

## **STANDARD TERMS OF BUSINESS**

### **1. Definitions**

1.1. In these conditions unless the context otherwise requires:

“Business Day”	means a day on which the Company is open for business;
“Client”	means the person, company or business that is contracting with the Company;
“Company”	means 8 Solutions Limited (register number 2602135) whose registered office is at The Business Park, Woodhouse Lane, Bolsover, Chesterfield, Derbyshire, S44 6BD;
“Contract”	means any agreement between the Company and the Client for the performance of the Services and sale of the Goods;
“Goods”	means the goods agreed in the Contract to be supplied and installed by the Company to the Client;
“Liability”	means any liability arising by reason of any representation warranty or guarantee or any breach of an implied term or any duty at Common Law or under statute, or under any express term of these conditions;
“Performance Date”	means the dates on which the Services are to be performed as stated in the Contract;
“Price”	means the price for the Goods and Services excluding VAT as stated on the Specification which may be amended in accordance with clause 4.2;
“Services”	means the services provided to the Client by the Company in accordance with the Contract and described in the Specification;
“Specification”	means the written specification as amended from time to time prepared and produced by the Company for the Client describing the Services in detail and the Price and incorporated into the Contract subject to the terms below.

1.2. The headings in these conditions are for convenience only and will not affect its interpretation

### **2. Basis of the Sale**

2.1. All Contracts will be on these conditions to the exclusion of all other terms (including any terms the Client purports to apply under any specification, confirmation of the works or other documents.

2.2. No variation to these conditions shall be binding unless agreed in writing and signed by authorised representatives of each of the Company and the Client.

2.3. Any advice or recommendation given by the Company or its employees or agents to the Client or its employees or agents as to the storage, application or use of the Goods (whether or not confirmed in writing and including all descriptions, illustrations and performance details contained in the Company's catalogues and advertisements) is given for general guidance only and forms no part of this Contract and is followed or acted upon entirely at the Client's own risk, and the Company shall not be liable for any such advice or recommendation

2.4. Performance dates for the Services quoted by the Company are approximate only.

- 2.5. In the event that a representative of the Company, whether any employee or otherwise, makes a representation to the Client in relation to the Services the Client shall request confirmation in writing of that representation from the Company. If the Client does not so request, the representation shall not form part of the Contract and no liability is accepted by the Company in respect thereof. If the Client does request confirmation the representation shall only form part of the Contract if confirmed to that effect by the Company.

### **3. Orders, Specification**

- 3.1. No order placed by the Client shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or, if earlier, the Company delivers the Goods to and performs the Services for the Client. Any quotations given are on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Client. Any quotation is valid for a period of 30 days only from its date or from the date the Company withdraws it if earlier.
- 3.2. The Client must ensure the terms of its order and any applicable Specification are accurate. All drawings, designs, specifications and particulars of weights, volumes and dimensions submitted by the Company are approximate only and the Company shall have no liability in respect of any deviation from them. The Company accepts no responsibility for any errors, omissions or other defects in any drawings, designs or specifications not prepared by the Company.
- 3.3. The Specification shall be submitted to the Client by the Company at any date prior to the date of the Contract and also on the date of the Contract. The Client shall notify the Company of its acceptance of the Specification in writing within 3 days of receipt of the Specification at which point the Company shall confirm receipt of that acceptance. No confirmation of the Specification shall be deemed accepted by the Company until confirmed in writing by the Company.
- 3.4. In the event that the Company determines that the Specification shall be amended for whatever reason at any time after the date of the Contract it shall notify the Client in writing of that together with the amended Specification. The Client shall have 24 hours in which to raise any objections to the amended Specification but shall be deemed to have accepted the amended Specification on expiry of that period ("the Expiry Date"). If the Client does not accept the revised Specification there shall be a period of 7 Business Days commencing on the Expiry Date for the Company and the Client to agree a new Specification.
- 3.5. The quantity and description of the Goods shall be those set out in the Client's order accepted by the Company. The Services shall be that set out in the Specification and otherwise in accordance with the Company's current brochure or other published literature relating to the Services from time to time, subject to these Conditions;
- 3.6. The Company reserves the right without notice to the Client to make any changes in the specification of the Goods and Services which are required to conform with any applicable safety or other statutory or EC requirement or which do not materially affect their quality or performance.
- 3.7. No order which has been accepted by the Company may be cancelled by the Client except with the agreement in writing of one of the Company's directors and if it is cancelled the Client shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 3.8. Delivery of Goods consequent upon a verbal order shall be deemed to be pursuant to a Contract and the person, firm or company named on the consignment note or invoice accompanying such delivery shall be the Client for the purposes of the Contract.
- 3.9. All sampling of the Goods, the making and testing of samples and interpretation of results must be carried out in accordance with the appropriate British Standard from time to time.

