

# Standard Conditions of Sale

## Application of Terms

1. These Conditions together with all of the terms and qualifications set out in the Company's Quotation form the entire contract between the Company and the Client to the exclusion of all other terms and conditions.
2. Any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document are similarly excluded.
3. All orders for Goods/Works/Services shall be deemed to be an offer by the Client to purchase pursuant to these conditions.
4. Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
5. If you are a consumer (as defined in UK Consumer Right Act 2015 Section 2 (3)) no provision of these terms shall seek to vary your rights under the law.

## Definitions

6. "Agreement" – Means the entire agreement between the parties which includes these Conditions together with all of the terms and qualifications set out in the Company's Quotation.
7. "Client" – Means the legal entity with whom the Company has entered into the Agreement for the Goods/Works/Services.
8. "Company" – Prospec Limited, a company incorporated in England & Wales with company number 01311949 Registered Head Office: Tel: 01709 377147
9. "Conditions" – Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company.
10. "Delivery Date" – Means the date specified by the Company when the goods are to be delivered to or collected by or on behalf of the Client and/or works performed on site.
11. "Goods" – Means the articles and or equipment which the Client has contracted to buy from the Company.
12. "Price" – Means the price for the Goods and services excluding UK Value Added Tax and any applicable local taxes or withholding tax.
13. "Quotation" – Means the formal offer or statement provided by the Company outlining the terms and conditions under which specific Goods, Services, or Works shall be supplied.
14. "Services" – Means the services (including provision of labour) which the Client has contracted to buy from the Company.
15. "Scope of Works" – Means the estimate and/or quotation and/or schedule of works in relation to the Works as may be varied or amended from time to time.
16. "Works" – Means any installation work which the Client has contracted to buy from the Company.

## Third Parties

17. Nothing in the Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
18. The Company reserves the right to employ such sub-consultants, sub-contractors and specialists as it deems necessary to undertake its contractual obligations.
19. Where any other company, person or persons are engaged by the Company on the Client's behalf, the Company shall have no liability whatsoever for any negligence, default or omission by such person or persons.

## Terms Validity

20. In case of conflict or variance between these Conditions and any conditions provided by or referred to by the Client the performance of an order placed by the Client or any part thereof shall be deemed to be an acceptance of all terms and conditions thereof including those set herein. Any terms and conditions contained in any order or acceptance or contract submitted by the Client, shall not in any way affect these Conditions and are at variance with these Conditions, except where and only in respect of any terms and conditions expressly agreed in writing by the Company. To the extent that any terms and conditions purport to cancel these Conditions they shall be ineffective and shall not be deemed to constitute a counteroffer for the purpose of interpretation of the terms of any resulting contract.
21. The Quotation is valid for 30 days from date of issue.
22. Unless specified otherwise, any quotation should be considered as budgetary unless specific statement is made of a 'fixed sum' and specific asset list and survey of the works undertaken.
23. All of the Conditions detailed shall apply not only to a specific Quotation, if accepted, but to all order subsequently placed with the Company by or on behalf of the same Client.
24. Quotations are based on all the quantities being supplied, including one of any alternatives offered. Should it be decided to take a smaller quantity or a reduced number of items, then it may be necessary to requote, to take into consideration various costs for the lower quantity and value. The same would apply to requests for additional site visits to install selected quantities or areas of work.
25. Quotations are based on one colour of laminate being chosen. The Company may provide multiple colour configurations but needs to assess the waste factors involved and therefore any cost implications before confirming whether this may have any effect on quoted prices.

26. When selecting colours/patterns of laminate from manufacturers brochures, please ensure that the type selected for cubicles is available in large sheet sizes, generally 3660mm long x 1525mm wide. Other sheet sizes may not be suitable and could increase the waste factor, which may result in additional costs. Quotations are normally based on Formica solid grade laminates unless otherwise specified. Other laminate manufacturers products may be more expensive.
27. All builder's work and grounds should be prepared and ready to receive the specified systems in accordance with standard or detailed drawings.
28. No allowance has been made and no responsibility shall be borne by the Company for the cost of repairing, replacing or associated equipment that has been intentionally, accidentally or maliciously damaged, discharged or removed and that are the subject of a maintenance or other contract between the Company and the Client.

