1. INTERPRETATION

1.1 In addition to the words and terms defined in the Contract Order the following definitions apply in these Clauses:

Additional Terms: any terms varying or adding to the Clauses that are included within the Contract Order or otherwise agreed.

business Day: a day other than a Saturday, Sunday or public holiday in England

Business Hours: the hours of 08:00 – 18:00 ("Normal Working Hours")

Commencement Date: has the meaning set out in Clause 2.2.

Clays: means SIPS@CLAYS LLP a company registered in England and Wales with company number CC306155 and whose registered office is at Scale House, Skipton, North Yorkshire, BD23 6ER.

Clays Materials: has the meaning set out in Clause 4.1(g).

Consumable Goods: Goods which are not capable of resale or being removed after being used as part of the Services.

Consumable Services: any services that Clays agrees in a Contract to supply to the Customer.

Contract: the contract between Clays and the Customer for the supply of Goods and/or Services in accordance with and subject to the Contract Order and these Clauses and any Additional Terms.

Customer: the person named in the Contract Order, agreeing to purchase Goods and/or Services from Clays.

Customer Default: has the meaning set out in Clause 4.2.

Goods: any goods that Clays agrees in a Contract to supply to the Customer. Any goods that Clays agrees in a Contract to supply to the Customer.

Intangible Property Rights: patents, rights to inventions, copyright and related rights, mark, business names and domain names, rights in registered designs, rights to use trade marks, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for registration and in registration and rights to use, and protect the confidentiality of confidential information, as amended or re-enacted.

Intangible Property Rights: patents, right to inventions, copyright and related rights, mark, business names and domain names, rights in registered designs, rights to use trade marks, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for registration and in registration and rights to use, and protect the confidentiality of confidential information, as amended or re-enacted.

Services: any services that Clays agrees in a Contract to supply to the Customer.

Site: the site as described in the Contract Order.

Specification: the description or specification of the Contract provided in writing by Clays to the Customer and may be included in the Contract Order or a quotation specified in a Contract Order.

Terms: the terms and conditions of the Contract Order as specified in accordance with these Conditions. The terms and conditions of the Contract Order as specified in accordance with these Conditions.

2. HOW THESE CLAUSES APPLY

2.1 The Contract Order constitutes an offer by Clays to provide the Goods and/or Services as specified in accordance with these Conditions.

2.2 The Contract Order shall only be accepted when the Customer has signed and returned a copy of the Contract Order to Clays and has paid in full and cleared funds the First Payment ("Commencement Date").

2.3 Unless otherwise agreed in writing, the Contract Order is only valid and available for acceptance by you for a period of 90 days from its date of issue.

2.4 Any drawings, descriptive matter or advertising issued by Clays, and any descriptions or illustrations contained in Clays' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Clauses apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any variation to the Clauses, and any representations about the Goods and/or Services in accordance with and subject to the Contract Order; and these Clauses and any Additional Terms.

2.7 Any quotation given by Clays in a Contract Order is only valid for a period of seven days from the date of the Contract Order or as otherwise agreed.

2.8 Any quotation given by Clays that is not specified in a Contract Order shall not have any contractual force.

2.9 In these Clauses, unless the context requires otherwise, a reference to a clause or other provision includes a reference to that clause or provision as amended, re-enacted or re-enacted.

2.10 In these Clauses, unless the context requires otherwise, a reference to a clause or other provision includes a reference to that clause or provision as amended, re-enacted or re-enacted.

2.11 Unless otherwise agreed, any terms varying or adding to the Clauses that are included within the Contract Order or otherwise agreed.

2.12 Any variation to the Clauses, and any representations about the Goods and/or Services, shall have no effect and shall not form part of the Contract unless expressly agreed in writing by Clays and the Customer.

2.13 Any quotation given by Clays in a Contract Order is only valid for a period of 90 days.

2.14 Any quotation given by Clays that is not specified in a Contract Order shall not constitute an offer.

2.15 The Contract Order constitutes an offer by Clays to provide the Goods and/or Services as specified in accordance with these Conditions.

2.16 The Contract Order shall only be accepted when the Customer has signed and returned a copy of the Contract Order to Clays and has paid in full and cleared funds the First Payment ("Commencement Date").

2.17 Unless otherwise agreed in writing, the Contract Order is only valid and available for acceptance by you for a period of 90 days from its date of issue.

