

J. & P. Supplies Limited trading as "Stourflex" – Terms and Conditions of Sale

1. Interpretation

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

1.2 Definitions:

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

Collection Location: J&P's premises or such other location as may be advised by J&P.

Commencement Date: has the meaning given in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.11.

Contract: the contract between J&P and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** will be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from J&P.

Deliverables: the deliverables set out in the Order produced by J&P for the Customer.

Delivery Location: the location set out in the Order or such other location as the parties may agree.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods that is agreed in writing by the Customer and J&P.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

J&P: J. & P. Supplies Limited trading as "Stourflex" registered in England and Wales with company number 00438581.

J&P Materials: has the meaning given in clause 9.1.9.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, as submitted by the Customer by email or verbally, or the Customer's written acceptance of J&P's quotation, or overleaf, as the case may be.

Site: the location where the Goods (or other goods which are relevant to the Services and/or in relation to which J&P has agreed to provide Services) are to be installed.

Services: the services, including the Deliverables, supplied by J&P to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by J&P to the Customer.

1.3 Interpretation.

1.4 A reference to:

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- 1.4.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 1.4.2 legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision;
 - 1.4.3 any words following the terms **including, include** or **in particular** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms;
 - 1.4.4 **writing** or **written** includes email but not fax.
2. **Basis of Contract**
- 2.1 These Conditions apply in all circumstances when J&P and the Customer are trading with each other in the course of their respective businesses.
 - 2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
 - 2.3 The Order will only be deemed to be accepted when J&P issues written acceptance of the Order at which point and on which date the Contract will come into existence (**Commencement Date**).
 - 2.4 Any samples, drawings, descriptive matter or advertising issued by J&P and any descriptions of the Goods or illustrations or descriptions of the Services contained in J&P's catalogues, website or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They will not form part of the Contract nor have any contractual force. More particularly, the provision of a sample by J&P is for information only and will in no way be taken to imply any warranty or condition as to the quality, merchantability, fitness for purpose, suitability or other properties of the Goods.
 - 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
 - 2.6 Any quotation given by J&P will not constitute an offer, and is only valid for a period of 14 Business Days from its date of issue.
 - 2.7 All of these Conditions will apply to the supply of both Goods and Services except where application to one or the other is specified.
 - 2.8 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
3. **Specifications**
- 3.1 The parties will use reasonable endeavours to agree the Goods Specification and, if applicable, the Services Specification.
 - 3.2 If the parties cannot agree the Goods Specification or the Services Specification, without prejudice to any other rights or remedies J&P may have, J&P may cancel the Customer's Order without liability. The Customer will pay J&P on a time and materials basis fair and reasonable compensation for any work in progress on or in relation to the Goods/Services at the time of termination and management time incurred by J&P in relation to that Order prior to the time of termination, but whilst such compensation will not include loss of profits in relation anything which J&P would have done under the Contract had this not been terminated, it is agreed that J&P will be entitled to its usual margin on all work it has carried out up to termination.

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- 3.3 It is the Customer's responsibility to ensure that all measurements, plans, drawings and designs provided by the Customer and forming part of the Goods Specification and/or the Services Specification are accurate, complete and fit for the intended purpose.
- 3.4 If requested at any time, the Customer will allow J&P to inspect the Site.
- 3.5 If on inspection or survey of the Site it becomes apparent to J&P that there are one or more problems:
- 3.5.1 with the structure of the building into which goods proposed to be supplied by J&P or which J&P are instructed to provide Services in relation to, are to be installed;
 - 3.5.2 with any plans, drawings, dimensions or measurements provided by the Customer;
 - 3.5.3 relating to technical matters regarding goods to be supplied by J&P and/or the Services;
 - 3.5.4 resulting (or which may result) in additional works being required before the Services can be carried out,
- which result in the requirement to increase the price of the Goods and/or the Services, then J&P reserves the right to so increase the price of the Goods and/or the Services accordingly. If the Customer does not accept such price increase, J&P may cancel the Customer's Order without liability and the Customer will pay J&P (i) for any goods already purchased or commissioned for manufacture in relation to the Customer's Order and (ii) fair and reasonable compensation for any work in progress on or in relation to the Goods and/or Services at the time of termination in relation to that Order prior to the time of termination, but such compensation will not include loss of anticipated profits or any consequential loss.
4. **Goods**
- 4.1 The Goods are described in the Goods Specification.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer will indemnify J&P against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by J&P arising out of or in connection with any claim made against J&P for:
- 4.2.1 actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with J&P's use of the Goods Specification;
 - 4.2.2 personal injury, loss or damage to property arising from the use of the Goods except to the extent that such injury, loss or damage is solely attributable to the negligence or default of J&P or J&P's employees or agents.
- 4.3 Clause 4.2 will survive termination of the Contract.
- 4.4 If required by any applicable statute, regulation or law, J&P reserves the right to amend the Goods Specification for the purposes of achieving compliance or to cease working on an Order if required. In these circumstances, to the extent legally possible, J&P will raise any such issue promptly with the Customer and the parties will work together using reasonable endeavours to agree a solution, including an amended Goods Specification if necessary. J&P reserves the right to increase the price of the Goods if any such solution or amendment to the Goods Specification results in increased costs to J&P.
- 4.5 Any advice or recommendations given by J&P or its employees or agents relating to the suitability of the Goods is supplied in good faith but the Customer must satisfy itself that the Goods are suitable for the intended purpose.

