

## **Terms and Conditions**

("Conditions")  
FEBRUARY 2009

### **1. GENERAL**

1.1 In these Conditions the following definitions apply:

<b>Confirmation of Order</b>	means the written confirmation of the Purchase Order sent by the Company to the Customer and which is returned countersigned by the Customer unamended and in accordance with these Conditions;
<b>Company</b>	means W & Co Design Solutions Limited, a company incorporated and registered in England and Wales with company number 04063394 whose registered office is at Unit 9 West Yoke Farm, Michaels Lane Ash, Sevenoaks, Kent TN15 7EP;
<b>Contract</b>	means any contract between the Parties for the sale and purchase of the Goods, incorporating these Conditions and the Returns Policy and including the Purchase Order and the Confirmation of Order, which shall be formed in accordance with clause 2.5 of these Conditions;
<b>Customer Goods</b>	the party named on the Purchase Order and the Confirmation of Order; the goods and/or services which are the subject to this Contract and which are detailed in the Purchase Order and the Confirmation of Order, and any part or instalment of those goods and/or services;
<b>Intellectual Property Rights</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and Intellectual Property Right means any one of the Intellectual Property Rights;
<b>Parties</b>	both the Company and the Customer together;
<b>Purchase Order</b>	means a written (or in any other form that the Company may accept from time to time) official order to purchase the Goods submitted by the Customer to the Company in accordance with these Conditions;
<b>Returns Policy</b>	means the Company's returns policy as applicable at the date of the Contract, a copy of which is available on the Company's website ( <a href="http://www.w-co.co.uk/returns.php">www.w-co.co.uk/returns.php</a> ), which for the avoidance of doubt the Parties irrevocably agree is specifically incorporated into the Contract and shall take precedence over anything which conflicts with it in these Conditions;
<b>Supplier Costs</b>	means all costs incurred by the Company with any third parties in connection with the Contract, including (without limitation) labour, supplier and material costs; and
<b>Working Day</b>	means a day (not being a Saturday or Sunday) when the banks in the City of London are open for business.

1.2 Reference to any statute or statutory provision shall be construed as a reference to the same provision as amended consolidated extended re-enacted or replaced.

1.3 The headings in these Conditions do not affect their construction.

1.4 The Contract will be on these Conditions and any Special Conditions set out in a quotation by the Company and specifically confirmed in the Confirmation of Order (which shall prevail over conflicting terms in these Conditions) to the exclusion of all other terms and conditions, including any terms and conditions which the Customer purports to apply whether in a Purchase Order or otherwise.

### **2. THE CONTRACT**

2.1 The Contract constitutes the entire agreement and understanding of the Parties and supersedes any previous arrangement, understanding or agreement between them relating to its subject matter.

2.2 No variation to the Contract shall be binding unless agreed in writing by both Parties.

2.3 The Customer agrees that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. For the avoidance of doubt no employee or agent of the Company has the authority to make any representations or warranties concerning the Goods unless those representations or warranties are in writing and are countersigned by a director of the Company.

2.4 Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in these Conditions.

2.5 The Contract shall be formed on the date when the Customer countersigns the Confirmation of Order.

2.6 Nothing in this clause shall limit or exclude any liability for fraud.

### **3. QUOTATIONS, ESTIMATES & PRICES**

3.1 No quotation or estimate given by the Company to the Customer shall constitute an offer.

3.2 The Company reserves the right to alter or withdraw the quotation or estimate at any time before receipt of a Purchase Order from the Customer.

3.3 All quotations are valid for thirty (30) days from the date of issue unless otherwise stated and are subject to any change in the Supplier Costs or the Customer's instructions or requirements. After the thirty (30) day period the quotation is deemed to have been withdrawn by the Company without notice to the Customer.

3.4 The Company reserves the right to amend a quotation after the receipt of a Purchase Order from the Customer if, upon inspection of the Purchase Order, the requirements differ from the specifications or timescales given by the Customer to the Company when the quotation was prepared.

