

If you are a consumer:

- a) Sections 1 and 2 apply to you.
- b) Section 3 does not apply to you.

If you are not a consumer (you will not be a consumer if you are a business):

- a) Sections 1 and 3 apply to you.
- b) Section 2 does not apply to you.

SECTION 1 – GENERAL

THE FOLLOWING CLAUSES IN THIS SECTION 1 APPLY TO BOTH CONSUMERS AND NON CONSUMERS.

1. THESE TERMS

- 1.1 **The “Terms”:** these are the terms and conditions on which we supply Goods and Services to you.
- 1.2 **Why you should read them.** Please read these Terms carefully before you submit your Order to us. These Terms tell you who we are, how we will provide Goods and/or Services to you, how you and we may change or end the Contract, what to do if there is a problem and other important information. If you think that there is a mistake in these Terms, please contact us to discuss.

2. INFORMATION ABOUT US AND HOW TO CONTACT US

- 2.1 **“we/our/us”:** McDonald Engineers (UK) Limited a company registered in Scotland. Our company registration number is SC023339 and our registered office is at Flemington Road, Queensway Industrial Estate, Glenrothes, Fife, KY7 5QF. Our registered VAT number is 751 150 262.
- 2.2 **How to contact us.** You can contact us by telephoning our customer service team at 01592 611123 or by writing to us at Flemington Road, Queensway Industrial Estate, Glenrothes, Fife, KY7 5QF or sales@mcdonald-engineers.com.
- 2.3 **“you/your”:** the customer making the Order (defined below). The customer may or may not be a consumer.
- 2.4 **How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provided to us in your Order.

3. WHAT ARE WE DOING?

- 3.1 We design, manufacture and deliver hot water cylinders.
- 3.2 The design, manufacturing and delivery of hot water cylinders will comprise “Goods” and “Services”:
 - (a) **“Goods”** are items that will be produced as a result of our manufacturing and which will be delivered to you. The Goods we will supply are set out in the Order (defined below).
 - (b) **“Services”** comprise the work that we will do to design the hot water cylinder in accordance with your needs and, if agreed between you and us, installing the hot water cylinder into your premises. The Services we will provide are set out in the Order (defined below).
- 3.3 **“Order”:** you can purchase Goods and/or Services from us by placing an order (“**Order**”). The Order and these Terms will form the Contract between you and us.
- 3.4 **“Contract”:** when we refer to the “Contract” in these Terms, this means the Contract between you and us and includes the Order and these Terms.

4. OUR CONTRACT WITH YOU

- 4.1 **How we will accept your Order.** Our acceptance of your Order will take place when we tell you that we are able to provide you with the Goods and/or Services, at which point a Contract will come into existence between you and us.
- 4.2 **Making sure your Order is accurate.** You must check your Order carefully to ensure that it is complete and accurate. In particular, you must ensure that the Goods will fit into the space where they are to be installed. Unless we are specifically instructed by you, we will not carry out a site survey to assess the viability of the Goods.
- 4.3 **Quotations.** Any quotes that we may give you in respect of the Goods and/or Services will only last for 14 days, unless we notify you otherwise.
- 4.4 **If we cannot accept your Order.** If we are unable to accept your Order, we will inform you of this and will not charge you for the Goods and/or Services. This might be because, for example, the Goods are outwith our capacity.

5. THE GOODS

- 5.1 **The Goods we supply may vary slightly from their pictures.** The images of the Goods in our brochure or on our website are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device's display of the colours or the printed pictures in our brochure accurately reflects the colour of the Goods. Your Goods may vary slightly from those images. Although we have made every effort to be as accurate as possible, because the Goods may be handmade, all sizes, weights, capacities, dimensions and measurements indicated on our website or in our brochure may have a small tolerance.
- 5.2 **Packaging of the Goods may vary.** The packaging of the Goods may vary from that shown in images on our website or in our brochure.
- 5.3 **Making sure your measurements are accurate.** If we are making the Goods to measurements you have given us you are responsible for ensuring that these measurements are correct. You may contact us to get tips on how to measure.

