

## THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF 4, 6, 7, 9, 10 AND 11

These terms and Clauses (the "Clauses") together with the Contract Order and any Additional Terms are intended to contain all the terms of the agreement between Clays and the Customer relating to the supply of Goods and Services, the Customer should read these Clauses carefully before submitting an order.

### 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.

**Additional Services:** has the meaning given in Clause 6.4.

**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 set out in Clause 2.2.

**Clays:** means SIPS@CLAYS LLP a company registered in England and Wales with company number OC306155 and whose registered office is at Scale Hill House, Skipton, North Yorkshire, BD23 6ER.

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

**Consumable Goods:** Goods which are no longer capable of resale or being retrieved after being used as part of the Services.

**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.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, 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 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.

**Price:** has the meaning given in Clause 6.1.

**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.

#### 1.2 Interpretation:

- (a) 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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, be deemed to be followed by the words "without limitation", shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) Where context requires otherwise, a reference to **Clays** includes its employees, agents and/or subcontractors.

### 2. HOW THESE CLAUSES APPLY

- 2.1 The Contract Order constitutes an offer by Clays to provide the Goods and/or Services as therein 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 as set out in Clause 7 ("**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, shall have no effect and shall not form part of the Contract unless expressly agreed in writing by Clays and the Customer.
- 2.7 Any quotation given by Clays in a Contract Order is only valid for a period of 90 days.
- 2.8 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 Specification in all material respects.
- 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 time shall not be of the essence for delivery of Goods or carrying out of the Services. Clays shall inform the Customer of any delays as soon as it reasonably identifies that a delay may be caused.
- 3.3 Clays will 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.

- 3.4 Clays shall have the right to make any changes to the Contract which are necessary to comply with any applicable law or safety 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.
- 3.5 Clays warrants to the Customer that the Services will be carried out in accordance with relevant statutory requirements and using reasonable care and skill.
- 3.6 Clays shall have and will maintain professional insurance in relation to the supply of Goods and/or Services.

### 4. THE CUSTOMER'S OBLIGATIONS AND WARRANTIES

- 4.1 From the date of the Contract Order, the Customer shall:
  - (a) ensure that the terms of the Contract Order and any information it provides in the Specification and or any Additional Terms are complete and accurate;
  - (b) co-operate with Clays in all matters relating to the Contract;
  - (c) provide Clays, its employees, agents, consultants and subcontractors, with access to the Customer's premises, and other facilities as reasonably required by Clays for the purposes of supplying the Goods and/or Services;
  - (d) provide Clays with such information and materials as Clays may reasonably require in order to carry out its obligations under the Contract, and ensure that such information is accurate in all material respects;
  - (e) prepare the Customer's premises and provide unobstructed access to the Site for the supply of the Goods and/or Services;
  - (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Goods are to be delivered or before the Services are to start and (where requested) provide copies of such to Clays;
  - (g) keep and maintain all materials, equipment, documents and other property of Clays, its employees, agents and/or subcontractors ("**Clays Materials**") at the Customer's premises in safe custody at its own risk, maintain Clays Materials in good Clause until returned to Clays, and not dispose of or use Clays Materials other than in accordance with Clays' written instructions or authorisation;
  - (h) comply with any additional obligations as set out and/or contained in the Contract Order;
  - (i) be responsible for the discharge of any planning Clauses relevant to the Contract.
  - (j) inspect or arrange the inspection (we would advise that your architect or project manager does this) of the Goods on delivery at the Site and notify Clays as soon as reasonably possible, if the Goods are not as described; and
  - (k) inspect or arrange the inspection (we would advise that your architect or project manager does this) of the Goods on completion of installation (if applicable) and notify Clays as soon as reasonably possible, if the Goods are not as described.
- 4.2 If Clays' 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**):
  - (a) Clays shall without limiting its other rights or remedies have the right to suspend delivery of the Goods and/or performance of the Services until the Customer or any other person acting on the customer's behalf remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Clays' performance of any of its obligations;
  - (b) Clays shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Clays' failure or delay to perform any of its obligations as set out in this Clause 4.2; and
  - (c) the Customer shall reimburse Clays on written demand for any costs or losses sustained or incurred by Clays arising directly or indirectly from the Customer Default.
- 4.3 If 30 days after Clays notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Clays reserves the right to charge the Customer for the reasonable costs of storing the Goods.