3.5 The Company reserves the right to amend a quotation after the receipt of a Purchase Order from the Customer if there is a subsequent increase in the Supplier Costs outside of the control or previous knowledge of the Company, the Company shall notify the Customer in writing of any such increase and consequential amendment to a quotation.

3.6 A quotation or estimate is strictly limited to the goods and/or services specifically listed on that quotation or estimate.

3.7 Any estimated price for hourly rates given taken to carry out a service (e.g. graphic design time, installation etc) is given on an estimate only basis and the actual fees charged by the Company for providing the service may be different depending on the time actually spent by the Company to undertake and perform the service in accordance with the Contract.

3.8 Any estimated price for installation does not include any unforeseen costs or any additional cost not specifically stated on the quotation and is subject to the provisions of clause 13.

3.9 Any prices listed on the Company's website, promotional material or sales literature are intended by the Company to be for guidance purposes only and should not be considered by any Customer as a quotation or estimate. For the avoidance of doubt no order or enquiry form(s) submitted online by the Customer on the Company's website ([www.w-co.co.uk](http://www.w-co.co.uk)) shall constitute an offer.

3.10 Unless otherwise stated the prices quoted are exclusive of Value Added Tax. VAT will be charged at the applicable rate at the time. Any other tax duty tariff or charges arising in the UK or in other countries shall be borne by the Customer.

#### **4. PURCHASE ORDER AND CONFIRMATION OF ORDER**

4.1 No Purchase Order shall be considered accepted by the Company until it is confirmed by a Confirmation of Order.

4.2 The Company requires a Purchase Order and a Confirmation of Order in order to commence production of the Goods.

4.3 The Customer shall be solely responsible for the accuracy of quantity, specification and detail of the Purchase Order and by signing the Confirmation of Order, the Customer confirms that the Confirmation of Order directly corresponds with the Purchase Order.

4.4 If the Customer wishes to cancel its Purchase Order after it has been confirmed by a Confirmation of Order, then the Customer must do so in writing without delay.

4.5 If a Purchase Order is cancelled by the Customer in accordance with clause 4.4, then subject to clause 7.7 below, the Customer shall pay to the Company:

4.5.1 all costs incurred by the Company up to and including the date of the receipt of the written cancellation by the Company; and/or

4.5.2 a cancellation fee of up to 100% of the total price payable for the Goods under the Contract,

provided always that the total amount payable by the Customer shall not exceed the total price payable for the Goods under the Contract.

#### **5. TERMS OF PAYMENT**

5.1 No payment shall be deemed received until the funds are cleared in the Company's bank account.

5.2 The Company requires full payment from all new and non-account Customers in order to commence production of the Goods.

5.3 There is a minimum order charge of £100 on standard items and £200 on bespoke items, unless otherwise agreed or stated.

5.4 The Company reserves the right to charge an additional fee for payments made by credit cards.

5.5 A thirty (30) day credit account may be provided by the Company, at its discretion, to a Customer subject to the successful completion of the relevant application form by the Customer and any credit checks on the Customer which the Company deems necessary to consider the application. By submitting the relevant application form to the Company, the Customer consents for the Company and/or its agents to undertake such credit checks on the Customer as the Company deems necessary to fully consider that Customer's application. The Company reserves the right to refuse applications for credit accounts without explanation to the Customer.

5.6 Customers who purchase Goods from the Company on account shall pay all sums due within thirty (30) days of invoice save in respect of any disputed amounts and/or unless otherwise agreed.

5.7 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately (and, in any event, no later than five (5) Working Days after receipt of the invoice by the Customer) notify the Company in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Company shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within thirty (30) days of the Customer giving notice to the Company, the dispute shall be resolved in accordance with clause 18. Where only part of an invoice is disputed, the undisputed amount shall be due and payable by the Customer in accordance with these Conditions.

5.8 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment under these Conditions (**Due Date**), then, without limiting the Company's remedies under clause 17.2, the Customer shall pay interest on the overdue amount at the rate set by the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith

5.9 The Customer shall indemnify for the Company for all costs incurred by the Company in recovering debts owed to it by the Customer.

