

TERMS AND CONDITIONS

1. BACKGROUND

1.1 The Client is to accept that the Provider or its nominated sub-contractors have the necessary qualifications, experience and abilities to provide services to the Client.

1.2 The Provider is agreeable to providing such services to the Client on the terms and conditions set out.

1.3 Terms and conditions come into effect upon the Client accepting a quotation, issuing an order (verbal or written), or delivery of the Works, Goods and/or Services (whichever occurs first).

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in these terms and conditions, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Provider (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

2. SERVICES PROVIDED

2.1 The Client hereby agrees to engage the Provider to provide the Client with the Works, Goods and/or Services as specified in the Contract

2.2 The Services will also include any other tasks which the Parties may agree on. The Provider hereby agrees to provide such Services to the Client.

3. TERM OF AGREEMENT

3.1 The term of this Agreement (the "Term") will begin on the date of any pre-agreed contractual arrangement, or at the point the Client accepts a quotation from the Provider. The terms will remain in full force and effect until the contractual period is completed, subject to earlier termination as provided in this Agreement. The Term may be extended with the written consent of the Parties.

3.2 In the event that either Party wishes to terminate a pre-agreed contractual arrangement prior to the Term period completion, that Party will be required to provide 10 days' written notice to the other Party. Where works have already been carried out, or equipment has been ordered for the client, these could remain chargeable.

4. PERFORMANCE

4.1 The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

5. PRICE

5.1 All quotations are valid for thirty days only unless otherwise stated. All prices are subject to change without notice.

5.2 The price charged for Works, Goods and/or Services will be that ruling on the date of order.

5.3 When an estimate of quantity, measurement or advice in relation to Works, Goods or Services or a particular purpose is given by the Provider, this information is only for guidance (based on information provided by the Client) and is without liability on the Providers part.

5.4 The Provider makes every endeavour to quote accurately for Works, Goods or Services being undertaken. Our costs relating to installations are based on information provided by the Client, along with the Clients' electrical installation standards and ground conditions where groundworks are to be undertaken. Costs are subject to change if it is found elements differ from those on which the quote or invoice are based.

5.5 Actual costs may change if project elements are altered due to new site information or alteration of clients' requirements. In such circumstance, the Client will be notified and consulted with prior to any additional costs being incurred.

5.5 The Provider assume that all mains equipment, existing power distribution, circuitry and accessories are compliant with the current IET wiring regulations.

5.6 Any part of the installation carried out by a third party on behalf of the client is the sole responsibility of the client and the third party. Any third party works that are not in line with building regulations and/or IET wiring regulations, or hinder the installation as quoted, are the sole responsibility of the client and the third party to make good.

5.7 Delays caused by third party installations may incur re-scheduling costs if the Provider's quoted works cannot be carried out within the time allocated.

5.8 Unless otherwise specified, value added tax and any other tax or duty payable by the Client will be added to the price.

5.9 Payment of deposit invoice, receipt of signed order acceptance, receipt of official client PO or an order acceptance sent to the Provider in the form of email or letter are acknowledgement by client of all elements there in and are binding on both parties. Notwithstanding the Provider's cancellation terms and conditions herein.

5.10 The detailed quantities of Works, Goods and/or Services for are included in the total costs. They are based on the quantities within the drawings / specification provided by yourselves.

Unless otherwise stated:

- Our work is to be carried out in normal working hours, no allowance for out of hours or weekend working has been made.
- No temporary electrical supplies or lighting have been allowed for within our costs
- We have allowed for free onsite parking for our vehicles
- We have made no allowance for working at heights above 3m, unless stated
- We have made no allowance for access equipment or lifting equipment, unless stated

5.11 The Provider does not accept any form of retentions for Works or Services completed.

5.12 If it is found additional power is required to provide Works, Goods and/or Services and and therefore do not meet the Client's requirements, the Provider can apply to the Clients energy supplier for additional power on the Clients behalf. All costs associated with the application, and/or the supply of addition power by the Clients energy supplier are considered to not be included in the price unless otherwise stated and will be invoiced separately.

5.13 When the Client has chosen to do part of the installation works (enabling) themselves, or are using a third party to do such works. These works must be done in accordance with current regulations and with the input of the Provider. All electrical enabling works must be certified and a copy of said certification supplied to the Provider prior to Works, Goods and/or Services being undertaken.