6. YOUR RIGHTS TO MAKE CHANGES

If you wish to make a change to the Goods and/or Services you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Goods and/or Services, the timing for delivery or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

7. OUR RIGHTS TO MAKE CHANGES

Minor changes to the Goods and Services. We may change the Goods and/or Services. For example, to reflect changes in relevant laws and regulatory requirements, or to implement minor technical adjustments and improvements. These changes will not affect your general use of the Goods/or Services

8. PROVIDING THE GOODS AND/OR SERVICES

- 8.1 **Delivery costs.** The costs of delivery will be as set out in your Order.
- 8.2 **When we will provide the Goods and/or Services.** During the Order process we will let you know when we will provide the Goods and/or Services to you. If the Goods and/or Services are a one-off purchase (rather than instalments) we will deliver them to you as soon as possible and in any event within reasonable time. If we cannot deliver the Goods and/or Services within 30 days, we will contact you. Any delivery dates we give you are estimates and timing will not be essential.
- 8.3 **Delivery Note for the Goods and/or Services.** When we deliver the Goods and/or Services to you, we will provide you with a delivery note which shows the date of the Order, all relevant reference numbers

for us, 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 and/or Services remaining to be delivered. You must ensure you receive this delivery note when the Goods and/or Services are delivered to you.

8.4 **Installation and care instructions for the Goods and/or Services.** When we deliver the Goods and/or Services to you, we will provide you with an installation and care instruction booklet in respect of the Goods and/or Services. Please ensure that you receive these instructions when the Goods and/or Services are delivered to you.

8.5 **Collection by you.** If you have asked to collect the Goods and/or Services from our premises, you must collect the Goods within 7 days of us telling you that the Goods and/or Services are ready for your collection.

8.6 **Delivery to you.** If it is agreed that we will deliver the Goods and/or Services to you and no one is available at your address to take delivery, we will leave you a note informing you of how to rearrange delivery or collect the Goods and/or Services from a local depot. We may charge you for redelivery of the Goods and/or Services.

8.7 **If you do not provide us with information we require.** We may need certain information from you so that we can supply the Goods and/or Services to you, for example, your address or measurements. We will contact you to ask for this information. If you do not give us this information within a reasonable time of us asking for it, or if you give us incomplete or incorrect information, we may either end the Contract or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying the Goods and/or Services late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.

8.8 **When you become responsible for the Goods and/or Services.** The Goods and/or Services will be your responsibility from the time we deliver the Goods and/or Services to the address you gave us or you collect the Goods from us.

8.9 **When you own the Goods and/or Services.** You own the Goods and/or Services once we have received payment in full.

9. PRICE OF THE GOODS AND/OR SERVICES

9.1 **Where to find the price for the Goods and/or Services.** The price of the Goods and/or Services (which includes VAT) will be the price set out in your Order.

9.2 **How you must pay.** We accept payment with a credit or debit card. There may be a charge for using a credit card. Any charge will be limited to our cost of using the credit card facilities.

10. SERVICES WE PROVIDE

10.1 **Services we deliver.** If we are delivering Services to you, the Services will be carried out to a reasonably competent standard of care and skill.

10.2 **Your obligations in relation to the Services.** If we are delivering Services to you, you must:

- (a) co-operate with us in all matters relating to the Services;
- (b) provide us (including our employees, agents, consultants and subcontractors) with access to the your premises, office accommodation and other facilities as we may reasonably require in order for us to provide the Services;
- (c) if it is agreed that the Services are to be delivered to you, prepare the your premises for the supply of the Services;

- (d) 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; and
- (e) keep and maintain all of our materials, equipment, documents and other property that we may bring on to your site in safe custody until they have been returned to us.

11. OUR WARRANTY

11.1 The warranty in this clause 11 is in addition to, and does not affect or restrict, the statutory rights of a consumer (please see clause 19.2 of the Terms).

11.2 You must fulfil the conditions in this clause 11 to be able to make a claim under our warranty.

11.3 We provide a warranty for the Goods and/or Services. We provide you with a warranty that the Goods and/or Services will correspond to the description of the Goods and/or Services in your Order. If you are a consumer, our warranty is additional to your legal rights, which are summarised at clause 19.2.