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- 4.6 The Customer will ensure that the Goods are fitted in accordance with the fitting instructions relating to the Goods issued by J&P. A hyperlink to the relevant fitting instructions on J&P's website or a copy of the fitting instructions will be provided to the Customer.
5. **Delivery and Collection of Goods**
- 5.1 Incoterms 2020 will apply to the Contract to the extent that an Incoterm is stated in J&P's Order confirmation given pursuant to clause 2.3 and, in that case, the relevant provisions of Incoterms 2020 in relation to the applicable Incoterm will prevail to the extent that they conflict with these Conditions. If an Incoterm is not stated in J&P's Order confirmation given pursuant to clause 2.3, these Conditions will prevail over any conflicting provision in Incoterms 2020.
- 5.2 It is the Customer's responsibility to check that the Goods delivered by J&P/made available for collection match the Goods ordered before putting such Goods to use. J&P will not be responsible for any liabilities, costs, expenses, damages or losses incurred by the Customer if the Customer does not check the Goods in this way. In the event of an inconsistency between the Goods (as ordered) and the goods actually delivered/collected (e.g. the wrong products are delivered or made available for collection), the Customer will notify J&P immediately on discovery and J&P will contact the Customer to arrange re-delivery/collection of the Goods as soon as reasonably practicable following notification of the inconsistency. The incorrect goods will be collected by or returned to J&P (at J&P's option) at J&P's cost and the Customer will co-operate with J&P in this respect.
- 5.3 J&P reserves the right at any time to refuse to make delivery of the Goods if in its sole opinion the storage and offloading facilities proposed by the Customer are unsafe or inadequate for the Goods. All reasonable costs incurred by J&P in attempting to make delivery in these circumstances will be for the account of the Customer. Delivery of the Goods by J&P or J&P's agent will in no way constitute a commitment or representation by J&P as to the suitability of the Buyer's storage or offloading facilities.
- 5.4 If J&P delivers the Goods to the Customer:
- 5.4.1 J&P will ensure that each delivery of the Goods is accompanied by a delivery note;
 - 5.4.2 J&P will deliver the Goods to the Delivery Location;
 - 5.4.3 the risk in the Goods will pass to the Customer on completion of delivery; and
 - 5.4.4 delivery is completed on the completion of the unloading of the Goods at the Delivery Location.
- 5.5 If J&P agrees that the Customer may collect the Goods:
- 5.5.1 J&P will make available to the Customer a delivery note;
 - 5.5.2 the Customer will collect the Goods from the Collection Location within 5 Business Days of J&P notifying the Customer that the Goods are ready for collection;
 - 5.5.3 the risk in the Goods will pass to the Customer on collection; and
 - 5.5.4 collection is completed on the completion of loading of the Goods at the Collection Location.
- 5.6 Any dates quoted for delivery/collection are approximate only, and the time of delivery or collection is not of the essence. J&P will not be liable for any delay in delivery or collection of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide J&P with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

