price list published on the date of delivery or deemed delivery. If so required by the Seller the Buyer shall pay a deposit. Prices shown on price lists and quotations are ex-works and exclusive of value added tax unless otherwise stated. Packing, carriage and insurance are shown separately in any quotation and will be invoiced to the Buyer at the Seller's rates prevailing at the time of despatch.
- b) In consideration of the provision of the Services by the Seller, the Buyer shall pay the charges as set out in the Contract, which shall be on a fixed price basis
- c) The total price for the Services shall be the amount set out in the Contract.  
The remainder of this Condition 5 shall apply to the sale of Goods and the supply of Services
- d) Any deposit payable shall be paid on acceptance of the Seller's quotation and its due payment is a condition precedent to the Seller being under any liability to supply Goods and/ or Services referred to in such quotation.
- e) Subject to Condition 5 (j) Invoices for the price of the Goods and/ or Services shall be paid in cleared funds within thirty (30) days of the invoice being rendered (the "Final Date").
- f) Time for payment shall be of the essence.
- g) If the Buyer fails to pay the Seller any sum pursuant to the Contract by the Final Date, the Buyer shall be liable to pay interest on such sum from the Final Date at the annual rate of three per cent (3%) above the base rate for lending of HSBC Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment, and the Buyer shall pay all costs and expenses (including legal expenses) incurred by the Seller in collecting such sum.
- h) If any sum is not paid by the Final Date, the Seller may suspend all deliveries and performance until such default is made good or may determine any Contract then subsisting so far as any further Goods and/ or Services remain to be delivered or performed and this remedy shall be without prejudice and in addition to any other remedies of the Seller.
- i) Where a Contract is to be or may be fulfilled in separate instalments, deliveries or parts, payment for each such instalment, delivery or part shall be made as if the same constituted a separate contract.
- j) All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
- k) Unless the Buyer delivers to the Seller, before or at the same time as accepting any quotation, any items belonging to or to be supplied by the Buyer for adaption or for incorporation in Goods to be supplied by the Seller and sufficient drawings, specifications and information to enable the Seller to start work at once, the Seller may amend the prices quoted to cover any increase in cost involved in doing the work which arises from the delay in receipt of such items, drawings, specifications and information.
- l) The Seller may increase any price quoted if the amount of work necessary to complete the Goods or Services, or if any costs incurred or to be incurred by it is or are increased due to any alterations by the Buyer in design, quantities and/or specifications and/or any suspension of work arising from instructions or lack of instructions from the Buyer and/or (without prejudice to the Seller's rights under Condition 14 below) due to any item to be supplied by the Buyer for adaption or for incorporation in the Goods to be supplied by the Seller proving unsuitable for, or having to be altered prior to, such incorporation, and/or due to the Seller not obtaining access to the Buyer's premises as and when necessary.
- m) The Seller may make any alteration it thinks reasonably necessary to any item supplied by the Buyer for incorporation into Goods to be supplied by the Seller and charge the cost of so doing to the Buyer.
- n) Any price fixed by reference to a price list (whether that of the Seller or not) is subject to change without notice to the Buyer whether a contract has come into existence or not, unless previously agreed in Writing.
- o) The Seller's quotation includes delivery and allows for a total vehicle waiting/ unloading time of 1 hour; in the event that waiting time exceeds this demurrage will be charged at the rate of £50 per hour or part thereof in accordance with RHA guidelines.

