

FORT MERCHANTING TERMS AND CONDITIONS: BUSINESS CUSTOMERS

1. INTERPRETATION

1.1 Definitions:

Bespoke Orders: the Customer's order for customer made or bespoke goods made specifically to the Customer's Specification, design or requirements.

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Contract: the contract between Fort Merchanting and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Fort Merchanting.

Force Majeure Event: has the meaning given in clause 11.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, (such orders may be the Customer's acceptance of Fort Merchanting's quotation, the Customer's purchase order form, online via the Website, Fort Merchanting's order form or verbally as the case may be).

Portal: an online internet platform that allows the Customer to view invoices and delivery notes.

Special Order: the Customer's Order for the Goods where Fort Merchanting does not hold the Goods in stock. The Customer will be made aware that their order is a Special Order in the order form, by email or telephone call or on screen during the online Order process.

Specification: the specification for the Goods as stated in the Order

Fort Merchanting: FORT MERCHANTING LIMITED (registered in England and Wales with company number 10623748).

Website: <https://www.fort-m.com/>

1.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision

includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- (b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- (c) A reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

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

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 After the Customer places an online Order, the Customer will receive an email from Fort Merchanting acknowledging receipt of the Order but such email does not mean that the Order has been accepted. Acceptance of the Order will take place as described in clause 2.4.

2.4 The Order shall only be deemed to be accepted when Fort Merchanting issues a written acceptance of the Order, confirms acceptance on the telephone with the Customer or when the Goods are tendered for delivery at which point the Contract shall come into existence.

2.5 If Fort Merchanting is unable to supply the Customer with the Goods for any reason, it will inform the Customer of this and will not process the Order. If the Customer has already paid for the Goods, Fort Merchanting will refund the full amount including any delivery costs charged as soon as possible.

2.6 Where the Customer places a Special Order or Bespoke Order it cannot be cancelled once it has been placed. Bespoke Orders and Special Orders are non-returnable and non-refundable.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.8 Any samples, drawings or advertising produced by Fort Merchanting and any illustrations contained in Fort Merchanting's Website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.9 A quotation for the Goods given by Fort Merchanting shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue unless otherwise stated.

2.10 Where an Order is placed by the Customer via the telephone, Fort Merchancing reserves the right to record the telephone call in order to ensure accuracy and completeness of the Order.

2.11 The Customer may opt to have all contractual documentation (including orders, delivery notes and invoices) uploaded to the Portal instead of being sent to it by Fort Merchancing. The Customer's opt-in in the Portal shall be deemed to be the Customer's consent to this form of communication.

2.12 This Contract is divisible. Each delivery made hereunder:

- (a) shall be deemed to arise from a separate Contract; and
- (b) shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect of default in the delivery of any other instalment.

3. GOODS

3.1 The Goods are described in the Order which may link to Fort Merchancing's catalogue or Website as modified by any applicable Specification.

3.2 Fort Merchancing reserves the right to amend the Specification if it is required to do so by any applicable statutory or regulatory requirements.

3.3 Where Fort Merchancing is unable to source the Goods in accordance with the Order, Fort Merchancing shall be entitled to cancel the Order without obligation to the Customer.

4. DELIVERY

4.1 Fort Merchancing shall ensure that:

- (a) either each delivery of the Goods is accompanied by a freight note and, where the Customer has opted to receive updates via the Portal, a delivery note will be uploaded to the portal.
- (b) if Fort Merchancing requires the Customer to return any packaging materials to Fort Merchancing, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Fort Merchancing shall reasonably request. Returns of packaging materials shall be at Fort Merchancing's expense.

4.2 Fort Merchancing shall deliver the Goods to the kerbside at the location specified in the Order (**Delivery Location**) at any time after Fort Merchancing notifies the Customer that the Goods are ready.

4.3 Further to clause 4.2 above, where it is agreed that the Delivery Location will be any place other than at the kerbside, the Customer agrees that delivery is at its own risk, and agrees to fully indemnify Fort Merchancing for any and all damage to the Customer's or a third party's property caused by Fort Merchancing or Fort Merchancing's agents in making the delivery.