2.18 Any drawings, descriptive matter or advertising issued by Clays, and any descriptions or illustrations contained in Clays' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

2.19 Any variation to the Clauses, and any representations about the Goods and/or Services, shall have no effect and shall not form part of the Contract unless expressly agreed in writing by Clays and the Customer.

2.20 Any quotation given by Clays in a Contract Order is only valid for a period of 90 days.

2.21 Any quotation given by Clays that is not specified in a Contract Order shall not constitute an offer.

3. CLAYS SUPPLY OF GOODS AND SERVICES

3.1 Clays shall supply the Goods and/or Services to the Customer in accordance with the Contract Order; and these Clauses and any Additional Terms.

3.2 Clays shall use reasonable endeavours to meet any performance and/or delivery dates specified in the Contract Order, but any such dates shall be estimates only and shall not be of the essence for delivery of Goods or Services, and shall not form part of the Contract or have any contractual force.

3.3 Clays shall provide the Services during the hours of 08:00 – 18:00 ("Normal Working Hours") on any Business Day unless otherwise agreed. Where Clays is prevented or delayed by any act or omission of the Customer to perform the Services within the Normal Working Hours, Clays will, unless otherwise agreed, be entitled to invoice the Customer for Additional Services in accordance with Clause 6.9. Clays shall have the right to make any changes to the Contract which are necessary to comply with any applicable law or requirement, or which do not materially affect the nature or quality of the Goods and/or Services, and Clays shall notify the Customer in any such event.

3.4 Clays warrants to the Customer that the Services will be carried out in accordance with relevant statutory requirements and using reasonable care and skill.

3.5 Clays shall and will maintain professional insurance in relation to the supply of Goods and/or Services.
In addition to the Price, the Customer shall be provided with an estimate, for any additional:
(a) work to be carried out by Clays or supply of additional Goods and/or Services, at the Customer’s request, which Clays was not originally contracted to undertake; and
(b) work required as a result of any matter that Clays did not know existed at the date of the Contract Order and Clays could not reasonably have foreseen; and
(c) work and/or costs as a result of the Customer providing inadequate or inaccurate instructions, information or drawings to Clays or as a result of the Customer failing to comply with any of the terms of the Contract; and
(d) work required to be carried outside of Normal Working Hours in accordance with Clause 18.5, subject to the Customer’s request.

6.5 Subject to Clause 6.6, where Additional Services are requested or required, Clays may, at its discretion, cease delivery of the Goods and/or performance of the Services until the Customer has notified Clays his/her decision to accept or reject the quote for Additional Services. In such circumstances Clays shall be entitled to any delay in performance.

6.6 The Customer will have no obligation to accept an estimation for Additional Services under Clause 6.4 and will have the right to cancel the Contract at that point before any Additional Services are supplied. The Customer will receive a refund for any Goods and/or Services not received, but shall pay for any Goods received and/or a proportion of the Services supplied at the contractual rate.

6.7 If the Customer does not accept an estimation for Additional Services, Clays has the right to cancel the Contract where it reasonably decides that it is unable to continue work without Additional Services. In such circumstances, the Customer will receive a refund for any Goods and/or Services not received, but shall pay for any Goods received and/or a proportion of the Services supplied at the contractual rate.

6.8 The Customer acknowledges that, any quote accepted for Additional Services, will be a variation to the Contract in accordance with Clause 2.6 and will not be treated as a separate Contract for Goods and/or Services.

6.9 Any costs for Additional Services will be invoiced by Clays and be payable by the Customer in accordance with Clause 7.

7. HOW THE CUSTOMER WILL MAKE PAYMENT

7.1 Unless otherwise agreed in writing by Clays and subject to clause 7.2, the Price shall be paid by the Customer to Clays under following payment mechanism:
(a) 5% of the Price is due before Clays will commence any design services ("First Payment");
(b) A further 35% of the Price is due before Clays will commence manufacture of the Goods, making the cumulative amount paid by the Customer 40% of the Price ("Second Payment");
(c) A further 50% of the Price is due before Clays will deliver any Goods to the Site, making the cumulative amount paid by the Customer 90% of the Price ("Third Payment");
(d) The balance of the Price is due on completion of the installation of the Goods at the Site, making the cumulative amount paid by the Customer 100% of the Price ("Final Payment");

7.2 Where the Customer has not entered into a Contract for the supply of installation services, clause 7.1(c) is amended to provide that a further 60% of the Price is due before Clays will deliver any Goods to the Site, making the cumulative amount paid by the Customer 90% of the Price.