**6. Seller's obligations for the Services**

- a) The Seller shall use reasonable endeavours to provide the Services, in accordance in all material respects with the Contract.
- b) The Seller shall use reasonable endeavours to meet any performance dates specified in the Contract but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- c) The Seller shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Buyer's premises and that have been communicated to it under Condition 7 (a) iii, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

**7. Buyer's obligations for the Services**

- a) The Buyer shall:
  - i) Co-Operate with the Seller in all matters relating to the Services;
  - ii) Provide the Seller, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Buyer's premises, office accommodation, data and other facilities as reasonably required by the Seller;
  - iii) Inform the Seller of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Buyer's premises;
  - iv) Be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before the supply of the Services at those premises, and informing the Seller of all of the Buyer's obligations and actions under this Condition 7 (a) iv;
  - v) Be responsible for ensuring that there is suitable mains power being available and provided within close proximity to the installation area; and
  - vi) Be responsible for ensuring that there is suitable on site parking and/or secure off loading/storage facilities for tools and equipment being available.
- b) If the Seller's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Seller shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- c) The Buyer shall not, without the prior Written consent of the Seller, at any time from the date of the Contract to the expiry of 6 months after termination of the Contract, solicit or entice away from the Seller or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Seller in the provision of the Services.

**8. Risk/Title in the Goods**

- a) The Goods are at the risk of the Buyer from the time of delivery, and the Buyer should therefore be insured accordingly.
- b) Notwithstanding the earlier passing of risk, ownership in the Goods supplied by the Seller shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice for the Goods has been paid in full (in cash or in cleared funds), and all other sums which are or which become due to the Seller from the Buyer on any account.
- c) Until ownership of the Goods passes to the Buyer, the Buyer shall:
  - i) Hold such Goods on a fiduciary basis as bailee and trustee for the Seller;
  - ii) Store or mark the Goods (at no cost to the Seller) so that they can at all times be readily identified as the property of the Seller;
  - iii) Not destroy, deface or obscure any identifying mark or packaging on or related to the Goods; and
  - iv) Maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risk to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Seller.
- d) The Seller shall be entitled at any time before title passes to repossess and dismantle (without being liable for any damage caused by so doing) and use or sell all or any such Goods and so terminate (without liability to the Buyer) the Buyer's right to use, sell or otherwise deal in them and for that purpose or for determining what if any Goods are held by the Buyer and inspecting them; to enter any premises of the Buyer. The Buyer may resell the Goods before ownership passes to it solely on the following conditions:
  - i) Any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Seller on behalf of the Seller and the Buyer will account to the Seller accordingly; and
  - ii) Any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- e) The Buyer's right to possession of the Goods shall terminate immediately if:
  - i) The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any act 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 a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or becoming unable to pay the Buyer's debts as they fall due (each "an Insolvency Event"); or
  - ii) The Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performance any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

