

J.J. SMITH & CO. (WOODWORKING MACHINERY) LIMITED – TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

1. Interpretation

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

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.
Commencement Date	has the meaning given in clause 2.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 18.8.
Contract	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions and any special conditions agreed by the Supplier in writing in its acceptance of the Order.
Customer	the person or firm who purchases the Goods and/or Services from the Supplier.
Data Protection Legislation	the all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
Delivery Location	has the meaning given in clause 4.2.
Force Majeure Event	has the meaning given to it in clause 17.
Goods	the goods (or any part of them) set out in the Order.
Goods Specification	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
Incoterms	the international commercial terms of the International Chamber of Commerce as in force at the Commencement Date.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information

(including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

Services the services supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification the description or specification for the Services provided by the Supplier to the Customer, including any engineer request form, verbally or in writing as the case may be.

Supplier J.J. Smith & Co. (Woodworking Machinery) Limited registered in England and Wales with company number 00339722.

Supplier Materials has the meaning given in clause 9.1.9.

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

1.3 A reference to a party includes its successors and permitted assigns.

1.4 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.

1.5 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.

1.6 A reference to writing or written includes fax and email.

1.7 The Contract shall include these Conditions as well as any special conditions agreed by the Supplier in writing in its acceptance of the Order. In the event that there is a conflict between the special conditions and these Conditions, the special conditions shall prevail.

2. **Basis of Contract**

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and 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 or when the Supplier delivers the Goods (if earlier) at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 Any samples, drawings, descriptive matter or 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, or any sub-suppliers' 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 nor 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 law, trade custom, practice or course of dealing.

2.5 Unless otherwise specified by the Supplier, any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 (thirty) 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 Supplier's catalogue or such other offer document provided by the Supplier, as modified by any applicable Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods 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 reasonable 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 Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. **Delivery of Goods**

4.1 The Supplier shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 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 or, if agreed by the Customer, the Customer shall collect the Goods from the Supplier's premises within 14 (fourteen) days of the Supplier notifying the Customer that the Goods are ready for collection.

4.3 Where the Delivery Location is outside of the United Kingdom and the Goods are to be exported:

4.3.1 the Customer shall be responsible for obtaining all consents and licences which are necessary to enable it to import and use the Goods and for all necessary consents (including exchange control consent) to enable it to make payment to the Supplier for the Goods, and shall promptly inform the Supplier of the grant of such licences and consents;

4.3.2 delivery shall be effected:

- 4.3.2.1 in the case of an Order to be delivered FCA under Incoterms, by the Supplier delivering the Goods on board in the manner customary at the port of shipment selected by the Supplier (and the Supplier shall not be required to give the Customer any notice relating to insurance) and the Goods shall at that time be deemed to be delivered in accordance with the Contract; and
 - 4.3.2.2 in the case of an Order to be delivered CIF under Incoterms, by the Supplier loading the Goods on board a vessel for conveyance to the port of destination specified in the Contract and tendering to the Customer on its agenda as soon as reasonably possible after shipment the bill of lading insurance policy or certificate and invoice relating to shipment. Delivery in accordance with the Contract shall be deemed to be effected at the same time of such loading on board,
- 4.3.3 the Supplier shall not be responsible for any loss or damage to the Goods after the Goods have been delivered; and
- 4.3.4 the Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection by the Customer and which is made after shipment or in respect of any damage during transit.
- 4.4 Subject to clause 4.3, delivery of the Goods shall be completed on the completion of the unloading of the Goods at the Delivery Location, or if the Customer is collecting the Goods, on the completion of the loading of the Goods at the Supplier's premises.
- 4.5 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.
- 4.6 The Supplier shall not be liable for any costs or expenses arising as a result of a delay in the delivery of the Goods.
- 4.7 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 for the Goods or any relevant instruction related to the supply of the Goods.
- 4.8 If the Customer fails to take delivery of the Goods within 14 (fourteen) 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:
 - 4.8.1 delivery of the Goods shall be deemed to have been completed at 9.00am on the fourteenth day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - 4.8.2 the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.9 If 20 (twenty) days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage 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.

4.10 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.