#### **Client's Obligations**

29. The Client shall supply to the Company, promptly and free of charge:
  - a. any instructions, decisions, consents and approvals; and
  - b. any relevant data and information in the possession of the Client or any of his agents, consultants or contractors which the Company may require in order to fulfil its obligations under the Agreement.
30. The Client is responsible for complying with all legal requirements in respect of the use of any Goods/Works/Services and for deciding that the Goods/Works/Services are what is required to meet the purpose for which it is being supplied.
31. The Client warrants that it has the right to have the Goods/Works/Services performed and has obtained all the necessary licenses and approvals. The Client shall indemnify and hold harmless the Company from and against all consequences of any failure in this respect.
32. The Client shall arrange all necessary rights of access to and use of the Client's facilities and sites which the Company may require in order to fulfill its obligations under the Agreement.
33. The Client shall take reasonable steps to ensure that the Company does not sustain any damage or loss to any equipment stored on the Works site.
34. The Client shall indemnify and hold harmless the Company against any liability for any claim for injury, death, loss or damage wholly, partly, directly or indirectly arising out of any breach of these Conditions and/or the Agreement, breach of statutory duty or negligence.
35. The Client shall indemnify and hold harmless the Company against any liability for any claim for injury, death, loss or damage wholly, partly, directly or indirectly arising out of or in connection with any hazardous substance including asbestos which anyone working for or under the direction of the Company is exposed to as a result of any action or negligence of the Client or any of his agents, consultants or contractors.
36. Unless specified otherwise, no allowance has been made for the disposal of redundant equipment or substances, including but not restricted to, ionising isotopes, batteries and redundant/prohibited gases. Any additional costs and legal obligations associated with any such disposal are to be the responsibility of the Client.
37. Unless specifically stated and allowed in the quotation, no provision has been made for the removal of any existing cubicles, lockers or other materials. This work, altogether with suitable preparation for the new material should be carried out by others prior to our arrival on site.
38. The contractor or Client's Representative on site is required to provide off-loading and hoisting facilities, if required, when materials are delivered. The Quotation assumes that there is a reasonable access for the materials to be taken to the installation point.
39. It is the Client's responsibility to provide notification in writing of the location of any pipe's cables, which might be damaged during installation. NO RESPONSIBILITY shall be accepted nor borne by the Company for damage to pipes or cables or for consequential damage to property or fittings unless such written notification has been given, which the Client expressly acknowledges and agrees.
40. Although every care shall be taken when fixing to tile surfaces, the Company shall not accept nor bear any responsibility for damage caused when drilling holes for fixings, which the Client expressly acknowledges and agrees.
41. The site must be ready and all concrete cured tiling to walls and floors and all ceiling work complete prior to the Company installer's arrival on site. Finished walls must be plumb and any special feature tiles, mouldings, skirting, dado or within the height (2000mm) of the panel should be removed or cut away to allow for aluminium wall channels.
42. Continuity of access to site without hindrance of other trades. Installation to run through to completion of the Company's work without interruption.
43. Electric power must be provided by the Client and available at all times, otherwise the Company shall be entitled to invoice additional time should the lack of electricity results in lateness.
44. Lockers - Unless otherwise stated, it is assumed that suitable concrete plinths shall be provided by the Client, onto which the Company can install their lockers.
45. Suspended Systems - Composition of walls to receive fixing position on head beams to be minimum 7n/ mm2.
46. Cabriglant Glass Cubicles
  - 1) It is essential that the construction of walls onto which we are fixing the glass cubicles has a composition of walls to receive fixing position on head beams to be minimum 7n/mm2. The glass weight is 25 kilos/m2.
  - 2) Plasterboard walls must have full length x 75mm wide "timber stud work", securely built into the surrounding partition construction, to take the angle bracket fixing to each divider, end wall and end pilaster panels.
  - 3) Finished walls must be plumb and any special feature tiles, mouldings, skirting, dado or within the height (2000mm) of the glass panel should be removed or cut away to allow for a straight edge of glass. It is not possible to scribe the toughened glass panels around such features.
  - 4) Under certain circumstances we are prepared to hinge doors from solid walls, provided:
    - a) There is a suitable and strong continuous fixing point within the wall structure, as items -1 and 2 above.
    - b) A glass pilaster is fixed to the closing side.
    - c) The wall on which the door is hinged must be plumb and lineable.

