

# KNIGHT ELECTRICAL LTD

## Conditions of Supply



National Inspection Council for  
Electrical Installation Contracting



REGISTERED MEMBER



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Directors:

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Knight Electrical Limited registered as  
a company in England No. 3747577

Registered Office: The Old Workshop,  
Eaglewood Park, Ilminster, Somerset TA19 9DQ

**Knight Electrical Ltd - CONDITIONS OF SUPPLY**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these Conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Charges:** the charges payable by the Customer to the Company for the provision of the Goods and/or Services, as specified in the Contract;

**Commissioning Tests:** where applicable, the tests of the System after installation to ensure it is functioning correctly and in accordance with any applicable specification;

**Company:** Knight Electrical Limited;

**Conditions:** these conditions of supply;

**Confidential Information:** any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;

**Contract:** the agreement between the Company and the Customer for the provision of Goods and/or Services created in accordance with these Conditions;

**Customer:** any person, firm, company or other organisation who submits an Order to the Company or who is the addressee of the Company's quotation;

**Customer Equipment:** any equipment, systems or facilities provided by the Customer and used directly or indirectly in the supply of the Goods and/or Services;

**Excluded Loss:** means any consequential, indirect or special loss, including loss or deferment of profit, loss of revenue, loss of use, business interruption, loss of contract, loss of reputation, credit or goodwill, loss or corruption of data or information, loss of opportunity and costs resulting from non-operation or increased expense of operation or maintenance, cost of finance and cost of purchased or replacement equipment or systems howsoever caused, including negligence or breach of duty;

**Goods:** any goods agreed in the Contract to be supplied by the Company to the Customer including, where applicable, the goods which form part of or are incorporated into the System;

**Initial Contract Term:** in respect of any Service(s) which are specified in the Contract to be subject to a minimum period, the initial period and minimum term of the Contract specified in the Contract, during which the Company is to provide the Service(s) to the Customer, subject to Condition 2.15 (and for the avoidance of doubt, the Initial Contract Term shall commence on the date that an Order is accepted by the Company in accordance with Condition 2.2);

**Input Material:** any documents, files, plans, drawings, designs, content, text, images, logos, photographs or other materials and any specification, instructions, data or other information provided by the Customer to the Company relating to the Goods and/or Services;

**Intellectual Property Rights:** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other

equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;

**Notice Period:** in respect of any Service(s) which are specified in the Contract to be subject to a minimum period, the period of notice specified in the Contract required to be given by either party to the other in order to terminate the Contract in accordance with Condition 2.15;

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

**Output Material:** any documents, files, plans, drawings, designs, content, text, images, logos, photographs or other materials and any specification, data or other information provided by the Company to the Customer relating to the Goods and/or Services;

**Renewal Term:** in respect of any Service(s) which are specified in the Contract to be subject to a minimum period, a period of equal duration to the Initial Contract Term (with the first such Renewal Term commencing immediately upon the expiration of the Initial Contract Term) during which the Company is to provide the Service(s) to the Customer, subject to Condition 2.15;

**Services:** the installation and commissioning of the System (or part of a System), the repair and maintenance of a System (or part of a System) and/or any other services which the Company agrees in the Contract to provide to the Customer and '**Service**' shall mean any of the Services; for the avoidance of doubt, a Service may be subject to a minimum period where this is specified in the Contract, in which event (but not otherwise) the defined terms '**Initial Contract Term**', '**Notice Period**' and '**Renewal Term**' (which are each set out in this Condition 1.1) shall apply;

**Site:** the premises of the Customer at which the Company is to deliver the Goods and/or provide the Services, as specified in the Contract;

**System:** any electrical system (or part of an electrical system) to be supplied under the Contract or an electrical system belonging to the Customer in respect of which the Company provides a Service;

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Words in the singular shall include the plural and vice versa.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to '**writing**' or '**written**' includes faxes and e-mail.
- 1.6 Where the words include(s), including or in particular are used in these Conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.7 Any reference to '**parties**' means the parties to the Contract; '**party**' shall be construed accordingly.
- 1.8 Condition headings do not affect the interpretation of these Conditions.