5. **Quality of Goods**

5.1 Subject to clauses 5.6, 5.7 and 5.8 and any special terms agreed by the Supplier on acceptance of the Order, the Supplier warrants that on delivery, the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Goods Specification;

5.1.2 be free from material defects in design, material and workmanship; and

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 In respect of Goods which are new Goods manufactured by the Supplier (as specified in the Order and/or the Goods Specification, "**New Goods**"), if, upon an examination carried out at the premises of the Customer within the period of 6 (six) months commencing on (i) the date that the New Goods were dispatched for delivery to the Customer; or (ii) if the Customer is collecting the New Goods, the date that the Customer is notified that the Goods are ready for collection from the Supplier's premises, the Supplier finds the New Goods are defective by reason of:

5.2.1 the faulty workmanship of the Supplier; or

5.2.2 faulty materials supplied by the Supplier (excluding bearings and electrical components which shall be replaced at the Customer's expense),

the Supplier shall repair or replace the New Goods free of charge or refund the purchase price at the Supplier's discretion.

5.3 In respect of Goods which are second-hand Goods (as specified in the Order and/or the Goods Specification, "**Second-hand Goods**"), the Supplier has inspected the Second-hand Goods. Any parts found to be defective in the Second-hand Goods have been replaced, repaired or renewed at the discretion of the Supplier, and the Second-hand Goods have been re-assembled, repaired and tested where practicable. If, upon an examination carried out at the premises of the Customer on delivery, or when collected by the Customer from the Supplier's premises, the Supplier finds that the Second-hand Goods are defective by reason of:

5.3.1 faulty workmanship of the Supplier; or

5.3.2 faulty materials supplied by the Supplier (excluding bearings and electrical components which shall be replaced at the Customer's expense),

then the Supplier shall, in its absolute discretion, supply repaired or renewed parts for the Second-hand Goods free of charge. All labour charges incurred as a result of this clause shall be paid by the Customer at the Supplier's standard rates.

5.4 Subject to clause 5.5, the Supplier shall, at its option, repair or replace the defective New Goods or Second-hand Goods as set out in clauses 5.2 and 5.3, or refund the price of the defective New Goods in full if:

5.4.1 the Customer gives notice in writing 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;

5.4.2 the Supplier is given a reasonable opportunity of examining such Goods; and

- 5.4.3 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, using a courier nominated by the Customer and approved by the Supplier, receipt of which shall only be acknowledged by signature of an authorised employee of the Supplier. Any failure by the Customer to obtain such a signature shall result in the Customer forfeiting its right to repair, replacement or reimbursement for the defective Goods.
- 5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.5.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.4;
- 5.5.2 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, including in relation to any software updates;
- 5.5.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- 5.5.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.5.6 the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 In respect of any Goods which are:
- 5.6.1 imported Goods;
- 5.6.2 new Goods manufactured in the United Kingdom other than by the Supplier; and
- 5.6.3 Goods in respect of which the Supplier acts as a factor,
- the Supplier gives no guarantee in respect of such Goods but shall assign to the Customer any rights which it may have. The rights of the Customer in respect of any such Goods shall be limited to the acceptance of any guarantee issued by the manufacturer of the Goods to a purchaser thereof.
- 5.7 In respect of any Goods which are sold "as purchased", "as seen" or other similar expression by the Supplier, the Supplier gives no guarantee to the Customer in respect of any such Goods. The Customer shall be deemed to have inspected the Goods thoroughly and to be satisfied that the Goods are in every way suitable for the purpose for which they are required by the Customer.
- 5.8 In respect of any Goods sold as "cleaned and checked", the Supplier has inspected the Goods and has repaired or renewed any defective parts, and the Goods have been test run where practicable. Whilst the Supplier warrants that the Goods have been stored in reasonable conditions, it does not guarantee that the Goods themselves have remained in a reasonable condition since the date of inspection. The Customer shall have the right to examine the Goods but should it fail to exercise such right it shall be deemed to have inspected the Goods thoroughly and to be satisfied that the Goods are in every way suitable for the purpose for which they are required by the Customer.
- 5.9 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.

5.10 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.11 If the Customer wishes to return any Goods which are not defective for any other reason, the Supplier shall not be liable to accept the return of such Goods and shall not be liable to provide the Customer with a refund. The Supplier may, however, in its absolute discretion, offer to buy back such Goods from the Customer at a reduced price on terms to be agreed between the parties in writing.