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- 5.7 If the Customer wishes to change a pre-agreed delivery/collection date then it must give J&P 48 hours' notice. The Customer will pay J&P's costs in connection with such a request including (without limitation) storage and re-delivery costs.
- 5.8 The Customer will not be liable for the price of and J&P will refund any amount paid in respect of Goods, which J&P fails to deliver or make available for collection (as the case may be). Subject only to clause 13.1 but notwithstanding any other provision of these Conditions or the Contract, J&P's further liability in respect of such failure will be limited to the lesser of the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality at the cheapest price available and 10% of the price of the Goods in respect of which such failure occurred. However, J&P will have no liability for any failure to deliver Goods or make the same Goods available for collection to the extent that such failure is caused by a Force Majeure Event or any breach or failure by the Customer.
- 5.9 If the Customer fails to take or accept delivery of the Goods within 14 Business Days of J&P notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or J&P's failure to comply with its obligations under the Contract, delivery/collection of the Goods will be deemed to have been completed at 9.00 am on the fourteenth Business Day after the day on which J&P notified the Customer that the Goods were ready.
- 5.10 If 14 Business Days after the day on which J&P notified the Customer that the Goods were ready for delivery the Customer has not taken (or accepted) delivery of them, J&P may resell or otherwise dispose of part or all of the Goods.
- 5.11 J&P may deliver the Goods or make the Goods available for collection by instalments, which will be invoiced and paid for separately. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.
- 5.12 J&P may at its discretion agree to deliver Goods to addresses outside of the United Kingdom. However, there are restrictions on some Goods for certain international delivery destinations and it is the Customer's responsibility to ascertain information about the existence and applicability of such restrictions. If the Customer Orders Goods for delivery outside of the United Kingdom, that Order may be subject to import duties and taxes which are applied when the delivery reaches that destination. J&P has no control over these charges and cannot predict their amount. The Customer will be responsible for payment of any such import duties and taxes. The Customer must comply with all applicable laws and regulations of the country for which the Goods are destined. J&P will not be liable or responsible if the Customer breaks any such law.
6. **Quality of Goods**
- 6.1 The Customer acknowledges that J&P is not the manufacturer of the Goods. J&P will use all reasonable endeavours to pass on to the Customer the benefit of any applicable manufacturer warranty in connection with the Goods.
- 6.2 J&P warrants that on delivery/collection the Goods will conform in all material respects with the Goods Specification.
- 6.3 Subject to clause 6.4, if:
- 6.3.1 the Customer gives notice in writing to J&P within 3 days of delivery or collection (provided that notice is given to J&P within 24 hours' of discovery) (and within 24 hours' of delivery or, as the case may be collection, if the alleged defect is apparent

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- on visual inspection) that some or all of the Goods do not comply with the warranty set out in clause 6.2;
- 6.3.2 J&P is given a reasonable opportunity of examining such Goods; and
- 6.3.3 the Customer (if asked to do so by J&P) returns such Goods to J&P's place of business at J&P's cost,
- J&P will replace any Goods it agrees are defective.
- 6.4 J&P will not be liable for the Goods' failure to comply with the warranty set out in clause 6.2 in any of the following events:
- 6.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.3;
- 6.4.2 the defect arises because the Customer failed to follow J&P's (or the manufacturer's) oral or written instructions as to the storage, handling, commissioning, installation, use, fitting and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 6.4.3 the defect arises as a result of J&P (or the manufacturer) following any drawing, design or specification supplied by the Customer;
- 6.4.4 the Customer alters such Goods without the written consent of J&P;
- 6.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 6.4.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.5 Except as provided in this clause 6, J&P will have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.2.
- 6.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.7 These Conditions will apply to any replacement Goods supplied by J&P.
7. **Title**
- 7.1 Title to the Goods will not pass to the Customer until the earlier of:
- 7.1.1 J&P receiving payment in full (in cash or cleared funds) for the Goods and any other goods that J&P has supplied to the Customer in respect of which payment has become due, in which case title to the Goods will pass at the time of payment of all such sums; and
- 7.1.2 the Customer reselling the Goods, in which case title to the Goods will pass to the Customer at the time specified in clause 7.3.
- 7.2 Until title to the Goods has passed to the Customer, the Customer will:
- 7.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as J&P's property;
- 7.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on J&P's behalf from the date of delivery/collection;
- 7.2.4 notify J&P immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4; and