5.10 If payment for the Goods is not made in accordance with the Contract, or if at any time the credit standing of the Customer has (in the reasonable opinion of the Company or its agents) significantly deteriorated, the Company may delay the delivery of the Goods until all sums due have been paid or arrangements as to payment or credit have been agreed between the Parties.

#### **6. DELIVERY & LEAD TIME**

6.1 Quoted delivery dates are estimates only and shall not be of the essence of the Contract.

6.2 Production lead times are subject to confirmation at time of placing the Purchase Order. Quoted lead times start from the date the Company receives the Confirmation of Order back from (and signed by) the Customer or the date of the receipt by the Company of any other relevant information requested by the Company needed to commence work under the Contract. If applicable, production lead times will only commence upon receipt of print ready digital artwork and completed installation report forms. Production lead times may be extended if any additional work or special requirements are ordered by the Customer which were not included in the original quotation or if there is a delay in the Customer's approval of any required proofs or job specifications.

6.3 The Company may deliver the Goods by instalments, which may be invoiced and paid for separately.

6.4 Delays in the delivery of the Goods shall not entitle the Customer to:

6.4.1 refuse to take delivery of the Goods; or

6.4.2 terminate the Contract, subject always to clause 17.1.

6.5 The Company shall have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under the Contract.

6.6 If the Customer requests a postponement in delivery of the Goods (and this is agreed to by the Company), the Customer shall pay all costs and expenses incurred by the Company (including a reasonable charge for storage of Goods) caused by the delay and the Goods shall be held at the Customer's risk as from the date of the postponement.

6.7 If the Customer fails to take delivery of the Goods or fails to give adequate delivery instructions within 14 days after being requested by the Company, the Company is entitled to, at its discretion and without prejudice to any other rights it may have, undertake one or more of the following:

6.7.1 dispose of the Goods; or

6.7.2 sell the Goods; or

6.7.3 charge storage to the Customer for the Goods from due delivery date; or

6.7.4 charge to the Customer for any other additional costs incurred.

6.8 If the Customer uses the Goods in any way after delivery then, notwithstanding any other clause in these Conditions, then the Customer shall be deemed to have been accepted that the Goods have been supplied by the Company in accordance with the Contract.

6.9 The Customer or its agents shall check the Goods thoroughly for any damage that may have occurred in transit. If damage has occurred in transit, the Goods should be rejected by the Customer at point of delivery or signed for as "DAMAGED". If the Customer signs for the Goods as "DAMAGED" the Customer shall report the damage to the Company immediately and then confirm the damage in writing to the Company within three (3) Working Days. Any rejection of Goods under this clause 6.9 shall be subject to clause 7 and the Returns Policy.

6.10 The Customer or its agents shall inspect the Goods immediately on delivery and shall within three (3) Working Days give notice in writing to the Company of any matter or thing by reason whereof it alleges the Goods are not in accordance with the Contract. If the Customer fails to give such notice, then the Customer shall be deemed to have accepted that the Goods have been supplied by the Company in accordance with the Contract and, if applicable, the Customer shall pay any outstanding sums due to the Company for the Goods under the Contract (or any credit account) in accordance with the Contract.

## 7. RETURNS POLICY

7.1 Any return of the Goods by the Customer shall be subject to the Returns Policy.

7.2 In the unlikely event that the Goods do not conform to the Contract and the Customer wishes to reject or return the Goods to the Company, the Customer shall notify the Company by telephone as soon as possible after delivery of its wish to return or reject the Goods and shall confirm its reason for returning or rejecting the Goods in writing to the Company within three (3) Working Days in accordance with the Returns Policy.

7.3 If the Goods are rejected under clause 6.9 the Company's courier shall bear any and all costs of returning the Goods to the Company, if the Goods are returned on any other basis or for any other reason then the Customer shall bear any and all costs of returning the Goods to the Company, subject to clause 7.4 below, in accordance with the Returns Policy.