11.4 The duration of the warranty depends on the type of Goods we supply you. The warranty will start on the date that we deliver the Goods to you or you collect the Goods from us. The warranty will expire at the end of the warranty period. You will find a full schedule of our Goods and their respective warranty periods on our website (<http://www.mcdonald-engineers.com>). We may update and amend this schedule of Goods from time to time. The most up to date schedule of Goods must be used, and such schedule of Goods is incorporated into this clause 11, your Order and any subsequent order, by reference.

11.5 How do you make a claim under the warranty. As soon as you think you have a claim under the warranty, you must write to us to tell that you think you may have a claim. You must notify us of any claim under the warranty before you take any action in connection with the Goods and/or Services. When we receive a claim from you, we will have thirty (30) business days to decide whether you have a valid claim under the warranty.

11.6 What happens if you have a valid claim under the warranty. If you have a valid claim in respect of your Goods, we may repair or replace these Goods during the period of the warranty.

11.7 Situations where you cannot make a claim under the warranty. You will not be able to make a claim under the warranty if:-

- (a) the damage arises because of a water supply;
- (b) the defect or failure arises because we followed a drawing or design of the Goods that you provided us;
- (c) the defect arises because of the improper installation of the Goods;
- (d) the defect or failure arises because you deliberately damaged the Goods or because of the conditions that you stored the Goods in;
- (e) you, or any person who has been instructed by you, has attempted to repair or renew the defective Goods without our prior consent in writing;
- (f) the defect or failure arises because you failed to follow our installation and maintenance instructions set out in the instruction booklet we provided you when we supplied the Goods to you;
- (g) the defect arises because you failed to follow any (and all) relevant or applicable regulations or codes of practice that apply to the Goods;
- (h) you could have avoided any loss or damage to the Goods; or
- (i) the Goods become defective or have failed because of a part of the Goods which was replaced without our consent.

11.8 **We are not liable for water damage.** We are not liable for any loss or damage resulting from the escape of water from the Goods.

11.9 **Charges for our repair or replacement under the warranty.** We may repair or replace the Goods under the warranty free of charge if you have a valid claim in the first year of the warranty. However, if we repair or replace the Goods after the first year of the warranty but before the warranty has expired, we will charge you a certain amount for our repair or replacement depending on the year you make the claim.

The charge will be a proportion of the current price for the Goods (or their nearest equivalent) equal to the number of full years that have lapsed since you bought the Goods divided by the length of the warranty.

By way of an example, if the price of the Goods was £1,000, and the Goods have a 5 year warranty period, your charge will be as follows:

Number of years lapsed	Formula to Work Out Charge	Charge
0	n/a	Free
1	$1,000 \times 1/5$	£200
2	$1,000 \times 2/5$	£400
3	$1,000 \times 3/5$	£600
4	$1,000 \times 4/5$	£800

If you need help to work out your charge, please contact us.

11.9 **Delivery and removal charges.** You are responsible for any costs of removing the defective Goods and/or Services from your premises and for delivering those Goods to us.

12. HOW WE MAY USE YOUR PERSONAL INFORMATION

12.1 **How we will use your personal information.** We will use the personal information you provide to us:

- (a) to supply the Goods and/or Services to you;
- (b) to process your payment for the Goods and/or Services; and
- (c) if you agreed to this during the Order process, to inform you about similar Goods and Services that we provide, but you may stop receiving these communications at any time by contacting us.

