



# Jamie Knight

Jamie Knight Carpentry & Joinery Ltd,

Company registration number: 9543510

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Kingsditch trading Estate,

Cheltenham, Jamie Knight Handmade kitchens TCs.doc

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## Terms and Conditions

The Customer's attention is particularly drawn to the provisions of *clause 11 (Limitation of liability)*.

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

#### 1.1 Definitions:

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

**"CAD"** means the computer aided design proposal of the Goods, created by the Supplier following consultation with the Customer, comprising one hard copy and an electronic version in PDF format of:

- 5 rendered three-dimensional images; and
- 1 two-dimensional plan.

**"Commencement Date":** has the meaning given in *clause 2.2*.

<b>"Conditions":</b>	these terms and conditions as amended from time to time in accordance with <i>clause 15.8</i> .
<b>"Contract":</b>	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
<b>"Customer":</b>	the person or firm who purchases the Goods and/or Services from the Supplier.
<b>"Delivery Location":</b>	has the meaning given in <i>clause 4.1</i> .
<b>"Deposit"</b>	has the meaning given in <i>clause 8.4.2(a)</i> .
<b>"Force Majeure Event":</b>	has the meaning given in <i>clause 14</i> .
<b>"Goods":</b>	the cabinets, shelving, kitchen units and other goods (or any part of them) set out in the Order.
<b>"Installation Works"</b>	The installation works carried out by the Supplier in respect of installing the Goods in the Works Location.
<b>"Intellectual Property Rights":</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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, 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.
<b>"Order":</b>	the Customer's order for the supply of Goods and/or Services, as set out the Customer's written acceptance of the Quotation.
<b>"Quotation"</b>	Means the Supplier's quotation comprising the Specification and the pricing in respect of the Goods and Services.
<b>"Services":</b>	the Installation Works and other services supplied by the Supplier to the Customer as set out in the Specification.
<b>"Specification":</b>	any specification for the Goods and/or Services, including any CAD, relevant plans or drawings, that are included in the Quotation or otherwise agreed in the Order.
<b>"Supplier":</b>	Jamie Knight Carpentry & Joinery Ltd registered in England and Wales with company number 09543510.
<b>"Supplier Materials":</b>	has the meaning given in <i>clause 7.1.8</i> .

“**Works Location**” has the meaning given in clause 7.1.5(a).

**Interpretation:**

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes fax and email.

**2. BASIS OF CONTRACT**

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 Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues 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 shall not form part of the Contract or have any contractual force.

2.4 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 trade, custom, practice or course of dealing.

2.5 Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.6 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. GOODS**

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in

connection with the Supplier's use of the Specification. This *clause 3.2* shall survive termination of the Contract.

- 3.3 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.4 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order confirmation email sent by the Supplier to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.5 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Goods and/or Services, and the Supplier shall notify the Customer in any such event.
- 3.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

#### **4. DELIVERY OF GOODS**

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to accept delivery of the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
  - 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - 4.5.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance) in the sum of £50 plus VAT per day.
- 4.6 If 30 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting storage costs in accordance with clause 4.5.2 and selling costs, account to the

Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

## 5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery ("**warranty period**"), the Goods shall:
- 5.1.1 conform in all material respects with the Specification;
  - 5.1.2 be free from material defects in design, material and workmanship;
  - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 5.1.4 be fit for any purpose held out by the Supplier.
- 5.2 Subject to *clause 5.3*, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- 5.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in *clause 5.1*; and
  - 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in *clause 5.1* if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with *clause 5.2*;
  - 5.3.2 the defect arises because the Customer failed to follow the Supplier'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;
  - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this *clause 5*, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in *clause 5.1*.
- 5.5 Notwithstanding the provisions of *clause 5.1* to *clause 5.4* the Supplier shall not be liable for:
- 5.5.1 knots and blemishes up to a size of 5mm in diameter in prime natural wood and knots and blemishes up to a size of 30mm in diameter in joinery grade material;