7.4 The Company shall inspect the returned Goods once received to determine whether, in the opinion of the Company, the Goods are faulty or do not conform to the Contract. If, in the opinion of the Company, the Goods are faulty or do not conform to the Contract then the Company shall, at its sole discretion:

7.4.1 repair the Goods;

7.4.2 replace the Goods;

7.4.3 provide the Customer with a full or partial refund of the sums paid by the Customer for the Goods under the Contract; and/or

7.4.4 provide the Customer with a full refund of any costs incurred in returning the Goods to the Company, subject always to the terms of this clause 7 and the Returns Policy.

7.5 The Contract will apply to any repaired or replacement Goods supplied by the Company to the Customer in accordance with the Contract.

7.6 If the Company elects, at its sole discretion, to provide the Customer with a full or partial refund in accordance with clause 7.4, the refund shall be subject to:

7.6.1 the full compliance by the Customer to conditions outlined in the Returns Policy; and

7.6.2 the payment by the Customer to the Company of a discretionary restocking fee of up to 15 % of the total price payable for the Goods under the Contract, which the Company, at its sole discretion, elects to charge to the Customer to reimburse the Company for any liabilities, costs, expenses, damages and losses incurred by the Company which are directly attributable to the Goods or the return of the Goods under the Contract, including (without limitation) any liabilities, costs, expenses, damages and losses incurred by the Company in communicating with the Customer, quoting for the Goods, preparing the Contract, invoicing for the Goods, packaging the Goods, labelling the Goods, arranging dispatch of the Goods, dismantling the Goods on return, re-boxing the Goods on return, checking for damage of the Goods on return, revising the stock chart at the Company's premises following the return, issuing a credit note to the Customer, postage costs (including courier charges) in relation to the Goods and any general expenses or inconvenience caused to the Company, in accordance with the Returns Policy (the **Restocking Fee**), for the avoidance of doubt the Parties agree that, if applicable, the Restocking Fee may be deducted by the Company from any sums refunded to the Customer in accordance with the Returns Policy.

7.7 If, upon inspection by the Company under clause 7.4 above, the Goods are found to have been supplied in accordance with the Contract, the Company shall have no further obligation in relation to the Goods and the Customer shall pay all sums due to the Company in relation to the Goods under the Contract.

7.8 Subject to Condition 7.9 below, the Customer does not have a general right to reject or return the Goods under the Contract and furthermore, for the avoidance of doubt, the Customer has no general right to a refund of the price paid for the Goods under the Contract.

### 7.9 Consumer rights

7.9.1 If the Customer is a consumer (as defined in the Consumer Protection (Distance Selling) Regulations 2000 as amended), the Customer may cancel the Contract at any time within seven (7) Working Days, beginning on the day after delivery of the Goods. In this case, the Customer shall receive a full refund of the price paid for the Goods under the Contract in accordance with the Returns Policy.

7.9.2 To cancel a Contract under clause 7.7.1, you must inform us in writing. You must also return the Goods to us immediately, in the same condition in which you received them, and at your own cost and risk. You have a legal obligation to take reasonable care of the Goods while they are in your possession. If you fail to comply with this obligation, we may have a right of action against you for compensation.

7.9.3 Details of this statutory right, and an explanation of how to exercise it, are provided in the Returns Policy. This provision does not affect your statutory rights.

## 8. RISK & TITLE

8.1 Subject to clause 6.6 above, risk in the Goods shall pass to the Customer on delivery or, if the Goods are collected by the Customer or its agents, on collection.

8.2 Title in the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:

8.2.1 the Goods; and

8.2.2 all other sums which are or which become due to the Company from the Customer for sales of the Goods.

8.3 Until title to the Goods has passed to the Customer, the Customer shall:

8.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

8.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Company. The Customer shall obtain an endorsement of the Company's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Company to inspect such Goods and the insurance policy,

but the Customer may resell or use the Goods in the ordinary course of its business.

8.4 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events in clause 17.2 then, provided that the Goods have not been resold and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, 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.

8.5 The Customer agrees that the Company shall be entitled to maintain an action for the price of the Goods notwithstanding the title in the Goods may not have passed to the Customer.