12.2 **We will only give your personal information to third parties where the law either requires or allows us to do so.**

13. OTHER IMPORTANT TERMS

- 13.1 **Notices must be in writing.** If you are required to give us a formal notice, or we are required to give you a formal notice, under the Contract, it must be in writing. That notice must be sent by first class post to: (a) us, at our address (see clause 2); or (b) you, at the address you have given us.
- 13.2 **When is a notice deemed to be received.** If a notice was sent by first class post, it will be deemed to be received two days (excluding weekends or bank/public holidays) after posting (not counting the day it was posted).
- 13.3 **We may transfer this agreement to someone else.** We may transfer our rights and obligations under these Terms to another organisation. We will contact you to let you know if we plan to do this.
- 13.4 **You need our consent to transfer your rights to someone else.** You may only transfer your rights or your obligations under these Terms to another person if we agree to this in writing. We may not agree.
- 13.5 **Nobody else has any rights under the Contract.** This Contract is between you and us. No other person shall have any rights to enforce any of its Terms.
- 13.6 **If a court finds part of the Contract illegal, the rest will continue in force.** Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.
- 13.7 **Even if we delay in enforcing the Contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your breaking the Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Goods and/or Services, we can still require you to make the payment at a later date.
- 13.8 **Which laws apply to the Contract and where you may bring legal proceedings.** These Terms are governed by Scots law and you may bring legal proceedings in respect of the Goods and/or Services in the Scottish courts.

SECTION 2 – CONSUMERS

The following clauses in this Section 2 will only apply to you if you are a consumer. The clauses in this Section 2 are expressly excluded from applying to non consumers.

14. SUSPENSION ON THE SUPPLY OF GOODS AND/OR SERVICES

- 14.1 **Reasons we may suspend the supply of Goods and/or Services to you.** we may have to suspend the supply of the Goods and/or Services because:
- (a) we have to deal with technical problems or make minor technical changes;
 - (b) update the Goods to reflect changes in relevant laws and regulatory requirements; or
 - (c) make changes to the Goods and/or Services as requested by you or notified by us to you (see clause 7).
- 14.2 **Your rights if we suspend the supply of Goods and/or Services.** We will contact you in advance to tell you we will be suspending supply of the Goods and/or Services, unless the problem is urgent or an emergency. If we have to suspend the supply of Goods and/or Services for longer than three months we will adjust the price so that you do not pay for Goods and/or Services while they are suspended. You may contact us to end the Contract if we suspend it, or tell you we are going to suspend it, in each case for a period of more than three months and we will refund any sums you have paid in advance for the Goods and/or Services in respect of the period after you end the Contract.

14.3 **We may also suspend supply of the Goods and/or Services if you do not pay.** If you do not pay us for the Goods and/or Services when you are supposed to (see clause 15) and you still do not make payment within fourteen days of us reminding you that payment is due, we may suspend supply of the Goods and/or Services until you have paid us the outstanding amounts. We will contact you to tell you we are suspending supply of the Goods and/or Services. We will not suspend the Goods and/or Services where you dispute the unpaid invoice (see clause 15.3). We will not charge you for the Goods and/or Services during the period for which they are suspended. As well as suspending the Goods and/or Services we can also charge you interest on your overdue payments (see clause 15.2).

14.4 **We are not responsible for delays outside our control.** If our delivery of the Goods and/or Services is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the Contract and receive a refund for any Goods and/or Services you have paid for but not received.

15. PAYMENT OF THE PRICE

15.1 **When you must pay.** You must pay for the Goods and/or Services (including delivery) before we dispatch them to you or you collect them from us.

15.2 **We can charge interest if you pay late.** If you do not make any payment to us by the due date we may charge you interest on the overdue amount at the rate of 5% a year above the base lending rate of the Royal Bank of Scotland from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

15.3 **What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date.

15.4 **We will pass on changes in the rate of VAT.** If the rate of VAT changes between your Order date and the date we supply the Goods and/or Services, we will adjust the rate of VAT that you pay, unless you have already paid for the Goods and/or Services (including delivery costs) in full before the change in the rate of VAT takes effect.

15.5 **What happens if we got the price wrong.** It is always possible that, despite our best efforts, some of the Goods and/or Services we sell may be incorrectly priced. We will normally check prices before accepting your Order so that, where the correct price of the Goods and/or Services at your Order date is less than our stated price at your Order date, we will charge the lower amount. If the correct price of the Goods and/or Services at your Order date is higher than the price stated in our price list, we will contact you for your instructions before we accept your Order.