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- 7.2.5 give J&P such information as J&P may reasonably require from time to time relating to:
- (a) the Goods; and
 - (b) the ongoing financial position of the Customer.
- 7.3 Subject to clause 7.4, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before J&P receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.3.1 it does so as principal and not as J&P's agent; and
 - 7.3.2 title to the Goods will pass from J&P to the Customer immediately before the time at which resale by the Customer occurs.
- 7.4 At any time before title to the Goods passes to the Customer, J&P may:
- 7.4.1 by notice in writing, terminate the Customer's right under clause 7.3 to resell the Goods or use them in the ordinary course of its business; and
 - 7.4.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product 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. **Supply of Services**
- 8.1 J&P will supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2 J&P will use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.
- 8.3 If required by any applicable statute, regulation or law, J&P reserves the right to amend the Services Specification to the extent required to achieve compliance or to cease providing Services. In these circumstances, to the extent legally possible, J&P will raise any such issue promptly with the Customer and the parties will work together using reasonable endeavours to agree a solution, including an amended Services Specification if necessary. J&P reserves the right to increase the price of the Services if any such solution or amendment to the Services Specification results in increased costs to J&P.
- 8.4 J&P warrants to the Customer that the Services will be provided using reasonable care and skill.
9. **Customer's Obligations**
- 9.1 The Customer will:
- 9.1.1 ensure that the terms of the Order and the Service Specification and/or the Goods Specification are complete and accurate;
 - 9.1.2 co-operate with J&P in all matters relating to the Services;
 - 9.1.3 provide J&P, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities (including (without limitation) fuel, water and electricity) as reasonably required by J&P to provide the Services;
 - 9.1.4 provide J&P with such information and materials as J&P may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

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- 9.1.5 organise and pay for any ancillary services required by J&P to carry out the Services including (without limitation) the supply and erection of scaffolding, ladders, moveable platforms, hoisting and/or lowering gear;
 - 9.1.6 prepare the Customer's premises for the supply of the Services;
 - 9.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 9.1.8 comply with all applicable laws, including health and safety laws;
 - 9.1.9 keep all materials, equipment, documents and other property of J&P (**J&P Materials**) at the Customer's premises in safe custody at its own risk, maintain J&P Materials in good condition until returned to J&P, and not dispose of or use J&P Materials other than in accordance with J&P's written instructions or authorisation; and
 - 9.1.10 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 9.2 If J&P's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 9.2.1 without limiting or affecting any other right or remedy available to it, J&P will have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays J&P's performance of any of its obligations;
 - 9.2.2 J&P will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from J&P's failure or delay to perform any of its obligations as set out in this clause 9.2; and
 - 9.2.3 the Customer will reimburse J&P on written demand for any costs or losses sustained or incurred by J&P arising directly or indirectly from the Customer Default.
10. **Charges and Payment**
- 10.1 The price for Goods will be the price set out in J&P's Order confirmation given pursuant to clause 2.3 and will exclude:
- 10.1.1 all costs and charges of packaging, insurance, transport of the Goods, which will be invoiced to the Customer;
 - 10.1.2 all applicable consular charges, stamp duties, export or import duties, purchase tax or similar fiscal demands (UK or otherwise), bank charges and interest charges; and
 - 10.1.3 amounts in respect of value added tax ("**VAT**"), which the Customer will additionally be liable to pay to J&P at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 10.2 The charges for Services will be the price set out in J&P's Order confirmation given pursuant to clause 2.3.
- 10.3 J&P will be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom J&P engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by J&P for the performance of the Services, and for the cost of any materials.

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- 10.4 J&P reserves the right to increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery/collection/performance (as the case may be), to reflect any increase in the cost of the Goods and/or Services (as the case may be) to J&P that is due to:
- (a) any factor beyond the control of J&P (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery/collection date(s), quantities or types of Goods or Services ordered, or the Goods Specification or Services Specification; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give J&P adequate or accurate information or instructions in respect of the Goods or Services.
- 10.5 In respect of Goods, J&P will invoice the Customer on or at any time after completion of delivery or collection (as the case may be). In respect of Services, J&P will invoice the Customer on completion of the Services.
- 10.6 The Customer will pay each invoice submitted by J&P within 30 days of the date of the invoice or in accordance with any credit terms agreed by J&P and confirmed in writing to the Customer and in full and in cleared funds to a bank account nominated in writing by J&P. Time for payment will be of the essence of the Contract.
- 10.7 If the Customer fails to make any payment due to J&P under the Contract by the due date for payment, then the Customer will pay interest on the overdue amount at the greater of 5% per annum above the Bank of England's base rate from time to time and the High Court judgment rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer will pay the interest together with the overdue amount.
- 10.8 The Customer will pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). J&P may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by J&P to the Customer.
11. **Data Protection**
Each party will, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK). Each party will ensure that it has all necessary consents and notices in place to enable the lawful transfer of personal data to the other for the purposes of each party fulfilling its obligations under the Contract. Neither party will use or disclose personal data provided to it by the other in connection with the Contract other than for the purpose of fulfilling the Contract.
12. **Intellectual Property Rights**
- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) will be owned by J&P.