- 5.5.2 minor defects that may appear visible in certain lighting and/or angles but do not affect the overall appearance and function of the Goods;
  - 5.5.3 minor variations in the Sayerlack branded paint colours used where colour matches have been sought in accordance with the paint swatch samples specified in the Order. Each paint swatch shall be charged at £55 plus VAT;
  - 5.5.4 gaps of up to 3mm in size where the Goods are fitted to uneven walls, floors and/or ceilings. Decorators caulk may be used to fill in gaps in excess of this size at a cost of £30 plus VAT in respect of each alcove, architrave and/or separate work piece;
  - 5.5.5 the removal, or procuring the removal, of any waste and/or refuse materials associated with the Goods and/or Services from either the Delivery Location or the Works Location.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier 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.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - 6.3.2 notify the Supplier immediately if it becomes subject to any of the events listed in *clause 12.2.2* to *clause 12.2.3*.
  - 6.3.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in *clause 12.2.2* to *clause 12.2.3*, then, without limiting any other right or remedy the Supplier may have the Supplier may at any time:
    - (a) require the Customer to deliver up all Goods in its possession; 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.

## 7. CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall:
- 7.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - 7.1.2 co-operate with the Supplier in all matters relating to the Services;

- 7.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to deliver the Goods and to provide the Services including (without limitation) removing gates, doors, windows and or fence panels where necessary as specified in the Specification;
- 7.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 7.1.5 prepare the Customer's premises for the supply of the Services, including (without limitation):
- (a) ensuring the pathway to the location in which the Supplier will be carrying out the Installation Works ("**Works Location**") is flat and unobscured;
  - (b) removing any breakable objects that are in and/or around the vicinity of the Works Location;
  - (c) clearing the Works Location of any portable furniture and furnishings to provide enough room for the Supplier to carry out the Installation Works;
  - (d) covering all furniture and furnishings that have not been removed in accordance with clause 7.1.5(c) and that may be exposed to dust as a result of the Installation Works;
  - (e) adequately covering the floors of the Works Location to avoid soiling of the flooring that may occur during the Installation Works;
  - (f) ensuring that the Works Location is suitably and adequately heated so as to (i) enable suitable acclimatisation of the Goods to the extent that the Goods reach a viable equilibrium moisture content before commencement of the Installation Works, and (ii) prevent paint cracking that may occur as a result of a cold installation; and
  - (g) ensuring there is adequate ventilation of the Works Location and, where windows are lockable, the Customer shall provide the Supplier with a key or ensure that such ventilation as is required is procured and/or possible.
- 7.1.6 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;
- 7.1.7 comply with all applicable laws, including health and safety laws;
- 7.1.8 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's instructions or authorisation; and
- 7.1.9 comply with any additional obligations as set out in the Specification;

- 7.1.10 be responsible, at its own cost, for procuring the removal, collection and/or disposal of all waste and refuse associated with the Goods and Services;
  - 7.1.11 to the extent it is agreed between the parties and set out in the Order, procuring that such subcontractors (including, without limitation, plumbers, gas engineers and electricians) carry out any services required to be performed in connection with the Services with reasonable skill and care, work in collaboration with the Supplier and complete any such services in accordance with any timetable set out in the Order or otherwise agreed between the parties;
  - 7.1.12 on completion of the Installation Works, carry out a snagging exercise in respect of the Goods and the Installation Works, following which the Customer shall, where necessary and within 5 Business Days of completion of the Installation Works, notify the Supplier of any snagging requiring attention to agree timescales for the Supplier to return and make good such snagging;
  - 7.1.13 where requested by the Supplier, return any packaging materials provided with the Goods at the Supplier's expense or make any such packaging materials available for collection at such times as the Supplier shall reasonably request; and
  - 7.1.14 comply with any instructions provided by the Supplier in relation to the care of the Goods after completion of the Services.
- 7.2 Where the Customer engages subcontractors in accordance with clause 7.1.10, the Supplier shall not be responsible for making cuts for the purposes of positioning pipes, cables and/or any other ancillary items relating to any utility or other services which are being installed or adapted by such subcontractors.
- 7.3 If the Supplier'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**"):
- 7.3.1 without limiting or affecting any other right or remedy available to it, the Supplier shall 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 the Supplier's performance of any of its obligations;
  - 7.3.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this *clause* 7.2; and
  - 7.3.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 8. CHARGES AND PAYMENT

- 8.1 The price for Goods:
  - 8.1.1 shall be the price set out in the Order; and