**2. BASIS OF CONTRACT AND APPLICATION OF TERMS**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms or conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by the Company shall not constitute an offer, and (unless otherwise stated in the quotation) is only valid for a period of 30 days from its date of issue.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in any specifications provided by the Company are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract.
- 2.6 Any recommendation, instruction or advice given by the Company to the Customer which directly or indirectly relates to the Goods and/or Services is given without liability on the part of the Company.
- 2.7 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of Order, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.8 The Customer shall ensure that the terms of its Order and any Input Material are complete and accurate.
- 2.9 All Input Material shall be submitted in such formats and shall meet such standards and timescales for submission as may be prescribed by the Company from time to time.
- 2.10 The Customer warrants that no Input Material shall cause the Company to infringe any Intellectual Property Rights of any other person. The Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any Intellectual Property Rights of any other person resulting from the Company's use of any Input Material.
- 2.11 The Customer warrants that no Input Material shall contravene any applicable safety or other statutory or regulatory requirement. The Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company as a result of any breach of this warranty.
- 2.12 The Company reserves the right to charge the Customer for any Output Material provided to the Customer.
- 2.13 Any surplus fittings or materials shall remain the property of the Company and shall be returned to it.
- 2.14 Subject to Condition 2.15 and Conditions 3.7-3.11, no Order which has been accepted by the Company pursuant to Condition 2.2 may be cancelled, varied, altered or deferred 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 the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation, variation, alteration or deferment as aforesaid.

- 2.15 Subject to earlier termination under Condition 12.1, any Service(s) which are specified in the Contract to be subject to a minimum period shall be provided for the Initial Contract Term and shall continue to be provided thereafter for subsequent Renewal Terms, unless the Contract is terminated by one of the parties to the Contract giving to the other notice of termination in compliance with the Notice Period, such Notice Period to expire on the last day of the Initial Contract Term or the last day of the relevant subsequent Renewal Term, as applicable.
- 2.16 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. SUPPLY OF GOODS AND SERVICES**

- 3.1 The Company shall use its reasonable endeavours to meet any delivery or performance dates or times specified in the Contract or as may be agreed from time to time, but, subject to Condition 3.2, any such dates shall be estimates only and time for delivery of the Goods or performance of the Services shall not be of the essence of the Contract.
- 3.2 Subject to the provisions of Condition 3.7, Conditions 3.8-3.12, Condition 5.2 and Condition 8.3, if a fixed time is quoted in writing by the Company for delivery of the Goods and/or performance of the Services, and the Company fails to deliver the Goods and/or perform the Services within that time or within any extension thereof agreed between the parties, and if as a result the Customer shall have suffered loss, the Company undertakes to pay for each week or part of a week of delay, liquidated damages at the rate of 0.25%, up to a maximum of 5% (or any other percentage specifically stated in the Company's quotation) of that portion of the price named in the Contract which is referable to such portion only of the Goods as cannot in consequence of the delay be used commercially and effectively. Such payment of liquidated damages pursuant to this Condition 3.2 shall be in full satisfaction of the Company's liability for delay.
- 3.3 The Company shall comply with all health and safety rules and regulations and any other security requirements that apply at the Site and that have been communicated to it under Condition 5.1(c), provided that it shall not be liable under the Contract if, as a result of such compliance, it fails to meet or perform any of its obligations under the Contract.
- 3.4 The Company may deliver the Goods by separate instalments and perform the Services in separate tranches. Each separate instalment or tranche shall be invoiced and paid for in accordance with the provisions of the Contract.
- 3.5 Each instalment or tranche shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment or tranche shall entitle the Customer to repudiate or cancel any other Contract or instalment or tranche.
- 3.6 If so stipulated in the Company's acceptance of Order, the Customer shall provide at the Site and at its expense adequate and appropriate equipment and manual labour for unloading and reloading the Goods.
- 3.7 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate

instructions, documents, licences or authorisations, the Company will charge the Customer an abortive delivery charge and:

- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage and insurance); or
  - (d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale the Goods), charge the Customer for any shortfall below the price of the Goods.
- 3.8 If either party wishes to change the scope or execution of any of the Goods and/or Services, it shall inform the other party of the proposed change.
- 3.9 Any proposed change which has a material impact on the provision or nature of any of the Goods and/or Services by the Company shall be a **'Major Change'** and shall be subject to the provisions set out in Conditions 3.11 and 3.12 below. Any other change shall be a **'Minor Change'**. The Company's decision as to whether a change is a Major Change or a Minor Change shall be final and binding.
- 3.10 The Company may, from time to time and without notice, make a Minor Change for any reason including in order to comply with any applicable health, safety or statutory requirements, provided that such changes do not materially affect the nature, scope of or the Charges for the Goods and/or Services.
- 3.11 If either party requests a Major Change, the Company shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the Major Change;
  - (b) any variations to the Charges arising from the Major Change; and
  - (c) any other impact of the Major Change on the terms of the Contract.
- 3.12 If the Customer wishes the Company to proceed with a Major Change, the Company has no obligation to do so unless and until the parties have agreed in writing (signed by a duly authorised representative of each) on the necessary variations to its charges and any other relevant terms of the Contract to take account of such Major Change.

#### **4. QUALITY OF GOODS AND SERVICES**

- 4.1 The Company warrants that on delivery, the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) if the Customer has made it expressly known to the Company in the Order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in the Company's acceptance of the Order issued pursuant to Condition 2.2 that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated.
- 4.2 Subject to Condition 4.3, if:
- (a) the Customer gives notice in writing within 7 days of delivery that the Goods do not comply with the warranty set out in Condition 4.1; and

- (b) the Company is given a reasonable opportunity of examining such Goods; and
  - (c) the Company determines that the Goods do not comply with the warranty set out in Condition 4.1; then
  - (d) the Company shall, at its option, repair or replace the defective Goods, or refund the price of the Goods at the pro-rata Contract rate.
- 4.3 The Company shall not be liable for the Goods' failure to comply with the warranty in Condition 4.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with Condition 4.2;
  - (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (c) the defect arises from any Input Material supplied by the Customer, its agents, employees or contractors;
  - (d) the defect arises because the Customer fails to provide any or any appropriate Customer Equipment required for use in conjunction with the Goods, or otherwise due to the failure of the Customer Equipment;
  - (e) the Customer alters or repairs such Goods without the written consent of the Company;
  - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, overload, or abnormal working conditions;
  - (g) the Goods differ from their description or any Goods specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.4 The Company shall provide the Services to the Customer using reasonable care and skill and in accordance with the Contract and, where applicable, any Service specification in all material respects.
- 4.5 The Company shall re-perform any Services which are proved to the reasonable satisfaction of the Company not to have been performed in accordance with the provisions of Condition 4.4, or at the Company's option, shall refund any monies already paid by the Customer for any such Services.
- 4.6 The provisions of Conditions 4.2 and 4.3 shall apply to Conditions 4.4 and 4.5 in all respects, mutatis mutandis (with the necessary changes to Conditions 4.2 and 4.3 having been made).

## **5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
- (a) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Site, office accommodation, data and other facilities as requested by the Company and which is reasonably required to enable the Company to provide the Services;
  - (b) at its own expense, prepare the Site in accordance with the information provided by the Company in advance of the date for the commencement of any works (including ensuring the availability of an electrical supply and obtaining any way-leaves which may be required).

- (c) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
  - (d) in any circumstances where any equipment of the Company is to be located at the Site, take all reasonable steps to keep such equipment in good condition and shall not dispose of or use such equipment other than in accordance with the Company's written instructions or authorisation;
  - (e) comply with any reasonable requests by the Company from time to time (including reasonable requests which are necessary for reasons of health, environment/sustainability, security, safety or the quality and/or performance of the Services);
  - (f) provide for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, such information as the Company may reasonably require from the Customer from time to time.
- 5.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, contractors, consultants or employees:
- (a) the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay; and
  - (b) the Customer shall pay to the Company on demand all reasonable costs, charges or losses sustained or incurred by the Company as a result of being so prevented or delayed (including the cost of any additional work which the Company is required to perform) subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 5.3 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf), at any time from the date of first supply of the Services to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 5.4 Any consent given by the Company in accordance with Condition 5.3 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.