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- 12.2 J&P grants to the Customer, or will procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 12.3 The Customer will not sub-license, assign or otherwise transfer the rights granted by clause 12.2.
- 12.4 The Customer grants J&P a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to J&P for the term of the Contract for the purpose of providing the Services to the Customer.
13. **Limitation of Liability**
- 13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 13.2.1 death or personal injury caused by negligence;
- 13.2.2 fraud or fraudulent misrepresentation;
- 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 13.2.4 defective products under the Consumer Protection Act 1987.
- 13.3 Subject to clause 13.1, J&P will under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.
- 13.4 Subject to clause 13.1, J&P's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will in no circumstances exceed the price of the Goods and/or Services ordered.
- 13.5 J&P has given commitments as to compliance of the Goods and Installation Services with relevant specifications in clauses 6.2 and 8.1. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 This clause 13 will survive termination of the Contract.
14. **Termination**
- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing to do so;
- 14.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

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- 14.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 14.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 14.2 Without affecting any other right or remedy available to it, J&P may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 14.2.2 there is a change of Control of the Customer.
- 14.3 Without affecting any other right or remedy available to it, J&P may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and J&P if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or J&P reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of Termination

- 15.1 On termination of the Contract:
 - 15.1.1 the Customer will immediately pay to J&P all of J&P's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, J&P will submit an invoice, which will be payable by the Customer immediately on receipt;
 - 15.1.2 the Customer will return all of J&P Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then J&P may enter the Customer's premises and take possession of them. Until they have been returned, the Customer will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination or expiry of the Contract will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry will continue in full force and effect.

16. General

16.1 Dispute resolution.

- 16.1.1 An Expert is a person appointed in accordance with this clause 16.1 to resolve any disagreement between the parties relating to (i) the Specification of the Goods and/or Services and (ii) whether the Goods comply with the warranty at clause 6.2. Where under the Contract a party wishes to refer a matter to an Expert, the parties will first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment. If the parties are unable to agree on an Expert or the terms of the Expert's appointment within 7 days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a suitable and appropriate Expert with the required expertise. The Expert is required to prepare a written decision including

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reasons and give notice of the decision to the parties within a maximum of 3 months of the matter being referred to the Expert. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required, then either party may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise and this clause 16.1 will apply to the new Expert as if they were the first Expert appointed. Each party will with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make submissions to the Expert. The Expert will act as an expert and not as an arbitrator. The Expert will determine the matters referred to the Expert under the Contract. The Expert's written decision on the matters referred to the Expert will be final and binding on the parties in the absence of manifest error or fraud. All matters concerning the process and result of the determination by the Expert will be kept confidential among the parties and the Expert. Each party will act reasonably and co-operate to give effect to the provisions of this clause 16.1 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

16.1.2 If any other dispute arises in connection with the Contract or these Conditions, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with CEDR's Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR notice**") to the other party the dispute, referring the dispute to mediation. If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.

16.1.3 For the avoidance of doubt, clause 16.1 will not prevent J&P from immediately initiating court proceedings to seek any interim relief (including injunctive relief) or take advantage of any applicable time limitation.

16.2 **Confidentiality.** Each party undertakes that it will not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.2. Each party may disclose the other party's confidential information (i) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each party will ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16.1. No party will use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

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- 16.3 **Force Majeure.** J&P will not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 6 weeks, the Customer may terminate the Contract by giving 30 days written notice to J&P.
- 16.4 **Assignment and other dealings.** J&P may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 16.5 **Notices.** Any formal notice given to a party under or in connection with the Contract will be in writing and will be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any such formal notice will be deemed to have been received if delivered by hand, at the time the notice is left at the proper address and if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting. This clause 16.5 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. A notice given under the Contract is not valid if sent only by email.
- 16.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.6 the parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 16.7 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.
- 16.8 **No partnership or agency.** Nothing in the Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.9 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract. Nothing in this clause 16.9 will limit or exclude any liability for fraud.
- 16.10 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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- 16.11 **Variation.** Except as set out in these Conditions, no variation of the Contract will be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.12 **Governing law and Jurisdiction.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.