47. Bench Seating

- 1) The strength of cantilever bench seating is entirely dependent on the composition of the wall materials. All seating, unless otherwise stated, shall be supported on cantilevered brackets, walls must be dense (solid) concrete blocks to EN771-3, with a minimum COMPRESSIVE strength of 7n/mm<sup>2</sup>.
- 2) The Company shall not accept nor bear any responsibility for damage to underfloor services, if the Company has not been previously advised in writing or by drawings, where applicable, giving details of wall/floor construction with position/depth of any services, which the Client expressly acknowledges and agrees.

48. It is possible that compact grade/solid laminate panels and doors, from any manufacturer, used in shower areas, results in some distortion of the installed panels due to the differing temperatures and humidity on either side of the panels.
49. The Company can only process orders after receiving all necessary information including but not limited to colours of all relevant materials, lock coinage details, approval of working drawings (where applicable), etc. and. All delivery periods shall then commence.
50. Delivery times can vary according to materials chosen, manufacturing, and production loads. The Company would therefore need to discuss the Client's installation programmes to ensure that it can meet your requirements.
51. The Conditions shall apply unless specifically agreed in writing by the Company.

**Confidentiality**

52. Each party shall maintain the confidentiality of any confidential documents and other information received from the other party. Neither party shall release or disclose such documents or information, nor permit release or disclosure, without the express instruction or prior permission of the other party or as obliged to do so by law or by the rules of a recognised security exchange.
53. Any reports, conceptual studies design, and the like are prepared by the Company exclusively for the Client on a confidential basis and are not to be relied on or disclosed to any third party without the written consent of the Company.

**Insurance**

54. Without prejudice to its liability to indemnify the Company, the Client shall maintain appropriate insurances policies (including but not limited to Employer, Public Liability, Professional Indemnity and Contractors All Risk) as are necessary to cover its liability in connection with the Works, and shall ensure that appropriate occupiers' insurance is maintained where applicable.
55. The Company shall maintain appropriate Employers and Public liability insurance policies and shall provide evidence of such insurance upon request.

**Copyright and Ownership of Documents**

56. All rights to any intellectual property acquired or developed in connection with these Conditions and/or the Agreement (whether or not registered or capable of registration) including but not limited to designs, trademarks, patents and copyright in all drawings, reports, calculations, computer data and other documents provided by the Company in connection with the Conditions and/or the Agreement shall remain the property of the Company.
57. The Company may, with the consent of the Client, which consent shall not be unreasonably withheld or delayed, publish alone or in conjunction with any other person articles, photographs or other illustrations relating to the appointment and/or the Goods/Works/Services undertaken by the Company.
58. Any technical specifications prepared or supplied by the Company in relation to the Goods/Works/Services are approximate unless stated otherwise, and the Company reserves the right to change the technical specifications so long as any changes do not substantially affect what we have agreed to supply or the cost or quality thereof.

**Design and Design Liability**

59. In so far as the Goods/Works/Services have been designed by the Company (including any further design required as a result of any variation or change to the Goods/Works/Services), the Company shall have in respect of any defect or deficiency in such design the like liability whether under statute or otherwise as would an Engineer, or, other appropriate professional designer.
60. Should the Client require, for an additional fee, the Company would be prepared to consider entering into warranties with funders, purchasers or tenants of any land, or development for which the Goods/Works/Services have been provided, provided always that such warranties are in a form acceptable to the Company and grant no greater benefits to the beneficiary than those available to the Client under this Agreement.
61. In the event that there is an error in any drawing or document, or inaccuracy in any measurement or quantity provided to the Company by the Client, that would result in an increase to the contract price, and/or shall require additional time adding to the completion date, then upon giving written notice to the Client, the Company shall set out the additional cost and/or time required to progress and complete the Works in order to correct the error and/or inaccuracy. The Client expressly agrees to make payment of the costs and to award the additional time as notified by the Company.

**Delivery of Goods/Works/Services**

62. Unless specified otherwise, it is assumed that the Company would require a minimum of 4 weeks' notice for commencement of works, this may be longer for mobilisation of installation staff or obtaining any specialist equipment/parts.
63. The Company shall require an official order detailing work required and any quotation references, this order should be sent by post to the head office or emailed to sales@prospec.co.uk, prior to being able to commence any works or the placement of any order on the suppliers of the Company.
64. All quotations are strictly NET, in the event of the order being placed through a main contractor which by trade custom is entitled to a 2.5% cash discount the price(s) must be advanced by 1/39th.
65. Unless otherwise set out in the Quotation, any price quoted by the Company is ex-works (Incoterms 2020) and does not include packaging and delivery charges.
66. The Company shall decide how Goods shall be packaged and any special packing requested by the Client shall be charged at the appropriate rate.