## **6. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS**

- 6.1 The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party. The Customer shall not use any Confidential



Information for any purpose other than to carry out the Customer's obligations to the Company.

- 6.2 The Customer acknowledges the Company's ownership of any and all Intellectual Property Rights in any Output Material and in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. The Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that any and all Intellectual Property Rights developed by the Company in performing any Services or providing any Goods shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this Condition 6.2.

## **7. COMMISSIONING TESTS AND SYSTEM ACCEPTANCE**

- 7.1 Any applicable Commissioning Tests shall be started as soon as reasonably possible after completion of the installation of the System. The Company shall carry out the agreed Commissioning Tests for the System. The Company shall permit the Customer to observe all or any part of the testing.
- 7.2 If the System fails to pass the Commissioning Tests, the Company shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 7.3 Acceptance of the System shall be deemed to have occurred on whichever is the earliest of:
- (a) the signing by the Customer of an acceptance certificate;
  - (b) the expiry of five Business Days after the successful completion of all the Commissioning Tests; or
  - (c) the commencement of use of the System by the Customer.

## **8. CHARGES**

- 8.1 Unless otherwise agreed by the Company in writing, the Charges for the Goods and/or Services shall be those which are confirmed in the Company's acceptance of Order issued pursuant to Condition 2.2, but the Company reserves the right to vary the Charges and to invoice the Customer at the rate(s) prevailing at the date of despatch of the Goods and/or performance of the Services.
- 8.2 If the cost to the Company of performing the Company's obligations under the Contract shall be increased by reason of the making or amendment of any law or of any order, regulation, or by-law having the force of law that shall affect the performance of the Company's obligations under the Contract, the amount of such increase shall be added to the Charges.
- 8.3 The Company reserves the right, by giving notice to the Customer at any time before delivery of the Goods and/or performance of the Services, to increase the Charges to reflect any increase in any cost to the Company which is due to any factor beyond the control of the Company (including any foreign exchange fluctuation, currency regulation, alteration of duties, increase in transportation costs and any increase in the costs of labour, materials or other costs of production), or if there is any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or for any delay or failure on the part of the Customer to provide any Input Material, or for any delay

caused by any instructions of the Customer, or for any failure of the Customer to give the Company adequate, accurate or complete information or instructions.

- 8.4 Unless otherwise agreed in writing between the Customer and the Company, the Charges shall be exclusive of Value Added Tax.
- 8.5 Unless otherwise agreed in writing between the Customer and the Company, the Charges for the supply of Goods are given by the Company on an ex works basis and the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 8.6 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

## **9. TITLE AND RISK**

- 9.1 The risk in any Goods shall pass to the Customer on delivery to the Site.
- 9.2 Title to the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 9.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
  - (d) notify the Company immediately if it becomes subject to any of the events listed in Condition 12.1(b) to 12.1 (g) inclusive; and
  - (e) give the Company such information relating to the Goods as the Company may require from time to time.
- 9.4 If the Customer is late in paying for the Goods, or the Customer is late in paying for any other goods or services supplied by the Company, or if before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 12.1, then, without limiting any other right or remedy the Company may have, the Company may at any time:
- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **10. PAYMENT**

- 10.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the Charges on or at any time after acceptance of an Order.
- 10.2 Provided that the Customer has produced credit references which in the Company's opinion are satisfactory, then unless otherwise agreed by the Company in writing, settlement terms will be net 30 days from the invoice date. In all other cases payment shall be made in advance upon submission by the Company of a pro-forma invoice. Without prejudice to the

foregoing provisions of this Condition 10.2, the Company reserves the right at any time to demand full or partial payment from the Customer before proceeding or proceeding further with any Order.