6. Title and Risk

6.1 The risk in the Goods shall pass to the Customer when the Customer is notified that the Goods are ready for collection from the Supplier's premises or (if no such notification is given) when the Goods leave the Supplier's premises; thereafter all Goods shall be at the risk of the Customer, who shall insure such goods to their full value to the satisfaction of the Supplier. When Goods are dispatched direct to the Customer from somewhere other than from the Supplier's premises, the Goods shall be at the risk of the Customer from the moment of despatch. For the avoidance of doubt, the Supplier shall not be liable if any Goods which have been dispatched are damaged whilst in transit or are not delivered.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

6.2.1 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; and

6.2.2 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:

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

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

6.3.3 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;

6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.4; and

6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:

6.3.5.1 the Goods; and

6.3.5.2 the ongoing financial position of the Customer.

6.4 Subject to clause 6.5 and clause **Error! Reference source not found.**, 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:

6.4.1 it does so as principal and not as the Supplier's agent; and

- 6.4.2 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 At any time before title to the Goods passes to the Customer, the Supplier:
 - 6.5.1 may by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - 6.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. **Supply of Services**

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service 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 Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. **Installation**

- 8.1 Unless otherwise specified in the Supplier's acceptance of the Order, the erection or installation of the Goods at the Customer's premises shall be at the Customer's cost and shall not form part of the Contract. If the Customer erects and installs the Goods, then the Customer does so at its own risk.
- 8.2 The Supplier shall not be responsible for any damages or losses suffered by the Customer arising out of or in connection with the faulty erection of the Goods or for any failure of the Goods to meet any performance specification, unless the Goods are erected and commissioned by the Supplier's own employees.
- 8.3 Where the Supplier has contracted to undertake the erection or installation of the Goods at the Customer's premises:
 - 8.3.1 the Customer will make all necessary facilities available and provide such assistance as necessary to enable any erection or installation of the Goods to be completed by the Supplier;
 - 8.3.2 if any erection or installation of the Goods by the Supplier is delayed due to the Customer's instructions, lack of instructions or any lack of facilities, the Customer shall bear all costs and expenses incurred by the Supplier as a result of the delay (including storage and insurance);
 - 8.3.3 the Supplier shall supply at least 1 (one) engineer to carry out the erection or installation. The Customer shall supply such suitably qualified assistant(s) as may be requested by the Supplier (or, if the Customer cannot provide such assistant(s), the Customer shall be liable for the costs of such assistant(s) to be provided by the Supplier) to assist the engineer(s) provided by the Supplier, together with any further assistance and apparatus as may be requested by the Supplier. Any assistant so provided by the Customer shall remain in the Customer's employment, and the

Customer shall be responsible for all claims arising directly or indirectly out of the erection or installation of the Goods.

9. **Customer's Obligations**

9.1 The Customer shall:

- 9.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- 9.1.2 co-operate with the Supplier in all matters relating to the Services;
- 9.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- 9.1.4 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;
- 9.1.5 prepare the Customer's premises for the supply of the Services;
- 9.1.6 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;
- 9.1.7 comply with all applicable laws, including health and safety laws;
- 9.1.8 ensure that the Goods are operated properly and in accordance with the Supplier's (or relevant manufacturer's) instructions by suitably qualified and experienced persons only;
- 9.1.9 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 written instructions or authorisation; and
- 9.1.10 comply with any additional obligations as set out in the Service Specification and the Goods Specification.

9.2 If 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**"):

- 9.2.1 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;
- 9.2.2 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 9.2; and
- 9.2.3 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.

10. **Charges and Payment**

10.1 The price for Goods:

10.1.1 shall be the price set out in the Order; and

10.1.2 shall be exclusive of all costs and charges of packaging, insurance, custom duties, import service and transport of the Goods, which shall be invoiced to the Customer.

10.2 If the Delivery Location is outside of the United Kingdom, the Order will specify whether the price of the Goods is CIF or FCA under Incoterms.

10.3 The charges for Services shall be calculated on a time and materials basis:

10.3.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current price list at the date of the Contract;

10.3.2 the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days (which includes travel time); and

10.3.3 the Supplier shall be entitled to charge an overtime rate of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.3.2; and

10.3.4 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.

10.4 The Supplier reserves the right to:

10.4.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12 (twelve) month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;

10.4.2 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:

10.4.2.1 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);

10.4.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

10.4.2.3 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.

10.5 In relation to prices of Goods specified in a currency other than sterling (the "**Quoted Currency**"), unless otherwise agreed in writing by the Supplier, the Supplier shall have the right at any time when the rate in the London Foreign Exchange market for the Quoted Currency in terms of sterling stands more than 5% (five per cent) higher than such rate on the date when the price was quoted, to increase any such prices for the Goods by a percentage not exceeding the percentage rise in such rate for Quoted Currency, and shall forthwith notify the Customer

in writing of such an increase in the price which shall then be substituted for the original price of the Goods.