- iii The Buyer encumbers or in any way charges any of the Goods.
- f) The Buyer grants the Seller, 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 Buyer's right to possession has terminated, to recover them.
- g) On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 8 shall remain in effect.
- 9. The Seller shall be entitled to recover payment for the price of Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 10. Delivery of the Goods/Services**
  - a) All delivery dates specified by the Seller for the delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.
  - b) The Seller shall not be liable for any direct, indirect or consequential loss (all three of which conditions 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 delivery of the Goods and/or Services (even if caused by the Seller's negligence) nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days. If no dates are specified, delivery shall be within a reasonable time.
  - c) The Buyer must accept delivery of any Goods or Services to be supplied within six months of notification that the Goods are available/Services are available for inspection.
  - d) If Goods are ready for delivery but delivery is delayed at the Buyer's request, Goods will be stored at the Seller's premises for the first delayed week thereafter will be placed in a secure warehouse charged to the Buyer at a rate of £50.00 per week or part thereof. This storage charge will be invoiced on a weekly basis and payable upon receipt.
  - e) Unless otherwise agreed, Goods shall be delivered to the Buyer at the Seller's place of business.
  - f) Delivery of the Goods may be by instalments and each instalment shall be deemed to be the subject of a separate contract. No cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
  - g) All costs of delivery at places other than the Seller's works shall be borne by the Buyer.
  - h) The Seller can accept no responsibility for any loss or damage to Goods while they are in transit unless they are carried by the Seller's carrier and the Buyer notifies the Seller in Writing (otherwise than upon the carrier's documents) of any loss or damage in transit within three 3 Working Days of receipt of such Goods.
  - i) If the Seller delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Seller, the Buyer 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. Deliveries quoted are subject to the capacity remaining unsold at time of any order confirmation.
- 11. Suitability of Premises**
  - a) The Buyer warrants that any land and buildings and the contents thereof on or in which the Seller is to carry out any work required by the Buyer are safe and suitable for the purposes to which the Buyer intends to put them and for the installation of the Goods to be installed there.
  - b) The Buyer shall insure its land and buildings and the contents thereof and any persons thereon together with all unfixated materials and Goods delivered thereto by the Seller and the tools and equipment owned or hired by the Seller and left at the premises of the Buyer against damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and devices dropped there from, collision, riot and civil commotion and shall provide such evidence as the Seller may reasonably require of the existence of such insurance.
- 12.** If the Buyer suspends, cancels or reduces Goods or Services ordered, the Buyer shall without prejudice and in addition to any other remedy of the Seller be liable to indemnify the Seller against all losses, costs, damages and other expenses (whether direct, indirect or consequential) occasioned by such suspension, cancellation or reduction.
- 13.** Goods shall be deemed to have been accepted by the Buyer if notice of rejection in Writing is not received within 3 Working Days of delivery. In the case of the Seller's installation this service is deemed to have been accepted by the Buyer upon signature of the Seller's site job sheet within 3 Working Days of completion. Upon such acceptance the Goods and Services shall be deemed to comply with the Seller's obligations in all respects.
- 14. Quality of the Goods**
  - a) Where the Seller is not the manufacturer of the Goods, the Seller shall endeavour to transfer to the Buyer the benefit by way of warranty or guarantee given to the Seller.
  - b) Subject to the provisions of this Condition and to the Conditions set out below, the Seller warrants that (subject to the other provisions of these Conditions) Goods manufactured by the Seller on delivery or completion of installation for the period of 12 months shall:
    - i Be of satisfactory quality within the meaning of the Sales of Goods Act 1979;
    - ii Be reasonably fit for purpose; and
    - iii Be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Seller in Writing and the Seller has confirmed in Writing this it is reasonable for the Buyer to rely on the skill and judgment of the Seller. Subject to Conditions 14 (c) and 14 (d) if any of the Goods do not conform with the warranty in Condition 14 (b) the Seller will repair or at its option replace the defective Goods or the defective part at the pro rata Contract rate provided that the Buyer, at its own expense and risk, shall adequately pack the Goods and return them at carrier's "risk" rates to the Seller and meet all other incidental expenses howsoever incurred. In cases where it would not be practical for the Buyer to return Goods to the Seller, and a visit is required from the Seller's engineer, the Buyer shall be liable to cover all the costs of travel and incidental expenses incurred.
  - c) The Seller shall not be liable for a breach of the warranty in Condition 14 (b) unless:
    - i The Buyer gives Written notice of the defect to the Seller, and, if the defect is as a result of damage in transit to the carrier, as soon as possible after the defect has become apparent or in any event within 3 Working Days of the time when the Buyer discovers or ought to have discovered the defect quoting the serial number of the Goods, if any, and the date of purchase; and
    - ii The Seller is given a reasonable opportunity after receiving notice of examining such Goods, returned in accordance with Condition 14 (b) iii.
  - d) The Seller shall not be liable for a breach of warranty in Condition 14 (b) if:
    - i The Buyer makes any further use of such Goods after giving such notice; or
    - ii The defect arises because the Buyer failed to follow the Seller's oral or Written instructions as to the storage, installation or commissioning, use or maintenance of the Goods (or if there are none) good trade practice;
    - iii The Buyer alters or repairs the Goods without the Written consent of the Seller; or