16. YOUR RIGHTS TO END THE CONTRACT

16.1 **You can always end the Contract for supply of the Goods and/or Services before they have been delivered.** You may contact us to end the Contract for the Goods and/or Services at any time before we have delivered them to you, but in some circumstances we may charge you for doing this, as described below. Of course, you always have rights where the Goods and/or Services are faulty or mis-described (see clause 19).

16.2 **What happens if you have good reason for ending the Contract.** If you are ending the Contract for a reason set out at (a) to (e) below, the Contract will end immediately and we will refund you in full for any Goods and Services which have not been provided or have not been provided properly and you may also be entitled to further compensation. The reasons are:

- (a) we have told you about an upcoming change to these Terms or the Goods and/or Services which you do not agree to (see clause 7.2);

- (b) we have told you about an error in the price or description of the Goods and/or Services you have ordered and you do not wish to proceed;
- (c) we have told you that we plan to transfer our rights under the Contract to someone else and you do not wish to proceed;
- (d) there is a risk that supply of the Goods and/or Services may be significantly delayed because of events outside our control; or
- (e) we have suspended supply of the Goods and/or Services for technical reasons, or we notify you that we are going to suspend them for technical reasons, in each case for a period of more than three months.

16.3 **What happens if you end the Contract without a good reason.** If you are not ending the Contract for one of the reasons set out in clause 16.2, then the Contract will end immediately and we will refund any sums paid by you for Goods and/or Services not provided but we may deduct from that refund (or, if you have not made an advance payment, charge you) reasonable compensation for the net costs we will incur as a result of your ending the Contract. This will cover at least the cost of items acquired for you and time spent on partial delivery of the Goods and/or Services.

16.4 **What happens if the Goods and/or Services are bespoke.** Unfortunately, as certain Goods and/or Services are made to Order, if you decide to cancel your Order once made then we will charge you for those Goods and/or Services if we have commenced to design and manufacture them, prior to receipt of your notice of cancellation. By ticking the box on the Order indicating you are happy for us to start designing and manufacturing the Goods and/or Services, then you confirm that you will be responsible for and due to pay the costs involved in their design and manufacture or ordering even if you have and exercise a right to cancel.

17. HOW TO END THE CONTRACT WITH US

17.1 **Cancellation form.** If you place your Order out with our business premises, for example at your home, then you may cancel the Contract within your 14 day cancellation period by signing the cancellation form on your Order and returning this page to us.

17.2 **Title to the Goods.** Title to the Goods shall remain with us until they are fixed into your property. All Goods and materials that we bring onto site shall remain our property at all times. Pending full payment of the price of the Goods and/or Services, you will hold these on our behalf but will have no entitlement to use them.

17.3 **Returning Goods after ending the Contract.** If you end the Contract after Goods and/or Services have been dispatched to you and (because we cannot recall them) they are delivered to you, you must return them to us. If you are ending the Contract for a reason set out in clause 16.2 then we will pay the costs of return. In all other circumstances you must pay the costs of return.

18. OUR RIGHTS TO END THE CONTRACT

18.1 **We may end the Contract if you break it.** we may end the Contract for the Goods and/or Services at any time by writing to you if:

- (a) you do not make any payment to us when it is due and you still do not make payment within 14 days of us reminding you that payment is due;
- (b) you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the Goods and/or Services, for example, your address or dimensions in connection with the Goods (see clause 8.7 and clause 10.2); or
- (c) despite our reasonable efforts to deliver the Goods and/or Services to you, you do not collect the Goods and/or Services from us as arranged or if, after a failed delivery to you, you do not re-arrange delivery or collect them from a delivery depot.

18.2 **You must compensate us if you break the Contract.** If we end the Contract in the situations set out in clause 18.1 we will refund any money you have paid in advance for Goods and/or Services we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the Contract. This will cover at least the cost of items acquired for you and time spent on partial design and manufacture of the Goods and/or Services.

18.3 **We may withdraw the Goods and/or Services.** We may write to you to let you know that we are going to stop providing the Goods and/or Services. we will let you know at least fourteen days in advance of our stopping the supply of the Goods and/or Services and will refund any sums you have paid in advance for Goods and/or Services which will not be provided.