## 9. DESIGNS & INTELLECTUAL PROPERTY RIGHTS

9.1 All designs, artwork, drawings, plans, sketches, specifications and technical information supplied by the Company to the Customer including those supplied, without limitation, as part of a quotation, estimate, Confirmation of Order or Contract in relation to the Goods (**Designs**) and Intellectual Property Rights in those Designs are and remain the property of the Company. The Designs shall not be traced, copied or exhibited to any third party without the prior written consent of the Company or until all sums due to the Company under the Contract are paid in full.

9.2 The Designs must be returned to the Company by the Customer immediately in the event of:

9.2.1 the cancellation of a Purchase Order by the Customer under clause 5.2; or

9.2.2 the termination of the Contract under clause 17; or

9.2.3 the Customer commissioning works of a similar type to be undertaken by another company.

9.3 The Designs must be returned to the Company by no later than 6 months after the date which they were supplied to the Customer in the event where no Contract is entered into by the Parties in relation thereto.

9.4 The Designs are confidential and shall be used by the Customer only for the purpose of considering any quotation or tender the performance of the Contract or the operation of the Goods. The Designs may not be divulged or disclosed by or on behalf of the Customer to any third parties without the prior written authority of the Company.

9.5 The Company will accept no liability for any loss caused to the Customer, which arises wholly or partly from any defect or error omission from the drawing plans and technical information provided by the Customer.

9.6 The Customer agrees that, by signing the Confirmation of Order, it warrants to the Company that it is fully entitled to or to use the Intellectual Property Rights in any material made available to the Company and that it has secured all necessary authority and permission in respect of the use of those Intellectual Property Rights. The Customer agrees to indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods or otherwise in relation to the Contract.

9.7 Upon completion of a Design, the Company will send to the Customer a proof of the digital artwork designed as a PDF (or in an alternative specified digital format if requested) for approval by the Customer. Once the proof has been approved by the Customer, the Company is no longer liable for any errors in the printed material.

## **10. PROTOTYPES**

10.1 Any prototypes, models, plans, illustrations, drawings, descriptions and specifications supplied by the Company to the Customer including those supplied, without limitation, as part of a quotation, estimate, Confirmation of Order or Contract in relation to the Goods (**Prototypes**) are intended to give a general outline of the Company's proposals and are not binding as to details nor to final sizes or arrangements. The Prototypes, and any Intellectual Property Rights in those Prototypes, shall remain the property of the Company and shall not be copied, divulged, disclosed or communicated to any third parties by or on behalf of the Customer without the Company's prior written consent. The Company may charge an agreed fee to the Customer for any Prototypes supplied to the Customer.

## **11. QUALITY**

11.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of three (3) months from the date of their initial use or three (3) months from delivery, whichever is the first to expire.

11.2 The above warranty is given by the Company subject to the following conditions:

11.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any information, drawing, design or specification supplied by the Customer;

11.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), incorrect installation, misuse or alteration or repair of the Goods without the Company's approval;

11.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment or if the Customer is in material breach of the Contract;

11.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company (e.g. fluorescent tubes, fuses, ballasts etc), in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee which is given by the manufacturer to the Company; and

11.2.5 the above warranty shall be invalidated and the Company's liability under the warranty in clause 11.1 shall cease if the Customer attempts to undertake repairs or make alterations to the Goods or allow this to occur via a third party during the warranty period, without the express permission in writing of the Company.

## **12. LIMITATION OF LIABILITY**

12.1 Subject to clauses 2.4 and 11, this clause 12 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its respective employees, agents and sub-contractors) to the Customer in respect of:

12.1.1 any breach of the Contract;

12.1.2 any use made or resale of the Goods by the Customer, 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 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.3 Nothing in these Conditions or the Contract shall limit or exclude the liability of either party for:

12.3.1 death or personal injury resulting from negligence; or

12.3.2 fraud or fraudulent misrepresentation; or

12.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979.

12.4 Without prejudice to clause 12.3, the Company shall not be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

12.4.1 loss of profit; or

12.4.2 loss of goodwill; or

12.4.3 loss of business; or

12.4.4 loss of business opportunity; or

12.4.5 loss of anticipated saving; or

12.4.6 loss or corruption of data or information; or

12.4.7 special, indirect or consequential damage, suffered by the Customer that arises under or in connection with the Contract.

