

Supply Terms and Conditions

Mezzanine and Storage Equipment Limited's Standard Terms and Conditions for the Supply of Goods and Services by Mezzanine and Storage Equipment Limited to a Customer.

The customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

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

Conditions: the terms and conditions set out in this document.

Contract: the contract between the Supplier and the Customer for the sale of the Goods by the Supplier and purchase of the Goods by the Customer and formed when the Customer issues its Order and the terms of these Conditions shall apply.

Customer: the person or firm who purchases the Goods and services from the Supplier.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods, works or services (or any part of them) set out in the Supplier's quotation or the Specification.

Order: the Customer's order for the Goods which shall be either the Customer's issue of any of the following which demonstrates their intention to be bound (a) a purchase order form or (b) the customer's written acceptance of the Supplier's quotation as the case may be and such communication is capable of being given in email or fax correspondence or such other customary manner in which the Customer intimates that they accept the Supplier's quotation and intend to be bound to a Contract for the provision of the Goods.

Relevant Milestone: means each and every milestone relevant for determining when the Supplier shall be entitled to apply for payment as either set out in clause 7 or referenced in the quotation, generally an advanced deposit with the Order, a second payment prior to delivery of the Goods and a final balancing payment on completion of the delivery of the Goods.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier as set out in a quotation.

Supplier: Mezzanine and Storage Equipment Limited (registered in England and Wales with company number 10899394).

1.2 **Construction.** In these Conditions, the following rules apply:

- (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 or permitted assigns.

- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing or written** includes faxes [and emails].

2. BASIS OF CONTRACT

- 2.1 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 or are written on their purchase order or other stationary.
- 2.2 Save when the circumstances in 2.5 exist, the Contract shall be formed when the Customer issues an Order in response to a written quotation from the Supplier at which point the Contract shall come into existence and these Conditions apply.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 A quotation for the Goods given by the Supplier shall constitute its offer to supply the Goods. A quotation shall only be valid for a period of 60 Business Days from its date of issue. In the event that the Customer accepts a quotation after the expiry of this period, this constitutes an offer, which the Supplier can accept by issue of an order acknowledgement, intimating that it wishes itself to be bound or sends an invoice.

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 and other reasonable professional costs and expenses) suffered or incurred by the Supplier 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 reserves the right to amend the specification if required by any applicable statutory or regulatory requirements or out of necessity due to constraints of the building or premises on which the Goods are to be sited.

4. DELIVERY

- 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 Goods' arrival at the Delivery Location.

- 4.3 Any dates quoted for delivery 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 in the cheapest market available, 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 or any other instructions that are relevant to the supply of the Goods.

- 4.5 If the Customer fails to take or accept delivery of the Goods within three 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 the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.6 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

- 4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.8 The Customer acknowledges the bespoke nature of the Goods. If the Customer fails to accept delivery, the Customer shall be liable for the full Price of the Goods, less any costs of re-use of the materials, if such materials are capable of being re-used, less the reasonable costs of storage of the materials.

5. QUALITY

- 5.1 The Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (**warranty period**), the Goods shall:
- (a) conform in all material respects with their description and the Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
 - (d) where the Goods involve installation that installation shall be conducted in a good and workmanlike way

but nothing in these Conditions shall be taken to impose a fitness for purpose obligation. The Supplier's obligation is to use reasonable skill and care only.

- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier 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;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods or the cost of repair of the Goods (whichever is the lesser amount). The Supplier's liability is limited to the reasonable cost of repair and renewal only and all other loss and damage including direct and consequential loss are excluded.

- 5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and

maintenance of the Goods or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

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 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.

5.6 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 earlier of:

- (a) 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; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and

- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - (a) it does so as principal and not as the Supplier's agent; and
 - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:
 - (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) 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. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price as set out in the Supplier's quotation together with any variations agreed and if no price is quoted, the price set out in the Supplier's published price list (available on request) in force as at the date of delivery or in the absence of any agreement to the price or a variation thereto shall be such reasonable costs that the Supplier is capable of demonstrating it has expended together with a 25% increase to account for its overhead and for its profit costs.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 2 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - (a) any factor beyond the Supplier's control (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 or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 Unless otherwise stated, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). 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 Goods.

7.5 The assessment and entertainment dates for when the Supplier is permitted to apply for payment shall be the date of the occurrence of the Relevant Milestone that is set out in the quotation or as set out below. Subject to 7.7, the due date for each Relevant Milestone payment shall be the later of either the date of (a) the occurrence of that milestone or (b) the issue by the Supplier of its invoice which shall set out the notified sum required to be paid and the VAT. Typically the quotation specifies a percentage of the total price (100%) due in three installments and the application dates, due dates and final dates that are established in this clause 7 are shown in the below table by way of example but in the event of conflict between the terms and the table, the terms apply:

Relevant Milestone Number	Assessment Event	Percentage of the Price	Due Date	Final Date
Relevant Milestone 1	On issue of the Order by the Customer	35%	The date that is the later of the date of occurrence of the Assessment Event or Issue by the Supplier of its Invoice	5 Business Days from the Due Date
Relevant Milestone 2	Delivery of Goods to the Delivery Location	35%	The date that is 5 Business Days prior to the Anticipated Delivery Date (see 7.8)	The date that is the Business Day before the Anticipated Delivery Date
Relevant Milestone 3	On completion of delivery of the Goods to	30%	Later of the Assessment Event or Issue	5 Business Days from the Due Date

	the Delivery Location		by the Supplier of its Invoice	
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The Relevant Milestones are likely to be expressed as follows, but will be more particularly set out in the quotation :

- (a) Milestone Payment 1 which is an initial deposit on issue of the Order by the Customer which shall be 35% unless this is expressed as a different % figure in the quotation in which case that % applies. This is the deposit with Order milestone.
- (b) Milestone Payment 2 which is a second payment on or prior to the delivery of the Goods to the Delivery Location which shall be 35% unless this is expressed as a different % figure in the quotation in which case that % applies .
- (c) Milestone Payment 3 which is a final payment on completion of the delivery of the Goods at the Delivery Location in accordance with the Specification which shall be 30% unless this is expressed as a different % figure in the quotation in which case that % applies.