    - iv The Goods have been subject to abnormal use or for use under abnormal conditions or beyond their capacity as rated and recommended by the Seller and the defect has been caused or contributed to by reason of the faulty installation of the Goods by any person other than a person duly authorised by the Seller.
  - e) The decision of the Seller is final as to whether or not a defect is due to faulty workmanship or materials and if in the opinion of the Seller the Goods are satisfactory in operation or, if defective, then defective only as a result of accident, neglect, alteration, misuse or wear and tear, the Buyer, if required by the Seller, shall pay a reasonable charge for the examination of the Goods by the Seller and the cost of returning the Goods to the Buyer.
  - f) The Seller shall not be liable, in any case, under these Conditions or at all in respect of any Goods not of the Seller's manufacture though the Seller will do all that is reasonable at the Buyer's expense to secure the benefit for the Buyer of any rights which the Seller may have against the supplier of any such Goods.
  - g) The Seller shall not be liable for any costs of stripping or reassembling any equipment into which any Goods may be fitted.
  - h) If the Seller complies with Condition 14 (b) (i) it shall have no further liability for a breach of the warranty in Condition 14 (b) in respect of such Goods.
  - i) If a court considers that it would not be reasonable for the Seller to rely upon any provision of these Conditions, but that it would be reasonable for the Seller to rely on such provision if it were in a modified form, these Conditions shall take effect as if such provision were Written in that modified form.
- 15. Limitation of Liability - the Buyer's attention is particularly drawn to this Condition**
  - a) Subject to Conditions 8 and 16 the following provisions set out the entire financial liability of the Seller (including liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions, any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods, or any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
  - b) Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence, for fraud or fraudulent misrepresentation, under section 2(3) of the Consumer Protection Act 1987, any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability, or for any liability incurred by the Buyer as a result of any breach by the Seller of the condition as to title or the warranty as to quiet possession implied by Section 2 of the Supply of Goods and Services Act 1982.
  - c) Subject to Condition 15 (a) and 15 (b):
    - i The Seller'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
    - ii The Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct or indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 16. Quality**
  - a) In the case that Goods are made to the Buyer's design, specification or particular requirement (the "Buyer's Specification") then:
    - i The Buyer shall indemnify the Seller against all loss (direct, indirect or consequential) and expenses arising out of any claim (whether successful or not) for breach of infringement of any third party intellectual property rights (including but not limited to any patent rights, registered design rights, copyright or other similar or equivalent rights whether registered or not and including all applications (or rights to apply) for such rights which subsist or will subsist in any part of the world) arising from the manufacture of the Goods in accordance with the Buyer's Specification.
    - ii The Seller's interest is confined to manufacture in accordance with the Buyer's requirements. Under no circumstances shall the Seller be liable or responsible for any loss or damage consequential or otherwise caused directly or indirectly by any fault in design, drawing, sample or material.
    - iii Any illustrations, photographs and drawings attached to the Seller's quotations or deliveries remain the Seller's property and may not be copied or made accessible to third parties in any way without the prior Written consent of the Seller.
- 17. Confidentiality and the Seller's property**
  - a) The Buyer 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 Buyer by the Seller, its employees, agents, consultants or subcontractors and any other confidential information concerning the Seller's business or its products which the Buyer may obtain.
  - b) The Buyer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this Condition 17.
  - c) The Buyer shall not use any such information for any purpose other than to perform its obligations under the Contract.
  - d) All materials, equipment and tools, drawings, specifications and data supplied by the Seller to the Buyer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Seller, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Seller, and shall not be disposed of or used other than in accordance with the Seller's Written instructions or authorisation.
- 18. Termination**
  - a) The Seller may terminate any Contract with the Buyer immediately on giving notice to the Buyer if:
    - i The Buyer defaults in making any payment by the Final Date and remains in default not less than 7 days after being notified in Writing to make the payment.
    - ii An Insolvency Event occurs.
    - iii Any land or buildings of the Buyer in which the Seller is to install Goods are not fit for such installation or the Seller is refused access thereto.
    - iv Any item supplied by the Buyer for incorporation into Goods to be supplied by the Seller is not fit for such incorporation or is not supplied punctually.
- 19.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law, and the parties submit to the exclusive jurisdiction of the English Courts.
- 20.** Without prejudice to the generality of any of these Conditions, the Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller, including, but not by way of limitation, war, riot, strikes, lock-outs, shortage of raw materials, natural disaster, fire and explosion, or restraints or delays in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in Writing to the Seller to terminate the Contract.
- 21.** In cases where the Buyer orders and pays for special powder for the coating of Goods, excess powders not used will be retained in stock at the Seller's premises for a period of 12 months from the purchase date and will thereafter be disposed of due to its shelf life having expired.
- 22.** Call out charges (other than calls which are made in accordance with Condition 14) are charged at a rate of £75 per man per hour including travelling time.