5.14 Qualification to claim the OZEV (Office for Zero Emission Vehicles) grant is the sole responsibility of the Client. Therefore, claims declined due to client error or misinformation will result in a shortfall in regards to the claim amount will be invoiced to client by the Provider.

6. CURRENCY

6.1 Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in GBP.

7. CREDIT ACCOUNT TERMS

7.1 By submitting a credit application, the Client agree to all of the terms as detailed in this contract.

7.2 The Provider will from time to time set a credit limit (including Value Added Tax) for the account and tell the Client what it is. The Client must not place orders at any one time to a value exceeding your approved credit limit, taking into account unpaid invoices at that time.

7.3 The Provider reserves the right to withdraw the Clients credit account terms, withhold the supply of Works, Goods and/or Services, or put the account on hold at any time and without prior notice. In such an event, the Client must settle any outstanding amounts at the time the account is account terms have ceased.

7.4 These account terms apply to the Client only. No third party may rely on any of the account terms agreed both parties.

7.5 These account terms will apply despite anything to the contrary in purchase orders or any other documentation.

7.6 The Client must advise the Provider in writing if there is any change to the information provided in their application.

8. PERSONAL GUARANTEE PROVISIONS

In these personal guarantee provisions, the Client which can be an individual, partnership, company or other corporate body that has applied to the Provider for a credit account, "guarantee" means any personal guarantee that has been given for the customer's obligations to the Provider, and "guarantor" means the guarantor(s) who has given the guarantee.

8.1 The guarantee is and will remain a continuing security and will cover the ultimate balance from time to time owing to the Provider by the Client.

8.2 The guarantor may give one month's notice in writing to the Provider to discontinue the guarantee but will remain liable for all the Clients obligations at the date notice is received by the Provider and for any further the Clients obligations that arise before the expiry of the notice.

8.3 The Provider may apply any payments received for the Client to reduce any of the Clients obligations, as the Providers decide.

8.4 Without releasing or reducing the guarantor's liability, and without the guarantor's consent, the Provider may:

8.4.1 grant new or increased credit to the Client;

8.4.2 allow time to and agree, renew, vary or end any arrangements with the Client or any other person;

8.4.3 release, renew, vary or refrain from enforcing any security or guarantee held from the Client or any other person;

8.4.4 settle with or release from liability the Client or any other person.

8.5 Where the guarantor is more than one person (including the partners of a partnership):

8.5.1 all of them are jointly and individually liable under the guarantee, and references to the guarantor are to them together and separately;

8.5.2 the guarantee gives the Provider the same rights as if it were a separate guarantee by each guarantor;

8.5.3 if notice to discontinue the guarantee is given by any of them, the others will continue to be liable to the Provider under the guarantee, which will remain a continuing security;

8.5.4 The Provider Ltd may settle with or release from liability any of them, without releasing or reducing the liability of the others;

8.5.5 The liabilities of each of them under the guarantee are severable; if the guarantee, or any provision of it, is unenforceable against any of them, it will not affect the enforceability or continuation of the guarantee in respect of any others;

8.5.6 The guarantor's liability will not be affected, and the guarantee will remain a continuing security, if a partner leaves or joins the partnership, if the partnership dissolves, or if there is a change in the name or constitution of the partnership.

8.6 All consents, notices and demands with reference to the guarantee must be in writing. The Provider may deliver a notice or demand to the guarantor at the contact details last known to the Provider or at the address given in the application for the credit account.

8.7 A notice or demand signed by the Provider with reference to the guarantee will be effective at the time of personal delivery or on the second business day after posting. A business day is a weekday other than a national holiday in England and Wales.

9. PAYMENT

9.1 The Provider will charge the Client for the Services in this agreement (the "Payment").

9.2 The Client will receive an invoice for each purchase, order or installation showing details of all Works, Goods and/or Services which have been charged to the account together with payments received.

9.3 We shall be entitled to deliver Works, Goods and/or Services by instalments. Each instalment shall be treated as a separate chargeable aspect under this contract.

9.3 The Provider must receive payment of the amount due shown on the invoice by the due date of the invoice. Any variation to these payment terms must be agreed in writing by the Provider.

9.3.1 Where the Provider supply hardware only, the Provider will require a proforma payment in advance for the goods ordered on behalf of client, unless an alternative payment structure has been agreed in writing between the Provider and the client.

9.3.2 For all domestic installations, The Client require full proforma payments to be made within 14 days prior to the work commencing, unless mutually agreed otherwise in writing between the Provider and the client.