19. IF THERE IS A PROBLEM WITH OUR WORK

19.1 **How to tell us about problems.** If you have any questions or complaints about the Goods and/or Services, please contact us. you can telephone our consumer service team at 01592 611123 or write to us at Flemington Road, Queensway Industrial Estate, Glenrothes, Fife, KY7 5QF or sales@mcdonald-engineers.com. Alternatively, please speak to one of our staff.

19.2 **Summary of your legal rights.** We are under a legal duty to supply Goods and/or Services that are in conformity with the Contract. See the box below for a summary of your key legal rights in relation to the Goods and/or Services. Nothing in these Terms will affect your legal rights.

Summary of your key legal rights

This is a summary of your key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website www.adviceguide.org.uk or call 03454 04 05 06.

In relation to Goods, the Consumer Rights Act 2015 says the Goods must be as described, fit for purpose and of satisfactory quality. During the expected lifespan of the Goods your legal rights entitle you to the following:

- up to 30 days: if the Goods are faulty, then you can get an immediate refund.
- up to six months: if the Goods can't be repaired or replaced, then you're entitled to a full refund, in most cases.
- up to six years: if the Goods do not last a reasonable length of time you may be entitled to some money back.

In relation to Services, the Consumer Rights Act 2015 says:

- you can ask us to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if we can't fix it.
- if you haven't agreed a price upfront, what you are asked to pay must be reasonable.
- if you haven't agreed a time upfront, it must be carried out within a reasonable time.

19.3 **Your obligation to return rejected Goods and/or Services.** If you wish to exercise your legal rights to reject and/or Services you must either return them in person to where you bought them, post them back to us or (if they are not suitable for posting) allow us to collect them from you. We will pay the costs of postage or collection. Please call our customer services team on 01592 611123.

20. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU

20.1 **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking

the Contract or our failing to use reasonable care and skill, but, except as set out in clause 20.2, we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both you and we knew it might happen, for example, if you discussed it with us during the sales process.

- 20.2 **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or sub-contractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the Goods and/or Services, as summarised at clause 19.2 and for defective Goods under the Consumer Protection Act 1987.
- 20.3 **When we are liable for damage to your property.** If we are installing the Goods or providing Services in your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the Services.
- 20.4 **We are not liable for business losses.** If you use the Goods and/or Services for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

SECTION 3 – BUSINESSES

The following clauses in this Section 3 will only apply to you if are a non consumer. The clauses in this Section 3 are expressly excluded from applying to consumers.

21. EXCLUSION OF OTHER TERMS

- 21.1 These Terms will apply to the Contract between you and us to the exclusion of any other terms or conditions that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 21.2 For administrative convenience you may use your own pre-printed forms, but you agree that no terms or conditions endorsed on, delivered with or contained in your purchase Order, confirmation of Order, specification or any other document shall form part of the Contract between us except to the extent any such terms and conditions are consistent with these Terms.

22. NON-DELIVERY OF THE GOODS AND/OR SERVICES

- 22.1 we shall not be liable for any direct, indirect or consequential loss (all three of which Terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or Services (even if caused by our negligence), nor shall any delay entitle you to terminate the Contract unless such delay exceeds 120 working days.
- 22.2 If for any reason you fail to accept delivery of any of the Goods and/or Services at the time provided for by these Terms, or we are unable to deliver the Goods and/or Services on time because you have not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods and/or Services shall pass to you (including for loss or damage caused by our negligence);
 - (b) the Goods and/or Services shall be deemed to have been delivered; and
 - (c) we may store the Goods until actual delivery, whereupon you shall be liable for all related costs and expenses (including, without limitation, the costs of storage and insurance).
- 22.3 If ten business days after the day on which we notified you that the Goods and/or Services were ready for delivery you have not taken or accepted delivery of them, we may resell or otherwise dispose of part or all of the Goods and/or Services.