7.3 Clays shall issue an invoice for the applicable amounts on the relevant dates, in accordance with Clause 7.1 or 7.2, whichever is applicable.

7.4 All invoices are payable upon receipt. Clays will not commence the relevant Services and/or supply of Goods before payment of the relevant stages have been made in accordance with Clause 7.1 or 7.2, whichever is applicable.

7.5 No payment shall be deemed to have been received until Clays has received cash or cleared funds and all sums payable to Clays under the Contract shall become due immediately on its termination, howsoever arising.

7.6 The Customer will within a reasonable period of time; (ii) without significant inconvenience to the Customer; and (iii) at no cost to the Customer.

7.7 Without prejudice to any of its other remedies, Clays may only be accepted by Clays, at the sole discretion, in writing.

7.8 The Customer shall be limited to £2,000,000 (two million pounds).

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in or arising out of or in connection with the supply of Goods delivered, whether owned by Clays or not, is the property of Clays. The Customer is granted a licence to use the Goods for the purposes specified in the Contract, and shall be entitled to use the Goods for those purposes only.

8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer’s use of any such Intellectual Property Rights is conditional on Clays obtaining a written licence from the relevant licensor on such terms as will entitle Clays to license such rights to the Customer.

8.3 All Company Materials are the exclusive property of Clays.

9. CANCELLATION

9.1 The Customer may amend or cancel the Contract for Goods and/or Services at any time before Clays accepts the order in accordance with Clause 2.2.

9.2 After the event set out in Clause 9.1, the Customer acknowledges that they will have no right to amend or cancel the Contract. Any amendment or cancellation may only be accepted by Clays, at its sole discretion, in writing.

9.3 As a result of the cancellation or amendment, the Customer’s specification and are therefore bespoke and cannot therefore be reasonably expected to be resold, the Customer acknowledges that in the event of cancellation from the moment Clays accepts the order in accordance with Clause 2.2:
(a) the Customer will be liable to pay Clays, all costs reasonably incurred on an apportioned basis at the contractual rate, in fulfilling the order up to the date of the Customer’s request for cancellation, including the full price of any Consumable Goods used;
(b) Clays will not be liable to make good any damage that may have been caused to the Site in undertaking the Services. This Clause 9.4(b) does not exclude Clays’ responsibility for any damage which is beyond what is reasonably commensurate with undertaking the supply of the Services or which has been caused by Clays’ negligence.

9.4 The Customer’s legal rights where the Goods and/or Services are faulty are summarised in Clause 10.

10. THE CUSTOMERS LEGAL RIGHTS

10.1 Clays warrants that at the time of delivery the Goods shall:
(a) conform in all materials respects with their description or the manufacturer’s specification;
(b) be of satisfactory quality;
(c) be fit for any purpose for which the Customer will use the Goods;
(d) be free from material defects in design, material and workmanship; and
(e) comply with all applicable statutory and regulatory requirements for selling the Goods in the United Kingdom.

10.2 If the Customer has any issues or complaints about the Goods and/or Services, they should contact Clays as soon as possible in writing, as any complaints by the Customer after the delivery of any Goods or completion of any Services will be deemed to be satisfied by all applicable statutory and regulatory requirements for selling the Goods in the United Kingdom.

10.3 Clays is under a legal duty to supply Goods and Services in conformity with the Consumer Rights Act 2015. Nothing in these terms will affect the Customer’s legal rights.

10.4 Subject to Clause 10.6 and 10.7, where the Goods are faulty and/or the Services are not performed correctly, the Customer is entitled:
(a) to request a repair or replacement;
(b) to request a repair or replacement under Clause 10.5(a); (ii) within a reasonable period of time; (iii) without significant inconvenience to the Customer; and (iv) at no cost to the Customer.

(c) where Clays fails to fulfil their obligations under Clause 10.5(b), the Customer will be entitled to:
(i) request a repair or replacement; or
(ii) cancel the Contract and receive a full refund.

10.5 Clause 11.5 shall not apply if the breach arises as a result of normal wear and tear, the Customer’s negligence or failure to comply with the Contract or failure to follow Clays’ oral or written instructions, or if the storage, installation, commissioning, use or maintenance of the Goods or the Customer fails to comply with Clauses 4.1 and/or (k) or alters, modifies, misuses or repairs such Goods before giving notice to Clays in accordance with Clause 10.7.