#### **4. Price**

- 4.1. Subject to clause 4.2 the Price shall be that stated on the Specification.
- 4.2. The Company reserves the right to alter the Price in the following circumstances:
  - 4.2.1. as a result of an amendment to the Specification in accordance with clause 3.4; or
  - 4.2.2. changes in rates for labour and materials and/or other production costs, or changes in the types of rates of tax contributions or levies which cause the Company to incur increased costs.
- 4.3. The Company shall notify the Client of such amendment together with the amended Price. The Client shall have 24 hours in which to raise any objections to the amended Price but shall be deemed to have accepted the amended Price on expiry of that period ("the Revised Price Expiry Date"). If the Client objects to the Price in the specified period both parties shall have 7 Business Days commencing on the Revised Price Expiry Date in which to agree a revised price.
- 4.4. The price for the Goods and Services, is exclusive of any value added tax, other taxes, levies or duties, and all costs or charges in relation to the Goods for loading, unloading, carriage and insurance which the Client shall pay in addition when it is due to pay for the Goods
- 4.5. The price for the Goods only covers delivery or collection during the Company's normal working days during its normal working hours which are 9.00am until 5.00pm on Mondays – Fridays inclusive but excluding public holidays. Upon the Client's request and at the absolute discretion of the Company delivery may be made on or collection effected at any time outside such normal working hours but such delivery or collection will be charged for by the Company as an increase to the quoted price.

#### **5. Payment**

- 5.1. The Company shall submit an invoice to the Client at the address on the Contract or any other address notified to the Company. Invoices shall be submitted as and when agreed between the Client and the Company in the Contract and such dates form part of these conditions.
- 5.2. The Client shall pay the Company the full amount stated on the invoice within 30 days of the invoice date, in sterling, without any deductions, withholding or set off whatsoever. The time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds.
- 5.3. If payment is not made in accordance with clause 5.2:-
  - 5.3.1. the Company reserves the right to terminate the Contract immediately and/or to suspend the provision of the Services at its option without prejudice to its right to recover the amount on the invoice and/or damages for any loss sustained by the Company;
  - 5.3.2. the whole of the balance of the Price outstanding shall become due and payable immediately;
  - 5.3.3. The Company may charge interest on any outstanding amounts (before and after judgement) at the annual rate of 8% above National Westminster Bank Plc base lending rate

## 6. Delivery and Performance

- 6.1. Unless otherwise agreed in writing by the Company, and subject to Clause 4.5, delivery of the Goods shall take place at the Clients' place of business.
- 6.2. Any dates specified for delivery of the Goods and performance of the Services are approximate only and the Company shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Goods (even if caused by the Company's negligence). Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the specified quoted delivery date upon giving reasonable notice to the Client. If no dates are specified delivery will be within a reasonable time.
- 6.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Contract as a whole as repudiated.
- 6.4. If the Client or its carrier fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then:
- 6.4.1. risk of damage to or loss of the Goods will pass to the Client (including for loss or damage caused by the Company's negligence);
  - 6.4.2. the Goods will be deemed to have been delivered;
  - 6.4.3. the Company may store the Goods until actual delivery and charge the Client for all related costs (including insurance) of storage;
  - 6.4.4. the Company may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Client for the excess over the price under the Contract or charge the Client for any shortfall below the price under the Contract;
  - 6.4.5. without affecting to any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries to the Client.
- 6.5. The Client acknowledges that where delivery is at a place nominated by the Client it is its responsibility to ensure that suitable access equipment and manual labour is available for the purposes of unloading and delivery of the Goods. **IF IN THE DRIVER'S REASONABLE OPINION THESE ARE NOT AVAILABLE THE COMPANY RESERVES THE RIGHT TO REFUSE TO DELIVER GOODS.**
- 6.6. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Client on delivery unless the Client can provide conclusive evidence proving the contrary.
- 6.7. If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Client's fault, and the Company is accordingly liable to the Client, the Company's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.8. It is the responsibility of the Client to arrange inspection of the Goods immediately on delivery and prior to signature of a delivery receipt, if required.

**THE CLIENT'S ATTENTION IS ALSO DRAWN TO CONDITION 7.**

## 7. Risk and Ownership of Goods

- 7.1. Risk of damage to or loss of the Goods shall pass to the Client from the time of delivery and installation from which point the Company shall bear no further responsibility for damage or deterioration to the Goods.
- 7.2. Ownership of the Goods shall not pass to the Client until the Company has received in cash or cleared funds payment in full of:
- 7.2.1. the price of the Goods; and