4.4 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Fort Merchancing 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 Fort Merchancing with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 Where Fort Merchancing has agreed a time for delivery with the Customer, in the event that a delay is caused by the Customer such that Fort Merchancing is unable to deliver at the agreed time (**Customer Delay**), the following will apply:

- (a) Fort Merchancing reserves the right to charge the Customer a supplemental fee in its full discretion for the time spent waiting (**Demurrage Charge**);
- (b) where there is a wait of 30 minutes or more, Fort Merchancing may decide in its full discretion to leave and deliver on a different date to be agreed with the Customer; and
- (c) where Fort Merchancing is subject to a Demurrage Charge from its suppliers, contractors or any other third party, this will be passed on to the Customer, who agrees to pay it in full.

4.7 If Fort Merchancing 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. Fort Merchancing 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 Fort Merchancing with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.8 If the Customer fails to accept delivery of the Goods within three Business Days of Fort Merchancing notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Fort Merchancing's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which Fort Merchancing notified the Customer that the Goods were ready; and
- (b) Fort Merchancing shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.9 If 10 Business Days after the day on which Fort Merchancing notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Fort Merchancing 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 Fort Merchancing may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.11 Fort Merchancing reserves the right to take photographic evidence of delivery and condition of Goods at delivery.

5. QUALITY

5.1 The Customer acknowledges that Fort Merchancing does not manufacture the Goods and as such cannot offer a standard warranty as to quality of the Goods. However Fort Merchancing shall use all reasonable endeavours to transfer the benefit of any manufacturer warranty or guarantee relating to the Goods to the Customer.

5.2 If the Goods have been damaged by Fort Merchancing on delivery, the Customer shall give notice in writing to Fort Merchancing that some or all of the Goods are damaged within three days of delivery Fort Merchancing shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 If Clause 5.2 above does not apply and the Customer gives notice in writing to Fort Merchancing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the manufacturer's warranty:

- (a) Fort Merchancing is given a reasonable opportunity of examining such Goods; and
- (b) the Customer (if asked to do so by Fort Merchancing) returns such Goods to Fort Merchancing's place of business at the Customer's cost,

Fort Merchancing shall, at its option, use its reasonable efforts to facilitate a warranty claim with the manufacturer of the Goods.

5.4 Except as provided in this clause 5, the Customer shall not be entitled to terminate the Contract and/or return any of the Goods unless it is so agreed in advance and in writing with Fort Merchancing, in which case it will be at the Customer's cost. Fort Merchancing drivers will not take returns unless they have a prior approved returns note.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Fort Merchancing.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

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

- (a) Fort Merchancing receives payment in full (in cash or cleared funds) for the Goods and any other goods that Fort Merchancing has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in *clause 6.4*.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Fort Merchancing's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Fort Merchancing immediately if it becomes subject to any of the events listed in clause 9.1; and
- (e) give Fort Merchancing such information relating to the Goods as Fort Merchancing may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Fort Merchancing receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Fort Merchancing's agent; and
- (b) title to the Goods shall pass from Fort Merchancing to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy Fort Merchancing may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) Fort Merchancing may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Fort Merchancing's published price list in force as at the date of delivery.
- 7.2 For online Orders the prices of the Goods will be as quoted on the Website at the time the Customer submits the Order. Fort Merchancing takes all reasonable care to ensure that the prices of Goods are correct at the time when the relevant information was entered onto the system. Fort Merchancing sells a large number of Goods through the Website. It is always possible that, despite Fort Merchancing's reasonable efforts some of the Goods on the Website may be incorrectly priced. If Fort Merchancing discovers an error in the price of the Goods in the Order Fort Merchancing will contact the Customer to inform them of this error and Fort Merchancing will give the Customer the option of continuing to purchase the Goods at the correct price or cancelling the Order. Fort Merchancing will not process the Order until it has the Customer's instructions. If Fort Merchancing is unable to contact the Customer using the contact details provided during the Order process, Fort Merchancing will treat the Order as cancelled and notify the Customer in writing. If Fort Merchancing mistakenly accepts and process an Order where a pricing error is obvious and unmistakable and could reasonably have been recognised by the Customer as a mispricing, Fort Merchancing may cancel supply of the Goods and refund any sums the Customer has paid.
- 7.3 Fort Merchancing may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond Fort Merchancing's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Fort Merchancing adequate or accurate information or instructions.