9.3.3 All commercial installations, unless otherwise agreed in writing with the Provider and the Client, the Provider will require a 20% deposit based on the full project value, prior to the commencing of works. Full and final payment will become due (2 weeks (14 days) after the completion of works unless an alternative payment agreement has been reached and stated in writing between the Provider and the Client.

9.3.4 Where equipment suppliers operate on a proforma basis or a proportional deposit basis. The Provider will require said funds prior to the equipment being purchased.

9.3.5 Deposit payments are refundable if the works are no longer required, and are subject to a £50 admin fee.

9.3.6 For service and maintenance contracts the Client will be required to pay in full, annually in advance of the annual period in which the contract starts, unless an alternative payment agreement has been reached and stated in writing between the Provider and the Client.

9.3.7 Where the Provider provides a breakdown call out service during the contract period. Any costs will be invoiced upon completion of the works and are payable within 14 days of receipt of said invoice.

9.4 In the event that this Agreement is terminated by the Client prior to completion of the Services (including software services) but where the Services have been partially performed, the Provider will be entitled to pro rata payment of the Payment to the date of termination provided that there has been no breach of contract on the part of the Provider.

9.5 When work is being carried out on behalf of a 3rd party who will also be responsible for paying for the Works, Goods and/or Service, the payment terms will be proforma unless a credit account application has been accepted. In such case, credit account and payment terms must be agreed individually with the 3rd party.

9.6 Referral payments for the Client will only be paid when the 3rd party have been paid their full and final payment in line with our terms. This will be done by presentation of an invoice from the Client for the amount of which the referral fee has been agreed in advance.

9.7 Installation certificates for Works completed will only be issued by the Provider after the Client has made a full and final payment.

10. PENALTIES FOR LATE PAYMENT

10.1 The Provider may charge the Client interest on overdue accounts at the rate of 15% a month above the base rate of HSBC bank plc from time to time. This interest will be calculated on a daily basis until the receipt by us of the full amount, whether before or after judgment.

10.2 The Client must reimburse the Provider for any expenses reasonably incurred in the collection of overdue amounts.

10.3 Goods supplied or installed shall remain the Providers property until the Client has paid in full. Please refer to section 12.

10.4 When Clients use paid for software services supplied and operated by the Provider, it is Clients responsibility to maintain accurate and valid bank details at all times to cover subscription fees and associated charges. Where software services remain unpaid for longer than 5 weeks, the Provider reserves the right to suspend such services and apply late penalty charges for the full outstanding value, in line with section 10.1

11. WARRANTIES

11.1 Once an installation has been commissioned all future works and site visits from this point will be considered as "maintenance" and standard manufacturer warranties will therefore apply to the hardware.

11.2 Where the manufacturer provides a "parts and labour" warranty, it is the manufacturers responsibility to conduct the remedial works either by:

11.2.1 Provide their own resource to replace the parts, or resolve a technical issue, or

11.2.2 Pay for the Provider to replace the parts, or resolve the technical issue

11.3 Where the manufacturer provides a "parts only" warranty, it is the manufacturers responsibility to make available any parts or units at their cost. All charger equipment is supplied as per the manufacturer's warranty terms. Where manufacturers do not offer an onsite warranty and the replacement of all, or part of charger is required customers will be required to pay the Providers standard call out and labour charges for replacement of said parts or equipment.

11.4 The installation, which consists of cabling and power distribution installed by the Provider is covered by a 12 month installation warranty and is not subject to call out chargers within the 12 month period.

11.5 The Provider cannot be responsible for works being completed by third parties that we have not instructed. If the Provider are required to put right issues that arise from third party works, this is chargeable at an hourly rate, plus materials if required.

11.6 Any charging equipment supplied by the Client it is their responsibility to agree the warranty terms with the manufacturer and the Providers standard terms will apply if remedial works are required.

12. PROPERTY

12.1 Goods shall remain the Providers property until the Client has paid (in cleared funds) all sums due on any account whatsoever. The Provider reserves the right to remove or recover any Goods that have been supplied or installed, where full and final payments have not been received, and can do so without notice.

12.2 Although the Goods remain the Providers property until paid for, they shall be at the customer's risk from the time of delivery and the customer must insure them against loss or damage accordingly.

12.3 The Providers right to possession of the Goods shall cease if:

12.3.1 the Client has paid for the Goods in full by the expiry of any credit period allowed by this contract;

12.3.2 The Client is declared bankrupt or makes any proposal to his creditors for a composition or other voluntary arrangement;

12.3.3 A receiver, administrative receiver, liquidator or administrator is appointed in respect of the customer's business.