### 5. TRANSFER OF RISK AND TITLE

- 5.1 Where the Contract Order is for the supply of Goods only, then the risk in the Goods shall pass on completion of delivery to the Site.
- 5.2 Where the Contract Order is for Goods and Services then the risk in the Goods shall not pass until completion of the Services.
- 5.3 Subject to Clause 7.2, title in the Goods shall not pass to the Customer until Clays has received (in cash or cleared funds) from the Customer the payment required in Clause 7.1 (c).
- 5.4 Clays shall be entitled to recover payment for the Goods and/or Services notwithstanding the fact that title in any of the Goods has not passed from Clays to the Customer.

### 6. WHAT IS THE PRICE

- 6.1 Unless otherwise agreed by Clays in writing and subject to Clauses 6.2 and 6.3, the price for the Goods and/or Services shall be the price stated in the Contract Order ("**Price**").
- 6.2 The Price, and the cost of any Additional Services provided for in Clause 6.4, is based on the costs of design work, materials, labour, sub-contracts, transport, taxes and duties and all other relevant costs at the date of the Contract Order.
- 6.3 The Customer acknowledges that due to the nature of the Goods and/or Services being provided that the Price stated in the Contract Order is an estimate only based on the information provided by the Customer and/or any other person acting on behalf of the Customer, and therefore if inaccurate may vary the Price. Clays reserves the right to vary the Price, including to take into account any variation (howsoever arising) in the costs of the Goods and/or Services or the imposition of any currency fluctuations, new taxes, tariffs or duties between the Contract Order date and the completion date. Any variation will be communicated to the Customer of any final Price and agreed.

- 6.4 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 at the Customer's request.
- 6.5 ("Additional Services").
- 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 not be liable for 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 100% 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 shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Clays to the Customer.
- 7.7 Without prejudice to any of its other remedies, if any amount due from the Customer is not paid in accordance with the Contract Clays may do all or any of the following:
- (a) treat the Contracts as repudiated by the Customer;
  - (b) without notice suspend or cancel delivery of the Goods and/or performance of the Services under the Contract, until the Customer pays the outstanding amount(s) in full;
  - (c) appropriate any payment made by the Customer under any other Contract with Clays to pay for any outstanding amounts as Clays may, in its sole discretion, think fit; or
  - (d) charge interest at the annual rate of 4% above the base rate of Royal Bank of Scotland PLC;
- 7.8 On termination of the Contract, howsoever caused, the rights of Clays in this Clause 7 shall remain in effect
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 All Intellectual Property Rights in or arising out of or in connection with the supply of Goods and/or Services shall be owned by Clays.
- 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 Order 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 the sole discretion, in writing.
- 9.3 As some of the Goods and/or Services are made to 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 notice of 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, by email or telephone. Clays will endeavour to resolve any complaints the Customer has.
- 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 supplied are not performed correctly, the Customer is entitled:
- (a) to request a repair or replacement;
  - (b) Clays will make a repair or replacement under Clause 10.5 (a);
    - (i) within a reasonable period of time;
    - (ii) without significant inconvenience to the Customer; and
    - (iii) 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 price reduction; 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 as to the storage, installation, commissioning, use or maintenance of the Goods or the Customer fails to comply with Clauses 4.1 (j) and/or (k) or alters, modifies, mishandles 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 that the Goods and/or Services are not in accordance with the Contract; 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 delivered at Clays' expense.
- 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 These Clauses 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 entire financial liability of Clays (including any liability for the acts or omissions of its employees, agents and sub-contractors) 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 11.1, Clays shall not be liable 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 11.3, and Clays agreeing otherwise in writing:
- (a) Clays shall not be liable to the Customer for any pure economic loss, loss of profits, loss of business, depletion of goodwill or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
  - (b) 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 performance or contemplated performance of the contract shall 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 notices sent by the Customer to Clays must be sent to Clays at its registered address (as detailed in Clause 1) or by email to [info@claysllp.co.uk](mailto:info@claysllp.co.uk) or as otherwise agreed by Clays. Clays may send notices to the Customer at the email or postal address, provided by the Customer to Clays.

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.