7.4 The price of the Goods:

- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Fort Merchancing at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be advised to the Customer during the check-out process.

7.5 The Customer may pay for online Orders using a debit card or credit card. Fort Merchancing accept Visa and Mastercard.

7.6 Subject to clause 7.7 Fort Merchancing will invoice the Customer for the Goods on or at any time after the completion of delivery. Where the Customer has agreed to receive updates to the Portal, the invoice will also be uploaded to the Portal.

7.7 Unless Fort Merchancing has agreed credit terms with the Customer, Fort Merchancing shall invoice the Customer prior to delivery and such invoice shall be due immediately upon receipt. Delivery shall not be made until payment is received. The Customer shall pay the invoice in full and in cleared funds in accordance with the payment terms agreed in writing between the parties.

7.8 Payment shall be made to the bank account nominated in writing by Fort Merchancing. Time for payment is of the essence.

7.9 If the Customer fails to make any payment due to Fort Merchancing under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4.0% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Fort Merchancing may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Fort Merchancing to the Customer.

8. DATA PROTECTION

DEFINITIONS

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended 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);

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Fort Merchancing is the Processor. The scope, nature and purpose of processing by Fort Merchancing, the duration of the processing and the types of Personal Data and categories of Data Subject is set out below:

Scope	Contractual scope for the provision of the Goods
Nature	Use, collection, storage or otherwise required for the purpose
Purpose of the processing	For the provision of the Goods under the Contract
Duration of the processing	For the term of the Contract and in order to comply with data retention periods
Types of Personal Data	Identity and contact details
Categories of Data Subject	Customer's staff and own customers/homeowner details.

8.3 Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Fort Merchancing for the duration and purposes of this agreement.

8.4 Without prejudice to the generality of clause 8.1, Fort Merchancing shall, in relation to any Personal Data processed in connection with the performance by Fort Merchancing of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Customer unless Fort Merchancing is required by Domestic Law to otherwise process that Personal Data. Where Fort Merchancing is relying on Domestic Law as the basis

for processing Personal Data, Fort Merchancing shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Fort Merchancing from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or Fort Merchancing has provided appropriate safeguards in relation to the transfer;
- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) Fort Merchancing complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) Fort Merchancing complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

8.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

8.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach; and

8.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data.

8.8 The Customer consents to Fort Merchancing appointing third party processors of Personal Data under this agreement. Fort Merchancing confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause and in either case which reflect and will continue to reflect the requirements of the Data Protection Legislation.

8.9 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

9. TERMINATION

9.1 Without limiting its other rights or remedies, Fort Merchancing may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five days of that party being notified in writing to do so;
- (b) the Customer 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), 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;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in Fort Merchancing's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

9.3 Without limiting its other rights or remedies, Fort Merchancing 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.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to Fort Merchancing all of Fort Merchancing's outstanding unpaid invoices and interest. Where Fort Merchancing incurs any costs related to the recovery of any outstanding unpaid invoices, these costs shall be passed on to the Customer.

9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude Fort Merchancing's liability for:

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

10.2 Subject to clause 10.1:

- (a) Fort Merchancing shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Fort Merchancing's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

11. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for two months, the party not affected may terminate this Contract by giving 60 written notice to the affected party.

12. GENERAL

12.1 **Assignment and other dealings.**

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

12.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause (b).
- (b) Each party may disclose the other party's confidential information:
 - (i) 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 this agreement. 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 12.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) 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 this agreement. For the avoidance of doubt, this applies to any communications regarding quotations or prices received by the Customer from Fort Merchanting, which must not be shared with a third party at any time.

12.3 Entire agreement.

- (a) This 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.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause (a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the two Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.8 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.

12.9 **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 and Wales.

12.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.