67. In the case of Goods shipped the Client must inform the Company promptly of any damage incurred during transit.
68. The risk in any Good the Company sells to the Client shall pass to the Client immediately at the collection due date, or when the Goods leave the Company's premises, except when the Company have agreed in writing to deliver the Goods in which case the risk shall pass to the Client when the Goods are s delivered to the agreed address.
69. The Company shall exercise reasonable skill care and diligence in the provision of the Goods/Works/Services hereunder and shall use reasonable endeavors to deliver/install/perform them in accordance with any programme or delivery dates agreed with the Client, but these shall be regarded as approximate and time shall not be of the essence of the Agreement.
70. If by reason of any agreed variation or of any act or omission on the part of the Client or their servants or agents, or any other matter, the Company is delayed in the performance of the Goods/Works/Services, the Client shall grant the Company from time to time in writing either prospectively or retrospectively such extension of the Date for Delivery and/or Completion as may be reasonable.
71. The Company shall have no liability for any failure or delay in the provision of the Goods/Works/Services or any part thereof resulting from any condition or circumstances that in any way affects the Company's ability to meet any delivery date or programme.
72. The Client shall make all necessary arrangements to take delivery of the Goods/Works/Services whenever they are tendered for delivery.
73. The Company may deliver the Goods/Works/Services by separate consignments or stages.
74. The Client shall indemnify and hold harmless the Company against any failure to make the necessary arrangements to accept delivery of the Goods/Works/Services at the agreed times, or any condition or circumstances that in any way affects the Company's ability to meet any delivery date or programme.
75. If the parties have agreed upon a daily or weekly amount of damages payable to the Company in the event of any extension to the delivery date or programme, such amount shall be as set out in these Conditions.
76. The Customer shall not be entitled to reject any delivery of Goods on the basis that an incorrect volume of Goods has been supplied, provided the volumes are within the tolerances (if any) set out in the Quotation. If no tolerance is set out in the Quotation, the Client shall accept the supplied incorrect volume of Goods.
77. Time of delivery is not of the essence. The Supplier shall use its reasonable endeavors to meet delivery dates, but such dates are approximate only.
78. The Supplier shall not be liable for any delay in or failure of delivery caused by the Client's failure to:
  - (i) make the delivery location available; or
  - (ii) prepare the delivery location in accordance with the Supplier's instructions or as required for delivery and installation of the Goods; or
  - (iii) provide the Supplier with adequate instructions for delivery and installation or otherwise relating to the Goods, or
  - (iv) collect the Goods from the Supplier's premises; or
  - (v) an event of force majeure.
79. If the Client fails to accept delivery of the Goods, the Supplier shall store and insure the Goods pending delivery, and the Client shall pay storage and insurance charges at the Supplier's then-applicable rate, and all costs and expenses incurred by the Supplier in doing so.
80. If 10 Business Days following the due date for delivery/collection, or the last day of the period for delivery/collection of the Goods, the Customer has not made payment in full and taken delivery of or collected the Goods, the Supplier may resell or otherwise dispose of the Goods.  
The Supplier shall be entitled to:
  - a. Invoice and/or deduct storage charges at the Supplier's then-applicable rate; and
  - b. Invoice and/or deduct reasonable costs of resale; and
  - c. Account to the Client for any excess of the resale price over; and
  - d. Invoice the Client for any shortfall of the resale price.
81. The Company shall have no liability for any failure or delay in the provision of the Goods/Works/Services or any part thereof resulting from any damage that would incur to the Goods due to prolonged storage, when the Client has failed to take delivery on time. The Client shall indemnify and hold harmless the Company from all costs incurred as a result of damage caused due to such prolonged storage.

#### Returns

82. No return or replacement shall be considered without the prior written authorisation of the Company.
83. If the Client returns equipment without prior written authorisation, the equipment shall be collected at the Client's expense, which the Client acknowledges and agrees. The Company may notify the Client of it. The Company may hold any such equipment for one month from the date of notice, after which the Company may disposed of the equipment without any liability.
84. Unless the Company have expressly agreed to provide a credit or replacement, whether under the warranty or otherwise, the exchange of returned equipment for credit and/or replacement is entirely at the discretion of the Company, regardless of whether prior authorisation for the return has been granted.