12.4 On cessation of the Clients' right to possession of the Goods, the Client must at his own expense make the Goods available to us and allow us to repossess them.

12.5 The Client grants us, our agents and employees an irrevocable licence to enter any premises where the Goods are stored in order to repossess them or inspect them at any time.

12.6 The Client will indemnify us against any liability in regard to any damage caused to premises or vehicles should repossession become necessary, where the damage could not reasonably be avoided.

13. COUNTERMANDS AND RETURNS

13.1 The Contactor cannot accept returns or countermands of Goods obtained or made, or to be obtained or made, specially to the Clients requirements.

13.2 The Provider shall be under no obligation to accept the return of Goods in good order and condition, but if in the instance the Provider agrees to do so, the Provider reserves the right to make a handling charge of 20% of the invoice price.

13.3 Goods returned without our prior written approval may, at the Providers absolute discretion, be returned to the Client or stored at the Client's cost, without limiting any other remedy offered.

13.4 The Client shall be under no obligation accept countermands and cannot agree to do so in the case of Goods ready for dispatch or in the process of manufacture.

13.5 The Client shall be under no obligation to issue a credit note for Works, Goods and/or Services, and cannot agree to do so unless proof of purchase can be made.

14. REIMBURSEMENT OF EXPENSES

14.1 The Provider will be reimbursed from time to time for reasonable and necessary expenses incurred by the Provider in connection with providing the Services.

14.2 All expenses must be pre-approved by the Client.

15. CONFIDENTIALITY

15.1 Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.

15.2 The Provider agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Provider has obtained, except as authorised by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.

15.3 All written and oral information and material disclosed or provided by the Client to the Provider under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Provider.

16 SPECIALLY MADE GOODS

16.1 Where the Provider manufacture or supply any Goods or services in accordance with any specification, drawings, designs, sketches, instructions or directions submitted by the Client they agree to:

16.1.1 indemnify the Provider against all damages, losses, costs, claims or expenses incurred in connection with any claim made against the Provider for infringement of the rights of any third party in the execution of the Clients' order;

16.1.2 any minor additions, omissions or defects which do not materially affect commercial or domestic use of the Goods will not entitle the Client to refuse delivery;

16.1.3 apply liability to the Provider in respect of any defect in the Goods arising from any specification, drawing or design supplied by the Client.

17 HEALTH AND SAFETY

17.1 The Client shall be responsible for ensuring that all Statutory, Government or Local Authority regulations are complied with in relation to the use of any Works, Goods and/or Services purchased and/or installed by the Provider. The Provider shall ensure that all Instructions, Hand Books, Notices and Warnings issued with the Goods are properly understood and complied with at all times by all persons using the Goods or working within close proximity to them.

18. OWNERSHIP OF INTELLECTUAL PROPERTY

18.1 All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trade mark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.

18.2 The Provider may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Provider will be responsible for any and all damages resulting from the unauthorised use of the Intellectual Property.

19. RETURN OF PROPERTY

19.1 Upon the expiry or termination of this Agreement, the Provider will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

20. CAPACITY/INDEPENDENT PROVIDER

20.1 In providing the Services under this Agreement it is expressly agreed that the Provider is acting as an independent Provider and not as an employee. The Provider and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

21. RIGHT OF SUBSTITUTION

21.1 Except as otherwise provided in this Agreement, the Provider may, at the Provider's absolute discretion, engage a third party sub-contractor to perform some or all of the obligations of the Provider under this Agreement and the Client will not hire or engage any third parties to assist with the provision of the Services.

21.2 In the event that the Provider hires a sub-contractor:

21.2.1 the Provider will pay the sub-contractor for its services and the Compensation will remain payable by the Client to the Provider.

21.2.2 for the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Provider.

22. AUTONOMY

22.1 Except as otherwise provided in this Agreement, the Provider will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement.

22.2 The Provider will work autonomously and not at the direction of the Client. However, the Provider will be responsive to the reasonable needs and concerns of the Client.

23. EQUIPMENT

23.1 Except as otherwise provided in this Agreement, the Provider will provide at the Provider's own expense, any and all tools, machinery, equipment, raw materials, supplies, workwear and any other items or parts necessary to deliver the Services in accordance with the Agreement.