12.5 Without prejudice to clauses 12.3 and 12.4, the Company's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the purchase price for the Goods under the Contract, or the proportionate part of the price of the Goods, except as expressly provided in these Conditions.

12.6 Subject to clause 12.7 and without prejudice to the other rights of the Company under the Contract, any claim made against the Company in relation to the Contract must be brought within three (3) months of the date on which the cause of action on the part of the Customer arose.

12.7 Any claim by the Customer under clause 11.1 shall be notified, in writing, to the Company within fourteen (14) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If no such notice is received by the Company, the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

12.8 Where any valid claim exists under clause 11.1, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or the proportionate part of the price), but the Company shall have no further liability to the Customer.

12.9 The Company makes every effort to match colours; however the Company shall have no liability where colours do not match or where the Goods are used outside and are not waterproofed.

### 13. INSTALLATION

13.1 Unless otherwise agreed in writing by the Company, the responsibility for obtaining all approval or consents for the installation of the Goods as may be required by statute, contract, landlord permission or otherwise shall be the responsibility of the Customer. Where the Company agrees to submit a planning application under the Town & Country Planning Acts on behalf of the Customer, the Customer agrees to pay the Company a fee either at the rates of the British Sign Association applicable at the time of the application or at such other rates as may be agreed between the Parties whether or not the application is successful. Where the Company at the request of the Customer commences performance of the Contract before any required approvals or consents have been obtained the Customer will indemnify the Company against any and all liability arising from such performance and in the event of such permission or consent being refused the Customer shall indemnify the Company against any and all losses, claims, demands or expenses arising from such refusal.

13.2 The Customer shall ensure the area where the Goods are to be installed is safe and of sound structure to accept the Goods and inform the Company of any special fixings or tools that may be necessary to complete the installation 7 days prior to the date of installation. Any costs incurred by the Company in the event that the Goods cannot be installed due to inadequate information given, insufficient structure to install to, or requirement of special tools or equipment to complete the installation (not available to the installation team on the day) will be charged to and be paid by the Customer in addition to the original quotation (the Company recommends the Customer pays for a site survey to avoid installation issues or if not that the Customer should complete and submit the Company's installation report sheet 7 days or more before the agreed date).

13.3 The Customer shall ensure access by the Company to the site of installation for the purpose of surveying and inspecting of the premises and installing the Goods. Any costs incurred by the Company in the event of delays in obtaining access arranged by the Customer shall be charged to and be paid by the Customer in addition to the original quotation.

13.4 The Customer shall ensure the site of installation has adequate supply of lighting, water, washing facilities, toilet and electricity during the whole installation period and secure facilities for the storage of tools and materials necessary for carrying out the installation. Any costs incurred by the Company in the event of inadequate facilities provided shall be charged to and be paid by the Customer in addition to the original quotation.

13.5 If the Company is unable to complete the installation on the agreed date due to the inaccessibility of the site of installation, the lack of any said facility, a breach by the Customer of its obligations under the Contract or cancellation by the Customer with less than 24 hours notice, then the Customer shall pay the Company for the whole installation quoted. Any work undertaken by the Company to complete the installation shall be charged in addition to the quoted price under the Contract.

13.6 Unless otherwise agreed the Company will undertake the installation within its normal working hours (Monday to Friday 9am to 5.30pm) and will not remain at one location for more than 8 hours including all necessary breaks required by law. Any additional time outside of these hours will be charged pro rata to the Customer in addition to the quoted price under the Contract.

13.7 The Company shall not be liable to the Customer for any delay in installation directly or indirectly attributable to the acts or omissions of the Customer, its agents or any third party.

### 14. HEALTH & SAFETY

14.1 Any liability for ensuring compliance with any requirement statutory or otherwise concerning health, safety or welfare on the premises of the Customer or the client of the Customer or any premises required to be visited by the Company's employees on behalf of the Customer rests exclusively with the Customer.