#### Site Operations

85. The Company shall take reasonable precautions and use reasonable endeavors to minimise damage to property, including utilities and other sub-surface obstructions. If, notwithstanding such precautions and endeavors, any such property is damaged, the cost of rectification and all other losses shall be borne by the Client.
86. The Company agrees to uphold and comply to any Health and Safety regulations that are applicable to the Company and the Site of the Works, and the Client agrees to the same.

87. The Client shall be responsible for doing all that is necessary in order enable the Company to execute the Goods/Works/Services in such a manner and at such times so that they are properly and fully integrated with the work of the Client, or as the case may be the employer or the main contractor and/or their respective subcontractors and suppliers and in a manner, which shall not restrict or prohibit the completion of the Goods/Works/Services by the Company.
88. The Client shall apply for, obtain and meet the cost in order to provide such licences and permissions as are required to perform the Works, unless otherwise specified as to be provided by the Company. The Company shall only obtain those necessary licences and permissions required to enable the Works as detailed in the Quotation. The Company shall not be obliged to commence any Works unless and until all necessary licences and permissions required to perform the Works have been obtained.
89. In the event of the Company being delayed or being required to move, alter re-align or re-test any works as a consequence of any failure by the Client to comply with this section or any provision of these Conditions, the Client shall indemnify the Company against any costs, losses, claims or expenses reasonably incurred by the Company as a result.
90. The Client shall make available on the Site for use by the Company for the purposes of the Goods/Works/Services, such supplies of electricity, water, gas, air and other services as may be reasonably required and at no cost to the Company.
91. The Company shall only carry out waste management and disposal that is required during the carrying out of the Works unless otherwise agreed in writing.
92. The Company reserves the right to make a claim for additional costs in the event that they are asked to perform works above 6m above ground level, unless specifically detailed within the scope of works.
93. The Goods/Works/Services shall be deemed to be ready for use, even if there are minor matters outstanding, providing they do not materially affect the use of the Goods/Works/Services.
94. In regard to any tests on Site, the Client shall provide free of charge such fuel, electricity, skilled and unskilled labour, materials, stores, water, apparatus, instruments and feed-stocks as may be required and as may reasonably be requested by the Company to enable the tests to be carried out effectively. Samples of products or materials can be provided by the Company for operational, aesthetic, functionality or fibre testing purposes, upon request.
95. The Client shall provide all of the above at such dates and times as agreed with the Contractor and so as to enable the Company to meet its obligations in accordance with the Agreement.
96. The Client shall indemnify the Company against any failure by the Client to provide all that is necessary to enable the Company to carry out its obligations, on the dates and times agreed, and in the event of any such failure, the Goods/Works/Services shall be deemed to have passed the performance tests for all the purposes of the contract.

#### **Instructions and Variations**

97. The Client may issue any reasonable Client's instruction in writing to the Company in regard to the Goods/Works/Services, including the ordering of any variation thereto.
98. Any oral instruction given to the Company shall have no validity whatsoever unless and until confirmed by the Client in writing and agreed by the Company in writing.
99. The Company shall not be obliged to act upon any written instructions, but shall provide the Client with a written quotation for implementing any variation resulting from the instruction with a view to agreeing the amount payable for the variation in advance.
100. Variations to the Goods/Works/Services shall be valued and determined where appropriate by reference to the rates and prices specified in the Agreement for similar or analogous work. If there are no such rates or prices, or if in the opinion of the Company they are not applicable, then the Company shall be entitled to such sum as is fair and reasonable in all the circumstances.
101. In the event that compliance with an instruction of the Client requires the Company to amend the date of performance of the Goods/Works/Services, then the Company shall advise the Client accordingly with a view to agreeing a revised date for performance.
102. In the event that the parties cannot agree the valuation of any variation, or any revised date for delivery, which would be required in order to accommodate any variation, then the Company shall be entitled to perform the Goods/Works/Services in accordance with the original Agreement and the instruction of the Client shall be of no contractual effect; save that the Company shall be entitled to recover the reasonable cost of preparing the written quotation from the Client.
103. The Company reserves the right to recharge the Client for any increase in materials occurring between the date the Quotation was issued and the date the materials were effectively bought.