10.6 Before any refund and/or replacement is made under Clause 10.5, the Customer will:
(a) notify Clays of the breach as soon as possible after the Customer discovers the breach; and
(b) give Clays a reasonable opportunity, after receiving notice under Clause 11.7(a), to examine the relevant Goods (or the relevant part) and/or Services supplied.

10.7 Any Goods that are returned by the Customer pursuant to Clause 10.5 shall belong to Clays unless Clays repairs such Goods.

10.8 Any Goods shall be returned to Clays at the Customer’s cost. The Customer shall apply to any repaired or replacement Goods supplied by Clays.

10.9 Clays’ reasonable opinion as to the cause of the defect shall be final and binding unless the Customer can provide conclusive evidence to the contrary.

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

11.1 The Customer should ensure that the Goods and/or Services supplied meet its requirements and notify Clays as soon as possible if this is not the case.

11.2 Subject to Clauses 3, 10 and 14, this Clause 11 sets out the overall financial liability of Clays (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of any breach of the Contract, or of any product incorporating any of the Goods and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract.

11.3 Nothing in the Contract shall limit or exclude Clays’ liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
(b) fraud or fraudulent misrepresentation; or
(c) breach of the terms implied by the Consumer Rights Act 2015 or any other liability which cannot be limited or excluded by applicable law.

11.4 Subject to Clause 11.3, Clays’ liability shall not be limited or excluded to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract.

11.5 Subject to Clause 11.4, Clays will not be liable for any business, depletion of goodwill or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11.6 Clays’ total liability in contract, tort (including breach of statutory duty or negligence), misrepresentation, restitution or otherwise arising out of or in connection with the Contract will be limited to £2,000,000 (two million pounds).
11.6 Nothing in these Clauses affects the Customer’s legal rights. Advice about the customer’s legal rights is available from the customer’s local Citizen’s Advice Bureau or trading standards office.

12. SUB-CONTRACTING
12.1 Clays may subcontract any portion of the Services to a third-party contractor. Any subcontractor will be deemed to be an independent contractor and not our partner, agent or employee.

13. DATA PROTECTION
13.1 In processing personal data for the purposes of the Contract, Clays shall only process the Customers personal data:
   (a) for the purpose of performing its obligations under the Contract;
   (b) to process payment for the Goods and/or Services under the Contract;
   (c) to comply with all relevant instructions or requests that the Customer may give to Clays from time to time concerning such processing of the Customer’s personal data; and
   (d) other than our subcontractors, we will only give your personal data to third parties where the law either requires or allows us to do so.
13.2 We may use photographs taken by Clays of any completed Services at the Site for the purposes of marketing (including placing them on our website or within our brochures) unless you say otherwise. Where your personal data is used as part of our marketing activities we will also obtain your consent beforehand.
13.3 For the purpose of this Clause 13, the terms personal data and process have the meanings given to them in the Data Protection Act 1998.

14. EVENTS BEYOND CLAYS CONTROL
14.1 Clays reserves the right to defer the date of delivery, cancel the Contract or delay delivery of the Goods or performance of the Services (in each case without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, labour disputes (other than in relation to Clays’ own workforce) or restraints or delays affecting suppliers or carriers, or inability or delay in obtaining supplies of adequate quality, provided that, if the event in question continues for a continuous period in excess of 6 months, either party may give notice to the other in writing to terminate the Contract.

15. GENERAL
15.1 The Customer shall not disclose any confidential information or commercial know-how provided by or relating to Clays except as permitted by law.
15.2 If any Clause is found by any court to be wholly or partially illegal, invalid, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining Clauses, and the remainder of such Clause, shall continue in full force and effect. In the event that such court decides that such Clause is not severable, the parties agree to substitute such Clause with a legal, valid, enforceable and reasonable Clause which achieves, to the greatest extent possible, the same commercial effect as the original Clause.
15.3 Failure or delay by Clays to enforce, or partially enforce, any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by Clays of any breach of, or any default under, any provision of the Contract by the Customer shall be in writing and shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other provisions of the Contract.
15.4 No provisions of the Contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.
15.5 All communications between the parties about the Contract, including any notices to be sent or received under the Contract, must be in writing. Notices shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email.
15.6 All communications between the parties about the Contract, including any notices to be sent or received under the Contract, must be in writing. Notices shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email.
15.7 The formation, construction, performance, validity and all aspects of the Contract shall be governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts (or Scottish courts if you are resident in Scotland) in the event of any dispute.