- 8.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which is charged at £300 plus VAT, unless otherwise stated in the Order.
- 8.2 The charges for Services shall be calculated on a fixed price basis where provided in the Order. Where any Services are provided which are not on a fixed price basis or are not included in the Specification, then such Services will be provided on a time and materials basis as set out below unless otherwise agreed:
- 8.2.1 the charges shall be calculated in accordance with the Supplier's hourly fee rates of £35 plus VAT;
- 8.2.2 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier 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 the Supplier for the performance of the Services, and for the cost of any materials.
- 8.3 The Supplier reserves the right to:
- 8.3.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (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 date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 8.3.2 revoke any discounts or special rates agreed with the Customer in the event of late or non-payment of the Supplier's invoice(s) that have been submitted in accordance with clause 8.4.2;
- 8.4 In respect of the Goods and Services, the Supplier shall invoice the Customer as follows:
- 8.4.1 100% of the total costs in respect of the CAD at the time of contracting with the Supplier to produce the CAD;
- 8.4.2 Where the Customer engages the Supplier to carry out the production and Installation Works:
- (a) 25% of the total costs in respect of the production of the Goods and the Installation Works ("**Deposit**") at the time of contracting with the Supplier to carry out the production and Installation Works;
  - (b) 65% of the total costs in respect of the production of the Goods and the Installation Works 10 Business Days before the Supplier is due to commence the production of the Goods; and
  - (c) 10% of the total costs in respect of production of the Goods and the Installation Works on completion of the Installation Works.

- 8.5 The Customer shall pay invoices submitted by the Supplier in full and in cleared funds to a bank account nominated in writing by the Supplier as follows:
- 8.5.1 invoices submitted in accordance with clause 8.4.1, clause 8.4.2(a) and clause 8.4.2(b) within 7 days of the date of the invoice; and
- 8.5.2 invoices submitted in accordance with clause 8.4.2(c) before the later of:
- (a) 7 days of the date of the invoice; or
- (b) 24 hours of completion of any snagging works which have been notified to the Supplier in accordance with clause 7.1.12, and
- time for payment shall be of the essence of the Contract.
- 8.6 Amounts agreed in respect of clause 8.4.1 shall include up to 2 minor amendments to the overall design in the CAD, specified by the Customer. For the purpose of this clause minor amendments to the CAD may include an additional cupboard, drawer or shelf being inserted, or removed as the case may be.
- 8.7 Significant changes to the overall design in the CAD shall be charged at the Supplier's hourly rate of £35 plus VAT. Any additional hard copies of the CAD may be requested by the Customer and each copy shall be charged at a cost of £35 plus VAT.
- 8.8 Where the Customer contracts with the Supplier for the supply of Goods and Services and the total costs in respect of production and the Installation Works is in excess of £10,000 plus VAT 50% of the initial costs relating to the CAD shall be deducted from the final invoice. For the avoidance of doubt additional charges incurred in accordance with clause 8.7 shall not be deductible from the final invoice.
- 8.9 Where the Customer cancels this Contract:
- 8.9.1 not less than 60 days before the date that the Supplier is due to commence production of the Goods, amounts paid in respect of the Deposit shall be refundable, PROVIDED ALWAYS that the Supplier shall be entitled to deduct from the Deposit the greater of an amount equal to 10% of the Deposit or £500;
- 8.9.2 less than 60 days before the date that the Supplier is due to commence production of the Goods, all amounts paid in respect of the Deposit shall be non-refundable,
- to cover the Supplier's administrative costs, materials and loss of contract.
- 8.10 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.11 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under *clause 12* (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this *clause 8.11* will accrue each day at 4% a year above the Bank of

England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 8.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 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) shall be owned by the Supplier.
- 9.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use and modify the CAD and to sub-licence such use to any alternative supplier to carry out any work in respect of producing and/or installing the design in the CAD at the Customer's premises.. The Customer shall not otherwise sub-license, assign or otherwise transfer the Intellectual Property Rights in the CAD.
- 9.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **10. DATA PROTECTION**

- 10.1 The Supplier will only use the Customer's personal information as set out in the Supplier's Privacy Policy.