#### **Title and Risk**

104. The Goods/Works/Services shall be at the Client's risk as from the collection due date, or when the Goods leave the Company's premises, except when the Company have agreed in writing to deliver the Goods in which case the risk shall pass to the Client when the Goods are delivered to the agreed address.
105. In spite of delivery having been made, property in the Goods/Works/Services shall not pass from the Company until:
  - a. The Client has paid the price, including VAT and/or any other applicable taxes, in full.
  - b. No other amounts whatsoever are owed by the Client to the Company.
106. Until property in the Goods/Works/Services passes to the Client, the Client shall hold the Goods/Works/Services as bailee for the Company. The Client shall store the Goods/Works/Services separate from all other goods in its possession and in a proper manner and in such conditions that adequately protect and preserve them. All such Goods/Works/Services shall be marked in such a way that they are clearly identified as the Company's property.
107. Notwithstanding that all or part of the Goods/Works/Services remain the property of the Company, the Client may sell or use the Goods/Works/Services in the ordinary course of the Client's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Client on the Company's behalf, and the Client shall deal as Principal when making such sales or dealings. Until property in the

Goods/Works/Services passes from the Company, the entire proceeds of any sale or otherwise shall be held in trust for the Company and shall not be mixed with other money or paid into any over-drawn bank account and shall be at all material times identified as the Company's money.

108. The Company shall be entitled to recover the price, including any VAT and/or any other applicable taxes, notwithstanding the property in any of the Goods/Services/Works has not passed from the Company.
109. Until such time as property in the Goods/Works/Services passes from the Company, the Client shall upon request deliver up such of the Goods/Works/Services as have not ceased to be in existence or returned to the Company. If the Client fails to do so the Client hereby grants an irrevocable license (or the local equivalent thereof) to the Company in order to enable the Company to enter upon any premises owned, occupied or controlled by the Client where the Goods/Works/Services are situated and repossess same.

#### **Payment**

110. The Company shall issue invoices or applications on a monthly basis, on dates to be agreed with the Client, or in the absence of such agreement, on the last working day of the month, and the Client shall pay the Company the amounts stated on the invoice including VAT and/or any other taxes where applicable.
111. The due date for payment of each invoice shall be the 14th day following the day of issuance of the invoice.
112. Within 5 days of the due date, the Client shall issue a Combined Payment Notice and Pay Less Notice setting out the amount that the Client considers due. In the event that this amount differs from the amount claimed by the Company in its invoice, and in order for the Client's notice to constitute a valid Combined Payment Notice and Pay Less Notice, the Client must clearly set out sufficient details as to identify exactly the elements of the Company's application or invoice that the Client does not value and a clear explanation of the reasons and calculations
113. In the absence of a Combined Payment Notice and Pay Less Notice, the Client shall pay the full amount as set out in the Company's application or invoice, at or before the due date.
114. The Client may not withhold any payment after the due date for payment of any amount due under these Conditions and the Agreement, unless it has issued a valid Combined Payment Notice and Pay Less Notice and, in any event, if any item or part of an item on an application or invoice is disputed or subject to question by the Client the payment by the Client of the remainder of that application or invoice shall not be withheld.
115. In particular, the Client recognizes that where specialised and/or state of the art equipment is incorporated into the Goods/Works/Services, then any problems with such equipment may take time to resolve whilst manufacturers respond. In such cases, the Client expressly accepts that it is not entitled to withhold payment of any amounts whatsoever whilst manufacturers respond.
116. Any amount remaining unpaid at the final date for payment shall bear interest calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended, and at the relevant reference rate, until such time as they are paid in full. Along with any costs or expenses incurred as a result of having to recover payment that is rightfully due.
117. If the performance of the Goods/Services/Works (including any part thereof which is subcontracted) is affected by any act, omission or default of the Client, its servants or agents, or due to any other reason the amount of any loss and/or expense thereby caused to the Company (whether suffered or incurred by the Company or by other sub-contractors employed by the Company on the Goods/Services/Works from whom claims under similar provisions in the relevant sub-contracts have been or are likely to be received by the Company) shall be notified to the Client and added to the amounts due to the Company.