- 23. Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 24. Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. A waiver of any right under the Contract is only effective if it is in Writing and applies only to circumstances for which it is given.
- 25. The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 26. The Buyer shall not, without the prior Written consent of the Seller assign any of its rights and obligations of the Contract. The Seller may at any time assign all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to a third party or agent.
- 27. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 28. A party who is not a party to the Contract shall not have any rights under or in connection with it.
- 29. Any notice or other communication to be given under these Conditions shall be in Writing and may be delivered personally, or be sent by first-class pre-paid post, recorded delivery, by fax, by commercial courier or by email to the party to be served at the address for such party as set out in the Contract, or as otherwise specified by the relevant party by notice in Writing to the other party. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address for such party as specified in the Contract, or if served by post served 48 hours after posting, if served by fax at the time of transmission, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if by email the time the email is received into the mailbox of the recipient.

**30. General provisions**

- a) The Seller does not accept retention of monies on any supply and/or installation contract.
- b) The Seller does not accept liquidated and ascertained damages on any supply and/or installation contract.
- c) The Seller does not enter into collateral warranties.

**IN THE EVENT THAT THE BUYER CONTRACTS WITH THE SELLER FOR THE INSTALLATION OF THE GOODS THEN THE FOLLOWING CONDITIONS SHALL ALSO APPLY TO THE CONTRACT. IN THOSE CIRCUMSTANCES, TO THE EXTENT THAT THERE IS ANY DISCREPANCY OR INCONSISTENCY BETWEEN THE FOLLOWING CONDITIONS AND CONDITIONS 1 TO 30 ABOVE, THE TERMS OF THE FOLLOWING CONDITIONS SHALL PREVAIL:**