14.2 The Goods are sold on condition that:

14.2.1 the Customer carries out such tests and examination of the Goods as are reasonably practicable to ensure that when used the Goods are safe and without risk to health and comply with all local laws and regulations, including the Consumer Protection Act 1987 (as amended) and the EC Product Liability directives (85/374/EEC and 1999/34/EC);

14.2.2 the Customer shall, if so requested by the Company, enter into a written undertaking to take such steps as may be specified by the Company relating to such tests and examination; and

14.2.3 the Customer shall indemnify the Company against any loss, liability or expense arising from the Customer's failure to carry out any such tests or examinations required under the above Conditions.

### 15. ASSIGNMENT

15.1 This Contract is personal to the Customer and may only be assigned by it with the prior written consent of the Company.

### 16. EXPORT

16.1 These Conditions shall apply to all export sales except as varied in the Company's Confirmation of Order.

16.2 It is hereby expressly agreed that the Uniform Law on International Sales and the Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

16.3 Where Goods are to be delivered outside the United Kingdom:

16.3.1 payment shall be made in the manner specified on the Confirmation of Order or otherwise instructed by the Company;

16.3.2 the Goods shall be delivered upon the terms specified in the Company's Confirmation of Order or otherwise instructed by the Company; and

16.3.3 the Customer shall reimburse the Company for any carriage, freight and insurance, bank charges and any other costs or charges to the extent that any such costs incurred by the Company are not included in the price of the Goods.

### 17. TERMINATION OF CONTRACT

17.1 In the event of the Customer's premises being destroyed or substantially damaged by fire, the Customer shall be entitled to terminate the Contract by written notice to the Company upon payment to the Company all sums outstanding under the Contract and any losses and/or expenses caused to the Company as a result of the termination.

17.2 If the Customer makes a voluntary arrangement with its creditors, or becomes bankrupt, or becomes subject to administration or goes into liquidation, or ceases to carry on business (or threatens to carry on business) or if the Company reasonably determines any of these instances is about to occur, then the Company shall be entitled to terminate the Contract and the price of all Goods received by the Customer shall become immediately payable, without prejudice to any other rights or remedies available to the Company and notwithstanding any previous agreements or arrangements to the contrary.

### 18. DISPUTE RESOLUTION

18.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in the Contract, the parties shall follow the dispute resolution procedure set out in this clause.

18.2 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the Company and the Customer shall attempt in good faith to resolve the Dispute.

18.3 If the Company and the Customer are for any reason unable to resolve the Dispute within twenty (20) Working Days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 20 Working Days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

18.4 No party may commence any court proceedings in relation to any dispute arising out of the Contract until twenty (20) Working Days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

## **19. FORCE MAJEURE**

19.1 The Company shall not be liable for any loss or damage caused by any delay in performance or by non-performance of any of its obligations where the same is occasioned by any cause whatsoever which is beyond its reasonable control including, but not limited to, acts of God, war (whether or not declared), riots, civil commotions, fire, explosion, sabotage, storm, flood, earthquake, fog, subsidence, adverse weather conditions, pestilence, epidemics, legal restrictions, or acts of any Government or branch or agency thereof (including without limitation any local Government), non availability of transport, strikes, lockouts or trade disputes of whatever kind, cessation or interruption of operation of any plant or process, failure of supply of raw materials or components of or breakdown of machinery. Should any such event occur the Company shall be entitled to terminate or rescind or suspend the Contract or suspend any delivery without liability for loss or damage resulting there from but only after advising the Customer in writing of the cause of the cancellation or rescission or suspension.

## **20. GOVERNING LAW**

20.1 The Contract and these Conditions are governed in all respects by and in accordance with the Laws of England and the Customer hereby submits to the non-exclusive jurisdiction of the English Courts.

## **21. MISCELLANEOUS**

21.1 The Company may sub-contract all or any part of the Contract without the consent of the Customer.

21.2 If any part of these Conditions is found to be invalid or unenforceable by a competent officially authorized body then the validity of the other parts shall not be affected and these Conditions shall be amended to the extent that they become invalid or unenforceable.

21.3 Time for performance of all material obligations of the Customer under the Contract is of the essence.

21.4 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.

21.5 Any failure or delay by the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.