#### **Suspension**

118. Without prejudice to any other rights and remedies which the Company may have, if the Client fails to make any payment in accordance with the terms of these Conditions and the Agreement, the Company shall give to the Client 3 days' notice stating its intention to suspend the performance of all of its contractual obligations. The notice shall state the ground(s) upon which it is intended to suspend performance.
119. The Company may suspend the further execution of its obligations until such payment is made in full, and suspension under this section shall not be deemed a failure on the part of the Company. The Company shall resume performance of its obligations once it has both received payment from the Client and had the opportunity to properly re-mobilise its resources.
120. If the Company exercises its right to suspend its obligations, it shall then be entitled to have extra time for completing its obligations extended by the addition of a period equivalent to any period of suspension, and the Client shall not be entitled to make any claim whatsoever against the Company for damages, loss and expense, demobilisation, remobilisation or any other consequential costs incurred as a result of the suspension.
121. In the event that the Company exercises its right to suspend its obligations, then the Client shall indemnify the Company against all damages, loss and expense, demobilisation, remobilisation or any other consequential costs incurred as a result of the suspension. All such costs shall be fully borne by the Client in accordance with these Conditions.
122. In the event that the Company exercises its right to suspend its obligations, then the Client shall take all necessary measures in relation to the protection safety and maintenance of the Goods/Works/Services during the suspension at no cost to the Company.

#### **Assignment**

123. The Client shall not assign or otherwise transfer any obligation or benefit under these Conditions and the Agreement without the prior written consent of the Company, which shall not be unreasonably withheld or delayed.

#### **Warranties**

124. The Company warrants that at the time of delivery, the Goods/Services/Works shall correspond to the technical specification incorporated in the Agreement.
125. The Company shall provide one of the following warranties to the Client, within the provisions, terms and limits provided herewith:
  - (1) **A 1-YEAR LIMITED WARRANTY AGAINST DEFECTS:**
    - a) **Scope.** If defects appear in the Goods within a period of one (1) year after the Goods have been delivered or collected, the Company shall – at its absolute discretion – either repair or replace the defective equipment, provided such defects are solely caused by faulty materials or workmanship.

- b) Conditions precedent.** This warranty shall only apply provided that the Client has complied with all of the following:
- (i) the Client promptly notifies the defect in writing to the Company, and
  - (ii) all granules of fractured toughened glass and/or damaged part of the Goods are retained by the Company for inspection, and
  - (iii) the replaced Goods become the property of the Company, and
- c) Limitations.** This warranty shall apply as follows:
- (i) Unless agreed otherwise in writing, any repair or replacement undertaken by the Company shall be carried out between 08:00 and 17:00 - Monday to Friday, excluding public holidays.
  - (ii) For equipment used overseas the Company's obligations are limited to the supply of replacement parts delivered free on-board UK port.
  - (iii) The Client shall be responsible for providing at its expense all access, facilities and equipment (including without limitation lifting equipment) necessary to enable the Company to access equipment manufactured by it, in order to provide any remedy, repair or replacement in respect of that equipment.
  - (iv) The liability of the Company under this warranty shall in no event exceed the purchase price of the individual piece of equipment. Any repair or replacement by the Company shall constitute an entire discharge of the Company's liability, which the Client acknowledges and accepts.
  - (v) Except where the Client is dealing as a consumer as defined in the UK Consumer Right Act 2015 Section 2 (3), the warranties set out herewith are the only warranties which shall be given the Company and all warranties, conditions and other terms implied by statute or common law relating to fitness for purpose, merchantability or condition are, to the fullest extent permitted by law, excluded.
- d) Exclusions.** This warranty shall not apply when:
- (i) the equipment has not been used in accordance with the instructions for maintenance or used provided by the Company, or
  - (ii) the equipment has not adhered to good engineering practices, or
  - (iii) the equipment has not been correctly installed or maintained, or
  - (iv) the equipment has been altered, dismantled, or reassembled, where such alteration, dismantling or reassembling has not been carried out by the Company, or
  - (v) the equipment has been exposed to chemicals or other contaminants effecting the applied finish to the equipment, or
  - (vi) the Client fails to inform the Company within a reasonable period of discovering the defect, or
  - (vii) the Client allows the equipment to continue to be used despite the defect being discovered, or
  - (viii) the Client allows anyone to attempt to repair the equipment without the express consent of the Company, or
  - (ix) defects are a direct cause of fair wear and tear, vandalism, misuse, abuse, or negligence.