- 31. Installation of trench covers (where specified) does not fall within the scope of works of the Seller and is therefore not included in the quotation provided within Condition 5.
- 32. If the installation option is taken, a satisfactory preliminary site survey must be obtained, the cost of which is included in the Seller's quotation (Note: Surveys are arranged on the understanding that access to the area is unimpeded and the necessary structural work is completed in the case of new build structures. Upon attendance as agreed, should this be found not to be the case and extra surveys are required as a result, these will be chargeable at £250.00 for each additional survey).
- 33. For preliminary site surveys in respect of existing doors/frames/structures - these are carried out on the understanding that small parts of the existing frameworks/structures may have to be removed to ascertain the hidden wall construction to ensure compatibility with our new frame/fixing systems.
- 34. Installation of the Goods by the Seller includes all necessary standard fixings and consumables such as mastic providing the openings are within an acceptable tolerance. If it is deemed necessary, and the nature of the structure so dictates, to use specialist chemical fixings or other specialist materials, these will be charged at extra cost.
- 35. All installation quotations provided by the Seller are subject to an allowance of 1 hour for customer site/safety inductions. Additional time taken over and above this will be charged at the rate of £75 per man per hour or part thereof.
- 36. Goods will either be pre-delivered or delivered to site on the day of installation. It is the Buyer's responsibility to ensure suitable offloading and positioning equipment and labour are available to ensure the Goods are moved in a safe and secure manner, placed adjacent to the aperture to which they are to be fitted and are then protected in such a way as to prevent any damage from site works or exposure to weather conditions. Any damage found upon pre-installation inspection will be chargeable and if un-repairable on site will also involve repair/abortive/re-attendance/re-delivery charges being levied following Written agreement in the form of a purchase/authority order from a responsible and authorised site representative of the Buyer.
- 37. There will be no charges incurred to the Buyer for cancellation of a previously booked installation provided the Seller is given at least 3 Working Days notice in Writing. If the Seller is notified within 2 working days then a charge of £250 will be levied, within one working day a charge of £500 will be levied and on the actual day of the planned installation the full abortive charge will apply as detailed in point 40 below.
- 38. Any delays in installation incurred as a result of interrupted access, waiting time, site obstructions, debris, doors incorrectly placed or not placed adjacent to the aperture to which they are to be fitted, incomplete or incorrect civil works (e.g. openings not square or not plumb to the extent that gaps around the frames exceed our standard installation acceptance specifications) or any other reason due to site circumstances that are beyond the Seller's control, will be chargeable at the Seller's standard site attendance rate of £75 per man per hour or part thereof.
- 39. If any site related delays incurred become excessive to the extent that the Seller's ability to carry out the installation within the allotted time is compromised then abortive/re-attendance charges will be applied at the rate as stated in Condition 40 below in addition to the original quotation costs.
- 40. If upon attending site on an agreed day, the Seller's installation team are unable to carry out any planned installation works due to the site not being ready (for any reason beyond the Seller's control) then an abortive fee will be charged at the rate of 75% of the installation quotation value.
- 41. Should any fee be levied as per Conditions 38 & 40 above, no site re-attendance will take place without Written agreement in the form of a purchase/authority order from a responsible and authorised Buyer/Site representative and where necessary pre-payment has been received.
- 42. The Seller's installation team will endeavour to overcome Buyer site problems/issues wherever possible, however where extra material/labour costs are likely to be incurred as a result, no rectification work will commence without Written agreement in the form of a purchase/authority order from a responsible and authorised site representative of the Buyer.
- 43. Every care will be taken not to damage surrounding brickwork, plaster or paintwork however, in some instances, especially where removal of existing doors is involved this may be unavoidable. Any rectification work necessary in conditions of brickwork, render, redecoration, plastering or painting does not fall within the Seller's scope of works and is therefore not included within this quotation or any subsequent Contract placed as a result of acceptance of the aforementioned quotation.
- 44. Where existing doors/frames have to be removed prior to installation the Seller will only be responsible for their disposal where there are no suitable Buyer site skip arrangements in place and it has been agreed in Writing that the Seller will do so.
- 45. The Seller does not accept the self-billing scheme and will submit invoices at the agreed rate as per the order acknowledgement and the Contract. Any remittance advices received with payments which indicate self-billing will be treated only as a remittance advice and not as an invoice for VAT.
- 46. If the site is zero rated for VAT purposes as per HMRC Regulations then it is the Buyer's responsibility to supply the Seller with Written confirmation on letter headed paper of such VAT rating along with any other evidence that the Seller may require. Failure to provide sufficient evidence will result in a demand for payment of VAT on all invoices submitted by the Seller as if the site is rated at the appropriate standard rate of VAT in force at that time.
- 47. The Seller will submit separate invoices for the Goods/materials and separate invoices for the labour contents. It is the responsibility of the Buyer to ensure that any deductions for tax under the CIS scheme are only made from the labour invoice(s) and not from the goods/materials invoice(s).
- 48. Not later than 5 days after receipt of any invoice issued by the Seller pursuant to Condition 5(e) the Buyer shall give a Written notice to the Seller which shall, in respect of the amount stated as due in that invoice, specify the amount of the payment proposed to be made, to what the amount relates and the basis on which that amount was calculated.
- 49. Not later than 5 days before the Final Date the Buyer may give a Written notice to the Seller which shall specify any amount proposed to be withheld and/or deducted from the amount due, the ground or grounds of such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground.
- 50. Subject to any notice given under Condition 49, the Buyer shall no later than the Final Date pay the Seller the amount specified in the notice given under Condition 48 or, in the absence of a notice under Condition 48, the amount as stated in the invoice.
- 51. Without affecting any other rights and remedies of the Seller, if the Buyer, subject to any notice issued pursuant to Condition 49, fails to pay the Seller in full by the Final Date as required by these Conditions and such failure continues for 7 days after the Seller has given to the Buyer Written notice of its intention to suspend performance of its obligations under this Contract and the ground or grounds on which it is intended to suspend performance, the Seller may then suspend such performance until payment in full occurs.
- 52. If a dispute or difference arises under this Contract either party may at any time refer such dispute or difference to adjudication, for which purpose the Scheme shall apply, provided that at the same time as he gives any decision the Adjudicator shall give reasons for the decision in Writing.