22.4 We may deliver the Goods and/or Services by instalments. Each instalment shall be a separate Contract between us and no cancellation or termination of any one Contract relating to an instalment shall entitle you to cancel or terminate any other Contract or instalment. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

23. RETENTION OF TITLE

23.1 Until title to the Goods and/or Services has passed to you in accordance with clause 8.9, you shall:

- (a) store the Goods separately from all other Goods held by you so that they remain readily identifiable as our property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) retain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify us immediately if any of the events listed in clause 26.2 occur; and
- (e) give us such information relating to the Goods and/or Services as we may require from time to time.

23.2 Subject to clause 23.3, you may resell or use the Goods in the ordinary course of its business (but not otherwise) before we receive payment for the Goods and/or Services. However, if you resell the Goods before that time:

- (a) you do so as principal and not as our agent; and
- (b) title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.

23.3 Your right to possession of the Goods shall terminate immediately if you become subject to any of the events in clause 26.2.

23.4 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to you.

23.5 You grant us (including our agents and employees) an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them.

23.6 Where we are unable to determine whether any Goods are the Goods in respect of which your right to possession has terminated, you shall be deemed to have sold all Goods of the kind sold by us in the Order in which they were invoiced to you.

23.7 On termination of the Contract, howsoever caused, our (but not your) rights contained in this clause 23 shall remain in effect.

24. PAYMENT OF THE PRICE

24.1 The following definitions shall apply to this clause 24:

- (a) **“Late Payment Compensation”** means the fixed sum that we are entitled to charge you in respect of each individual Qualifying Debt (defined below), in accordance with section 5A of the Regulations (defined below).
- (b) **“Late Payment Interest”** means the statutory interest in relation to a Qualifying Debt (defined below) in accordance with section 4 and section 6 of the Regulations (defined below).
- (c) **“Qualifying Debt”** has the meaning given to it in section 3 of Regulations.

(d) **“Regulations”** means the Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts (Scotland) Regulations 2013/77 and the Late Payment of Commercial Debts (Scotland) Regulations 2015/226.

(e) **“Statutory Period”** means the period in which we become entitled to charge you Late Payment Interest in respect of a Qualifying Debt, in accordance with section 4 of the Regulations.

24.2 For the avoidance of doubt, the Regulations shall apply to the Contract.

24.3 Unless otherwise agreed by us in writing, payment of the price for the Goods and/or Services shall be paid in full and in cleared funds no later than the last working day of the month following the month in which the Goods and/or Services are delivered or deemed to be delivered (as the case may be). Payment shall be made to the bank account nominated by us in writing.

24.4 Time of payment shall be of the essence. Without limiting our other rights in any way, we reserve the right to suspend deliveries and demand immediate payment for all Goods and/or Services which have been ordered or delivered if (a) any payment under any Contract between you and us, or any Contract we have with any person associated with you, becomes overdue; or (b) we, in our sole discretion, believe that you may be unable or unwilling to pay for the Goods and/or Services in accordance with these Terms.

24.5 All monies prospectively payable to us under the Contract shall become immediately due on termination of the Contract, or on the termination of any other contract we have with any other person associated with you.

24.6 You shall make all payments due without any deduction whether by way of retention, set-off, counterclaim, discount, abatement or otherwise unless you have a valid court Order requiring us to pay you an amount equal to such deduction. We may at any time, and without limiting any other rights or remedies we may have, set off any amount you owe to us.

24.7 If you fail to make any payment due to us under the Contract by the due date for payment, then, in respect of each individual invoice or part thereof which remains unpaid by the due date for payment, such monies due to us shall be deemed a Qualifying Debt.

24.8 In respect of each Qualifying Debt, and without limiting our rights under clause 24.9, we shall be entitled to charge you Late Payment Interest upon each outstanding invoice, accruing on a daily basis, over the Statutory Period.

24.9 In respect of each Qualifying Debt, once the Late Payment Interest begins to run in accordance with clause 24.8, we shall be entitled to charge you Late Payment Compensation upon each outstanding invoice.

25. INTELLECTUAL PROPERTY RIGHTS

25.1 In this clause 25, **“Intellectual Property Rights”** means 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.

25.2 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by us.