24. NO EXCLUSIVITY

24.1 Unless otherwise stated, the Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services.

25. NOTICE

25.1 All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing.

26. INDEMNIFICATION

26.1 Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

27. MODIFICATION OF AGREEMENT

27.1 Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.

28. LIABILITY

28.1 Nothing in these conditions shall limit or exclude the Providers liability for:

28.1.1 Death or personal injury caused by negligence;

28.1.2 Fraud or fraudulent misrepresentation; or

28.1.3 Any matter in respect of which it would be unlawful to exclude or restrict liability.

28.2 The Provider shall not be liable to the Client:

28.2.1 For shortages in quantity delivered, unless the customer notifies us in writing within three days of receipt of the Goods;

28.2.2 For damage to or loss of Goods or part of a consignment in transit (where the Goods are carried by our own transport or by a carrier on our behalf), unless the customer notifies us and the carrier (if any) in writing of any claim within ten days of receiving the Goods or the scheduled date of delivery if earlier;

28.2.3 For defects in the Goods caused by any act, neglect or default of the Client or any third party;

28.2.4 For defects in the Goods if the Client is unable to produce on request satisfactory proof of purchase of the goods from us;

28.2.5 For defects in the Goods which would have been apparent on inspection or testing before incorporation into building works and the Client did not make such inspection or tests;

28.2.6 For defects in the Goods to the extent that the manufacturer of the goods has limited its liability and such limitation has been advertised or announced in trade literature or may otherwise be deemed to be known to the Client.

28.3 Subject to condition 12.1:

28.3.1 the Provider shall under no circumstances whatever be liable to the Client, 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

28.3.2 our total liability to the Client in respect of all other losses arising under or in connection with a contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1m (one million pounds sterling).

29. TIME OF THE ESSENCE

29.1 Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

30. ASSIGNMENT

30.1 The Provider will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

31. ENTIRE AGREEMENT

31.1 It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

32. ENUREMENT

32.1 This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

33. TITLES/HEADINGS

33.1 Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

34. GENDER

34.1 Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

35. GOVERNING LAW

35.1 This Agreement will be governed by and construed in accordance with the laws of England and the parties submit to the jurisdiction of the English Courts.

36. SEVERABILITY

36.1 In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

37. INSOLVENCY AND DEFAULT

If the Client:

37.1 Shall convene a meeting of its creditors; or

37.2 Shall commence negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or shall make a proposal for or enter into any compromise or arrangement with its creditors; or

37.3 Shall be subject of any other proposal for any composition, scheme of arrangement with, or assignment for, the benefit of its creditors; or

37.4 Shall suspend, or threaten to suspend, payment of its debts or shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) shall be deemed either unable to pay its debts or as having no reasonable prospect of so doing, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) shall have any partner to whom the same applies; or

37.5 Shall have a trustee, receiver or administrative receiver or similar officer appointed in respect of all or any part of its business or assets; or 23.6 shall be subject to a petition presented for its winding up or for the making of an administration order or if a notice of intention to appoint an administrator shall be given or if an administrator shall be appointed over the customer; or

37.7 Shall cease to carry on, or shall threaten to cease to carry on, its business or any substantial part of its business; or

37.8 Shall convene a meeting, or be the subject of a meeting convened, for any of the foregoing purposes; or

37.9 (being an individual) shall be the subject of a bankruptcy petition or order, or shall die; or

37.10 Shall commit any breach of the contract or any other contract between us and the customer; or

37.11 Shall exceed the authorised credit limit with the company, or the company has serious concerns as to the customer's solvency, we may without affecting any of our other rights stop any Goods in transit and/or suspend further deliveries and/or by notice in writing to the customer immediately end the contract.

38. THIRD PARTY RIGHTS

38.1 A person or business who is not a party to a contract shall not have any rights to enforce its terms.

39. FORCE MAJEURE

39.1 Notwithstanding any other of these conditions, the Provider shall not be liable to the Client for any loss or damage which may be suffered by the Client or associated 3rd parties, as a direct, or indirect, result of the supply of Goods or service by the Provider being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond our reasonable control ("force majeure event") including (but not limited to):

39.1.1 Act of God, war, riot, strike, lockout, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm; or

39.1.2 Difficulty or increased expense in obtaining labour, materials or transport, or other circumstances affecting the supply of Goods of raw materials by the Providers normal course of supply, or the manufacture of the Goods by the Providers normal means, or the delivery of the Goods by the Providers normal route or means of delivery.

40. WAIVER

40.1 The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.