**ADDITIONAL CONDITIONS SPECIFIC TO SECURITY DOOR INSTALLATIONS**

- 53. For installations of security doors to LPS 1175 SR2 the surrounding structure should be constructed of timber (hardwood), blockwork, brickwork/concrete blockwork or alternatively steel work and offer a security resistance comparable with the security rating of the door.
- 54. For installations of security doors to LPS 1175 SR3 the surrounding structure should be constructed of brickwork/concrete blockwork or alternatively steel work and offer a resistance comparable with the security rating of the door.
- 55. For installations of Security Doors to LPS 1175 SR4 the surrounding structure should be constructed of reinforced brickwork/concrete blockwork or alternatively steel work and offer a security resistance comparable with the security rating of the door.
- 56. For installations of security doors to LPS 1175 SR5 the surrounding structure should be constructed of reinforced concrete alternatively steel work and offer a security resistance comparable with the security rating of the door.
- 57. For installations requiring certificates of conformity to LPS 1271 - these certificates are issued on the understanding with the Buyer that the level of resistance to attack provided by the surrounding structure to which the doors will be fitted is beyond the control of the Seller.
- 58. HSE Fees
- 59. In this Condition the following definitions will apply:
- 60. "the Buyer's Persons" means all persons employed, engaged or authorised by the Buyer, excluding the Seller, the Seller's Persons and any Statutory Undertaker.
- 61. "the Seller's Persons" means the Seller's employees and agents and all other persons employed or engaged on or in connection with the Contract or any part of it or any other person properly on the site in connection therewith excluding the Buyer, the Buyer's Persons and any Statutory Undertaker.
- 62. "Fee for Intervention" has the meaning as defined in Regulation 23 of the Health and Safety (Fees) Regulations 2012.
- 63. "Health and Safety Executive" has the meaning as defined in section 10 of the Health and Safety at Work Act 1974, as amended by paragraph 4 of the Legislative Reform (Health and Safety Executive) Order 2008.
- 64. If due to the acts or omissions of the Buyer or the Buyer's Persons, the Seller incurs any costs, claims, liabilities, charges or expenses ("Costs") arising out of or in connection with any Fee for Intervention that the Health and Safety Executive levies on the Seller; then subject to Condition 64, the Buyer will indemnify the Seller against such Costs. Notwithstanding any other provision the Seller shall be entitled to invoice the Buyer all costs for which the Buyer is liable under this Condition.
- 65. If the Health and Safety Executive concludes that the breach of Health and Safety Legislation was caused solely by the wrongful acts or omissions of the Seller, the Seller's Persons, the Buyer will be entitled to recover such monies paid pursuant to Condition 63.
- 66. For the avoidance of doubt the Buyer will provide the indemnity in Condition 63 whether or not the Health and Safety Executive also levies a Fee for Intervention against the Trade Contractor.
- 67. The indemnity in Condition 63 will apply irrespective of any decision by the Health and Safety Executive as regards the prosecution of any person for an offence under the Health and Safety Legislation.