Milestone Payments 1 and 2 are forward payments of work to be done and goods provided whereas Milestone Payment 3 is for retrospective works completed. All amounts due under the Contract are to be assessed and ascertained by reference to the stated milestone and the % that is required to be paid on the occurrence of that milestone as stated in the quotation.

7.6 Subject to 7.7 and 7.8 (which applies in respect of Milestone Payment 2 only) the final date for payment shall be 5 Business Days from the due date for payment (determined in accordance with 7.5 and 7.7). On or before the final date for payment the Customer shall pay the invoice in full and in cleared funds. Payment shall be made to the bank account nominated in writing by the Supplier or specified on the invoice. Owing to the Goods in question being comprised of significant payments to third parties and materials costs fluctuations time for payment is a significant term of the Contract. Time of payment is of the essence and the provisions of 7.12 and 7.13 shall apply to non-payment by the Customer of payment by the final date for payment.

7.7 In respect of Milestone Payment 2, due to the Goods being both bespoke and intended to be physically annexed to the Customer's land, as part of its security requirements it is necessary for the Supplier to ensure that a proforma / advanced payment is made in respect of the Goods before their delivery to site. Therefore, although the date of assessment and milestone trigger for payment shall be delivery of the Goods to site, the Supplier shall be entitled to issue its invoice at any point prior to the date of delivery of goods to site. The due date for payment shall be the date that is 5 days before the

date that is the anticipated delivery date and the final date for that particular payment shall be the Business Day prior to the anticipated delivery of goods to site. Non payment of this milestone shall entitle the Supplier to withhold delivery of the Goods, and together with other entitlements it may have under the Contract, to the cost of storage, and redelivery.

- 7.8 For the purposes of clause 7.7 the anticipated delivery date shall be either the date that is otherwise notified as the date of delivery by the Supplier to the Customer within 10 Business Days of the Order or in the absence of such notification the anticipated delivery date is the date that is the anniversary of 5 calendar weeks from the date of the Customer's Order.
- 7.9 Should the Customer not consider the amount that is claimed as due as set out in the invoice is not in fact due or has been incorrectly calculated then the Customer can issue the Supplier with a notice to deduct or pay less and which notice shall be issued up to 2 days prior to the final date for payment. Such notice shall provide reasons and a calculation of the revised amount that is due. This will then be the amount that is payable on the final date for payment.
- 7.10 Without prejudice to any other rights available under these Conditions or at law if the Customer fails to make the relevant payment to the Supplier under the Contract by the final date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.11 Save where clause 7.9 applies the Customer shall 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). The Supplier 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 the Supplier to the Customer.
- 7.12 In the event of non-payment of any amounts due by the final date for payment, without prejudice to any remedies that are available to the Supplier at law or under statute it shall be entitled to suspend further performance of any work, services or delivery of Goods. Such right to suspend performance shall operate at any point following the final date for payment determined in accordance with these Conditions and be operable by a notice (capable of being given by email) to the Customer confirming that the Customer has failed to pay the sum due at the final date for payment and wishes to suspend performance until satisfactory payment has been made. Should the Customer make full payment following such suspension, the Supplier shall recommence performance but the Customer shall be liable for such increased cost of resuming the works or delivery of the Goods as may be notified by the Supplier and the time for performance shall be similarly extended by the period of suspension. In the event that such suspension continues for a period of 21 days from the date of issue of the notice to suspend performance, the Supplier may by issue of a further notice bring the Contract

to an end which is capable of being exercised at any point after the expiry of the 21 day period and recover all loss, damage, costs, expenses, loss of profit and other opportunity arising as a consequence. If the Supplier does suspend performance in circumstances where they were not entitled to suspend, then they shall not be entitled to any cost of resuming the works and the Customer shall be entitled to deduct a £100 per day or part day as a liquidated amount for each day or part day where suspension occurred but should not have but the Customer shall not be entitled to regard the occurrence of an incorrect suspension as deeming the Contract as repudiated or otherwise at an end. In the event of suspension the Customer can make full payment to the Supplier and by notice require the Supplier to resume the works or provision of Goods within the next 3 days.

- 7.13 The Customer shall fully indemnify the Supplier against all the costs and expenses incurred by the Supplier in pursuing any claims under the Contract or incurred in recovering any sums that ought to be payable by the Customer to the Supplier under the Contract or the Order and or in circumstances where the Customer has failed to pay any part of the amount which is due and or final. For the avoidance of doubt this shall include the cost of management time incurred together with any costs of legal representatives, experts or arbitrators, adjudicators, expert assessors or the courts.

8. TERMINATION AND SUSPENSION

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

- 8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer];
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the

Customer with one or more other companies or the solvent reconstruction of the Customer;

- (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of any part of the services, works or the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the final date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatever 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; and
- (b) the Supplier'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, shall in no circumstances exceed 25% of the price of the Goods.

10. FORCE MAJEURE

The Supplier shall not be liable for performance under this Contract where an event occurs during the performance of the Contract which event by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) 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. 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.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall 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 shall prevent or restrict the further exercise of that or any other right or remedy.

- 11.5 **Consents.** The Customer shall have full responsibility for obtaining any consents, permissions, licences or approvals for the works or supply or installation of the Goods from any third parties or statutory undertaker.
- 11.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 11.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 11.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).