- 10.3 The time of payment of the Charges shall be of the essence of the Contract.
- 10.4 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 10.5 The Customer shall make all payments due under the Contract in full 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.
- 10.6 Any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Conditions 12.1 (b) to 12.1 (g) inclusive in relation to the Customer shall entitle the Company, at any time and without notice to the Customer and without limiting any other remedy available to the Company under these Conditions, the Contract, or otherwise:
- (a) at its option, to charge interest at the rate of eight percent (8%) per annum above the Bank of England's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
  - (b) to charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer;
  - (c) to suspend any warranty for the Goods and/or Services or any other goods or services supplied by the Company to the Customer, whether or not they have been paid for;
  - (d) to appropriate any payment made by the Customer to such of the Goods and/or Services as the Company may think fit;
  - (e) to set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever;
  - (f) to terminate the Contract, or suspend or cancel the further delivery of any Goods or the performance of any Services, including, without limitation, stopping the delivery of any Goods in transit;
  - (g) to withdraw or reduce any agreed monthly credit limit; and
  - (h) to cancel any discount (if any) offered to the Customer.
- 10.7 The Company reserves the right to claim interest at the rate set under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 and also to claim fixed sum compensation under section 5A of that Act (as amended by section 3 of The Late Payment of Commercial Debts Regulations 2013) to cover the Company's credit control overhead costs.
- 10.8 Stage payments will be normally on a monthly basis and to the value of work carried out that month

## **11. LIMITATION OF LIABILITY AND INDEMNITY**

- 11.1 This Condition 11 sets 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 for:
- (a) any breach of the Contract;
  - (b) the provision of the Goods and/or Services; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions limits or excludes the liability of the Company:
- (a) for death or personal injury resulting from its negligence; or
  - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
  - (c) for any liability incurred by the Customer which cannot be limited or excluded by the Company by law.
- 11.4 Subject to Condition 11.3:
- (a) the Company shall not be liable for any Excluded Loss;
  - (b) the Company's aggregate liability to the Customer of any description (including for breach of contract and negligence) in connection with the Contract shall not exceed the total Charges paid by the Customer pursuant to the Contract.
- 11.5 The Customer acknowledges and agrees that the Company gives no undertaking or guarantee that any System cannot be compromised or circumvented or will be fully functional or operational at all times and in all circumstances. The Customer also acknowledges and agrees that the System may not prevent loss, damage or injury, that the Company is not an insurer of the Customer's property and that the Charges are not calculated by reference to the value of the Site or the property at the Site. Accordingly, it is the responsibility of the Customer to maintain comprehensive insurance against all normal risks applicable to the Site and the property held or located at the Site.
- 11.6 The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities to the extent that any such liabilities arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

## **12. TERMINATION**

- 12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving written notice to the other if:
- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of notification in writing of the breach; or
  - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party (or where the Customer is an individual, the Customer becomes subject to a bankruptcy petition or order); or

- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder; or
  - (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
  - (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
  - (f) the other party ceases, or threatens to cease, to trade; or
  - (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 12.2 On termination of the Contract under Condition 12.1 for any reason:
- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
  - (b) the Customer shall pay to the Company (within 14 days of the date of termination) an amount or amounts equal to any remaining Charges which would have been due to the Company under the Contract until the end of any applicable minimum period for a Service as specified in the Contract (notwithstanding that such Services have not been provided due to the termination); and
  - (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

### **13. GENERAL**

- 13.1 No variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 13.2 Neither party shall have any liability to the other under the Contract if it or any of its subcontractors or suppliers is prevented from, or delayed in, performing its obligations under the Contract (other than the Customer's obligation to pay the Charges) or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control.
- 13.3 Failure to exercise, or any delay in exercising, any right or remedy provided under the Contract or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall preclude or restrict the further exercise of any such right or remedy.
- 13.4 A waiver of any right or remedy provided under the Contract or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific

circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

- 13.5 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 13.6 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.
- 13.7 The Contract and any documents referred to in it constitute the whole Contract between the parties and supersede any previous arrangement, understanding or Contract between them relating to the subject matter of the Contract.
- 13.8 Each party acknowledges that, in entering into the Contract and any documents referred to in it, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the agreement or not) other than as expressly set out in the Contract or those documents. Nothing in this Condition 13.8 shall limit or exclude any liability for fraud.
- 13.9 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, subcontract or deal in any other manner with any of its rights or obligations under the Contract.
- 13.10 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 13.11 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.
- 13.12 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.