25.3 you acknowledge that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, your use of any such Intellectual Property Rights is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.

25.4 All materials that we may bring on to your site remain our exclusive property.

26. TERMINATION AND SUSPENSION

- 26.1 On not less than 30 days written notice to the other party, this Contract may be terminated by either you, or us.
- 26.2 If you become subject to any of the events listed in sub-clauses (a) to (c) below, we may terminate the Contract with immediate effect by giving you written notice:
- (a) you become the subject of a bankruptcy Order or arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed in respect of your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator in respect of your undertaking or you (or your directors or creditors) have given notice of intention to appoint an administrator, or a resolution is passed or a petition presented to any court for your winding-up or for the granting of an administration Order in respect of your undertaking, or any other proceedings are commenced relating to your insolvency or possible insolvency or for the granting of an administration Order in respect of your undertaking, or any other proceedings are commenced relating to your insolvency or possible insolvency; or
 - (b) you suffer or allow any diligence or enforcement action to be levied on your property or obtained against it, or you fail to observe or perform any of its obligations under the Contract or any other contract between us, or you become unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or
 - (c) you encumber or in any way charge any of the Goods.
- 26.3 Without limiting our other rights or remedies, we may suspend provision of the Goods and/or Services under the Contract or any other contract between the you and us if the you become subject to any of the events listed in clause 26.2 (a) to (c), or we reasonably believes that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.
- 26.4 On termination of the Contract for any reason, you shall:
- (a) immediately pay to us all of our outstanding unpaid invoices and interest; and
 - (b) return all of our materials and any Goods and/or Services which have not been fully paid for. If you fail to do so, then we may enter the your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 26.5 Termination of the Contract, however arising, shall not affect any of our rights, remedies, obligations and liabilities that have accrued as at termination.

27. LIMITATION OF LIABILITY

- 27.1 Subject to clause 11, the following provisions set out our (including any liability for the acts or omissions of our employees, agents and sub-Contractors) entire financial liability to you in respect of:
- (a) any breach of the Contract;
 - (b) your use or resale of any of the Goods and/or Services, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or delictual act or omission including our (including our agents) negligence arising under or in connection with the Contract.

- 27.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 27.3 Nothing in these Terms excludes or limits our liability for:
- (a) death or personal injury caused by our (including our agents) negligence; or
 - (b) any matter in respect of which it would be illegal for us to exclude or attempt to exclude its liability; or
 - (c) fraud or fraudulent misrepresentation.
- 27.4 Subject to clauses 27.2 and 27.3:
- (a) our total liability in Contract, delict or tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with our (including our agents' or suppliers') performance or contemplated performance of the Contract shall be limited to the price of the Goods and/or Services; and
 - (b) we shall not be liable to you for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 27.5 This clause 27 shall survive the termination of this Contract.

28. FORCE MAJEURE

we reserve the right to suspend or defer the date of delivery or to cancel the Contract or reduce the volume of the Goods and/or Services you have ordered (without liability to you) if we are prevented from or delayed in carrying on our business or performing the Contract due to circumstances beyond our (including our agents' or suppliers') 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, lock-outs, strikes or other labour disputes (whether or not relating to either our or your workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or in respect of our costs, any increase in the price of the Goods and Services which exceeds 20% of the same price at the date the Contract was made, provided that, if the circumstances in question continue for a continuous period in excess of 120 working days, the Contract may be terminated by either you, or us on notice.

29. PERSONAL LIABILITY OF DIRECTORS

- 29.1 If you are a limited company, a limited liability partnership, a trust or an unincorporated voluntary association, your directors/members/trustees/office bearers (as the case may be) each personally, jointly and severally, unconditionally and irrevocably (until all sums payable by you have been paid to us) (a) guarantee the payment of all sums due to us; (b) indemnify and hold us harmless in respect of any losses sustained by us as a result of trading with you; and (c) agree that the foregoing guarantee and indemnity shall not be discharged or affected by (i) anything that would not have discharged or affected them if they had been a principal debtor instead of a guarantor; or (ii) our waiver or failure to enforce any of our rights in the Contract.