**(2) A 10-YEAR LIMITED WARRANTY AGAINST DEFECTS:**

- a) Scope.** If defects appear in the Goods within a period of ten (10) years after the Goods have been delivered or collected, the Company shall – at its absolute discretion – either repair or replace the defective equipment, provided such defects are solely caused by faulty materials or workmanship.
- b) Conditions.** This warranty is subject to the following conditions:
- (i) the maintenance contract must remain continuous throughout the extended warranty period, and
  - (ii) the extended warranty shall expire on the earlier of:
    - the termination or expiration of the continuous maintenance contract; or
    - ten (10) years from the date the Goods were delivered or collected.
  - (iii) This warranty is limited to products installed by the Company.
- c) Reference.** Provisions set out in sections 125 (1) b), 125 (1) c) and 125 (1) d) shall apply to this warranty.

**(3) A 25-YEAR LIMITED WARRANTY AGAINST DEFECTS:**

- a) Scope.** If defects appear in equipment made in solid grade laminate of Marathon Classic, Marathon Conform, Marathon Wet Lockers or Trojan Duct Panels ranges, within a period of twenty-five (25) years after the Goods have been delivered or collected, the Company shall – at its absolute discretion – either repair or replace the defective equipment, provided such defects are solely caused by faulty materials or workmanship and provided the equipment has been installed by the Company. This warranty shall only apply to the main structure of the cubicle, locker or integrated plumbing system, to the exclusion of any movable/consumable components such as but not limited to hinges, locks, keys, door furniture, etc. Any equipment made of glass is expressly excluded from this warranty.
- b) Reference.** Provisions set out in sections 125 (1) b), 125 (1) c) and 125 (1) d) shall apply to this warranty.

**Liability and Expiry of Liability**

126. Nothing in these Conditions seeks to restrict the liability of the Company for death or personal injury.
127. Notwithstanding anything to the contrary contained in these Conditions and the Agreement, any liability whether in contract, tort, negligence, for breach of statutory duty, defects in the Goods, failure to correspond with the specification or suitability for any purpose including the purpose for which such Goods are generally used or any other purpose whether made known to the Company or otherwise (but only to the extent permitted by law), or otherwise, for any claim for loss, injury or damage wholly, partly, directly or indirectly arising out of or resulting from or associated in any way with any failure of the Goods/Services/Works or any breach of contract on the part of the Company, including delay, towards the Client, its Contractor and/or any person(s) claiming through them, shall not exceed and shall be limited to five percent (5%) of the price paid or payable to the Company in accordance with the Agreement for the Goods concerned.
128. Under no circumstance shall the Company be liable for any, loss of profit, loss of production, loss of contracts or opportunity, direct or indirect costs or losses, indirect or consequential costs including liquidated damages, consequential, exemplary or punitive damages, claim arising out of or in connection with pollution and contamination.
129. The Client shall address any complaints or claims regarding any alleged breach of the Agreement directly to the Company. The Client agrees not to bring any claims – whether in contract, tort or for breach of statutory duty (including negligence) – against any individuals who are, or were, at any time, employed by or acting on behalf of the Company. The Client further acknowledges that such individuals are entitled to enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999.
130. Each part of this section “Liability and Expiry of Liability” must be read and construed separately, such that if any part of this section is found to be unreasonable, void or voidable, the remaining parts shall still remain in full force and effect.



131. No action or proceedings under or in connection with these Conditions or the Agreement, whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against the Company after the expiry of 6 years from the date of completion of the Goods/Works/Services, or such earlier date as may be prescribed by law.

#### **Termination**

132. In the event of a breach of these Conditions or the Agreement by the Client, the Company may at its absolute discretion, give 14 days' notice of its intention to terminate its appointment setting out the acts or omissions of the Client relied upon as evidence of such breach. If the Client does not, to the reasonable satisfaction of the Company, take expeditious steps to repair the breach during the notice period, the Company may terminate its appointment forthwith by further notice.
133. Termination of the Company's appointment under these Conditions and the Agreement shall not prejudice or affect the accrued rights or claims of the Company.
134. Either party may terminate the Agreement by notice in writing to the other if:
- a) The other party is unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
  - b) A liquidator, receiver, administrative receiver, manager, trustee or similar officer or officeholder is appointed over all or any of the assets.

#### **Law**

135. This contract shall be subject to the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 and it shall be subject to English law.
136. Subject to the Company's right to refer any matter to adjudication in accordance with the Scheme for Construction Contracts all disputes or claims arising out of or relating to this contract shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.