## **11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

### **GENERAL LIABILITY**

- 11.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 11.1.1 death or personal injury caused by negligence;
  - 11.1.2 fraud or fraudulent misrepresentation; and
  - 11.1.3 breach of the terms implied by section 17 of the Consumer Credit Act 2015, 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).
- 11.2 Subject to *clause 11.1*, the Supplier's total liability, including in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract, to the Customer shall not exceed an amount equal to two times the sums paid by the Customer under the Contract.
- 11.3 Subject to *clause 11.1*, the following types of loss are wholly excluded by the Supplier:
- 11.3.1 loss of anticipated savings.
  - 11.3.2 loss of use or corruption of software, data or information.

- 11.3.3 indirect or consequential loss.
- 11.4 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in *clause 5*. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 and 5 of the Supply of Goods and Services Act 1982 are, where applicable, to the fullest extent permitted by law, excluded from this agreement.
- 11.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

#### **SPECIFIC LIABILITY**

- 11.6 Where the Customer instructs his/her own subcontractors in accordance with clause 7.1.10, the Supplier shall not be liable for:
- 11.6.1 any damage arising out of positioning errors made by such subcontractors in respect of works carried out in accordance with clause 7.1.10; or
- 11.6.2 any damage to the Customer's premises and/or the Goods caused by such subcontractors.
- Any reparation works carried out by the Supplier that are required to make good any damage caused in connection with this clause 11.6 shall be charged to the Customer at an hourly rate of £25 plus VAT, on the basis of the reparation works being carried out by one person.
- 11.7 Where the Customer has not provided the Supplier with a clear specification or accurate drawings, the Supplier will use its preferred methods in respect of joining materials, detailed finishes and other tasks and the Supplier may make such adjustments to the design as are necessary and/or appropriate to achieve adequate functionality of the finished pieces.
- 11.8 The Supplier shall not be liable for any warping of the Goods arising as a result of the Customer's failure to comply with clause 7.1 and any reparation works required to remedy such damage will incur further charges.
- 11.9 If any minor defects (such as paint chips, marks or scratches to the Customer's wall decoration) have occurred during the Installation Works the Customer shall notify the Supplier no less than 3 Business Days prior to the date scheduled for the Supplier to return to carry out snagging works and the Supplier shall make good any such minor defects at no additional cost to the Customer PROVIDED ALWAYS such reparation works shall not extend to any damage to wallpaper.
- 11.10 The Supplier shall use reasonable endeavours to maintain the cleanliness of the Customer's premises during the Installation Works, but the Supplier shall not be liable for cleaning or procuring the cleaning of the Customer's premises on completion of the Installation Works. Additionally the Supplier shall not be liable for any costs, expenses or fees associated with the cleaning of the Customer's premises.
- 11.11 This *clause 11* shall survive termination of the Contract.

## 12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than one month's written notice.
- 12.2 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:
- 12.2.1 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 10 days after receipt of notice in writing to do so;
  - 12.2.2 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), 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 in the case of the Customer being an individual, that party being the subject of bankruptcy proceedings, or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 12.2.3 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 12.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier 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 12.2.2 to clause 12.2.3*, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 13. CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Contract:
- 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 13.1.2 the Customer shall return all of the Supplier Materials and Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 13.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including

the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination save that where the Contract is terminated as a result of the Customer's breach of any terms of the Contract, clause 5.1 and clause 5.2 shall immediately cease to have effect.

- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

#### **14. FORCE MAJEURE**

The Supplier shall 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 events, circumstances or causes beyond its reasonable control.

#### **15. GENERAL**

##### **15.1 Assignment and other dealings**

15.1.1 The Supplier 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.

15.1.2 The Customer shall 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 without the prior written consent of the Supplier.

##### **15.2 Notices.**

15.2.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service:
  - (i) in the case of the Supplier, at its registered office; and
  - (ii) in the case of the Customer, at the address specified in the Order; or
- (b) sent by email to the email address used and/or specified in the Order.

15.2.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (b) 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 or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this *clause 15.2.2(c)* business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- 15.2.3 This clause 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.
- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. If any provision or part-provision of this agreement is deemed deleted, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise 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 prevent 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 prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **No partnership or agency.** Where the Customer is a business, nothing in the Contract is intended to, or shall 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.
- 15.6 **Entire agreement.**
- 15.6.1 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.
- 15.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall 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 shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 15.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 15.7 **Third parties rights.**
- 15.7.1 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.
- 15.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.9 **Governing law.** 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 shall be governed by and construed in accordance with the law of England.

- 15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall 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.