10.6 In respect of Goods, the Supplier shall invoice the Customer in accordance with the time periods set out in the Supplier's written acceptance of the Order, including at the time the Order is submitted, before delivery, and on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

10.7 Unless otherwise agreed between the parties in writing, the Customer shall pay each invoice submitted by the Supplier:

10.7.1 in accordance with the payment terms specified on the invoice; and

10.7.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

10.8 Unless otherwise specified by the Supplier in writing, 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.

10.9 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 15, 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 10.9 will accrue each day at 5% (five per cent) a year above the National Westminster Bank PLC base rate from time to time, but at 5% (five per cent) a year for any period when that base rate is below 0% (zero per cent).

10.10 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).

11. **Intellectual Property Rights**

11.1 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.

11.2 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.

11.3 The Customer shall not use in relation to any Goods or other goods of any description whatsoever the registered trade marks of the Supplier or which the Supplier is entitled to use as agent for any other company or any other trade marks registered from time to time by the Supplier or by any of its subsidiary companies and applied by the Supplier or any such subsidiary company to the Goods.

11.4 The Customer shall be solely responsible for the consequences of any infringement of a third party's Intellectual Property Rights resulting from the Customer's use or sale of any of the Goods produced to the Goods Specification, or as a result of any modification made by the Customer to the Goods, and the Customer shall fully and completely indemnify the Supplier in respect of all damages, costs and expenses for which the Supplier may be liable as a result of any such infringement or alleged infringement.

12. **Data Protection**

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 12.2 The Supplier shall process personal data as necessary to fulfil the Contract in accordance with its Privacy Policy (<https://www.jjsmith.co.uk/pages/privacy-policy>).

13. **Confidentiality**

- 13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of 5 (five) years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- 13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14. **Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 14.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims and copies of such insurance are available on request. The Customer is responsible for making its own arrangements for the insurance of any loss.
- 14.2 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 14.3.1 death or personal injury caused by negligence;
 - 14.3.2 fraud or fraudulent misrepresentation;
 - 14.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - 14.3.4 defective products under the Consumer Protection Act 1987.
- 14.4 Subject to clause 14.3, the Supplier's total liability to the Customer shall not exceed the price of the Goods and/or Services supplied under the Contract.
- 14.5 The amounts awarded or agreed to be paid under clause 4.7 shall count towards the cap on the Supplier's liability under clause 14.4.
- 14.6 Subject to clause 14.3, the following types of loss are wholly excluded by the parties:
- 14.6.1 loss of profits;

- 14.6.2 loss of sales or business;
 - 14.6.3 loss of agreements or contracts;
 - 14.6.4 loss of anticipated savings;
 - 14.6.5 loss of use or corruption of software, data or information;
 - 14.6.6 loss of or damage to goodwill; and
 - 14.6.7 indirect or consequential loss.
- 14.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.8 This clause 14 shall survive termination of the Contract.
- 15. Termination**
- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 15.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 (fourteen) days after receipt of notice in writing to do so;
 - 15.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 15.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 15.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 15.2 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.
- 15.3 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 15.1.2 to clause 15.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 16. Consequences of Termination**
- 16.1 On termination of the Contract:
- 16.1.1 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; and

- 16.1.2 the Customer shall return all of the Supplier Materials and any 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.
- 16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. **Force Majeure**

Neither party shall 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 (a "**Force Majeure Event**"). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 (three) months, the party not affected may terminate the Contract by giving 1 (one) month's written notice to the affected party.

18. **General**

18.1 **Assignment and other dealings**

18.1.1 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.

18.1.2 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.

18.2 **Notices.**

18.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

18.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

18.2.1.2 sent by email to the address specified in the Order or by the parties from time to time.

18.2.2 Any notice shall be deemed to have been received:

18.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

18.2.2.2 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; and

- 18.2.2.3 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 18.2.2.3, 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.
- 18.2.3 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.
- 18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 18.4 **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.
- 18.5 **No partnership or agency.** 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.
- 18.6 **Entire agreement.**
- 18.6.1 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.
- 18.6.2 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.
- 18.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 18.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.8 **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).
- 18.9 **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.
- 18.10 **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.