- 7.2.2. all other sums due to the Company by the Client on any account.
- 7.3. Until ownership of the Goods has passed to the Client, the Client must:
- 7.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
  - 7.3.2. store the Goods (at no cost to the Company) separately from all other Goods of the Client or any third party in such a way that they remain readily identifiable as the Company's property;
  - 7.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.4. maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Client shall produce the policy of insurance to the Company;
  - 7.3.5. hold the proceeds of the insurance referred to in Condition 7.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account; and
  - 7.3.6. not resell the Goods
- 7.4. The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Client does so all moneys owing by the Client to the Company shall (without affecting to any other right or remedy of the Company) immediately become due and payable.
- 7.5. The Client's right to possession of the Goods shall terminate immediately if:
- 7.5.1. the Client has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part of it, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Client or notice of intention to appoint an administrator is given by the Client or any party who is so entitled to appoint an administrator or a resolution is passed or a petition presented to any court for the winding up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client; or
  - 7.5.2. the Client suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Client, or is unable to pay its debts as they fall due or the Client ceases to trade; or
  - 7.5.3. the Client encumbers or in any way charges any of the Goods.
- 7.6. The Company shall be entitled to recover payment for the Goods even if ownership of any of the Goods has not passed from the Company to the Client.
- 7.7. The Client grants the Company, its 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 the Client's right to possession has terminated, to recover them.

## 8. Quality

- 8.1. The Company warrants that the Goods will correspond with their specification at the time of delivery. In relation to the Services the Company warrants to the Client that they will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Specification. All other warranties, conditions or other terms implied by statute or common law in respect of the Goods and Services are excluded to the fullest extent permitted by law.
- 8.2. Without prejudice to Condition 8.1 any claim by the Client which is based on a shortfall in quantity of the Goods or any defect in the quality or condition of the Goods or the quality of the Services shall be notified to the Company within 48 hours from the date of delivery of the Goods or supply of

the Services (where a defect or failure was not apparent on proper inspection) within a reasonable time after discovery of any defect.

- 8.3. If the Client does not notify the Company in accordance with Condition 8.2, the Client shall not be entitled to reject the Goods and the Company shall have no liability for such shortfall, defect or failure, and the Client shall be bound to pay the price. It is the responsibility of the Client (at its own expense) to return any relevant Goods to the Company's premises if requested to do so by the Company to allow inspection by the Company. For the purposes of this Condition 8.3 time shall be of the essence.
- 8.4. If the Client does notify the Company in accordance with Condition 8.2 and the claim is valid the Company shall (in the case of a shortfall) supply additional Goods to make up the shortfall or (in any other case) shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund the Client the price of the Goods or Services (or a proportionate part of the price), or in the case of Services, supply further services to the Client, but the Company shall have no further liability to the Client. It shall be the responsibility of the Client to collect from the Company's premises any Goods returned pursuant to this Condition if the Client's claim in respect of those Goods proves not to be valid
- 8.5. Despite any of the other provisions of this Condition 8, if Goods delivered to the Client are processed, manufactured and/or incorporated by the Client with any other goods or have been sold by the Client or the Client does not return the same to the Company at the Company's request or the Client alters the Goods in any way the Client shall be deemed to have accepted such Goods as being in all respects in accordance with the Contract.
- 8.6. Where the Company is not the manufacturer of the Goods, or of any other goods supplied by a third party in connection with the Services the Company will use its reasonable endeavours to transfer to the Client the benefit of any warranty, guarantee or indemnity given to the Company.

## 9. Access to Clients Premises

- 9.1. The Client shall ensure that the Company's representatives have full and free access to the Client's premises at all times during normal working hours or at the times stated in the Specification to enable the Company to perform and provide the Services in a safe and secure working environment.
- 9.2. The Client shall ensure that it undertakes all necessary steps to ensure that at least one copy of all of its data is made immediately prior to the commencement of provision of the Services by the Company to the Client. The Company shall not be responsible for the loss of any data held by the Client immediately prior to the commencement of the Services by the Company. Further the Client shall be required to ensure that it continues to back up its computer system and all data at regular intervals during the provision of the Services by the Company.

## 10. Cancellation

- 10.1. If a Service visit has not been carried out on or before the expiry of 30 days after it was due to take place as a result of a Client actions regardless of whether the service has been performed at all 100% of the price will be payable.
- 10.2. If the Client cancels the Services or postpones with less than seven (7) Business Days+ notice or less, it shall pay the Company the full Price.
- 10.3. If the Client cancels the Services or postpones on notice of not less than seven (7) Business Days+ and not more than twenty one (21) Business Days it shall pay to the Company:
  - 10.3.1. 50% of the Price; and
  - 10.3.2. the full amount of any expenses incurred by the Company as a direct result of such cancellation which shall include, but are not limited to, hire fees.

10.4. If the Client cancels the Services or postpones on notice of not less than twenty one (21) Business Days+ and not more than thirty (30) Business Days it shall pay to the Company 25% of the Price.

+Business Day is Monday to Friday excluding Bank Holidays.

## 11. Liability

11.1. Subject to Clause 8.1 all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.2 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or Services (including any delay in supplying or any failure to supply the Goods or Services in accordance with the Contract or at all) or (in the case of Goods) their use or resale by the Client, and the entire liability of the Company under or in connection with the Contract shall not exceed the Price paid for the Goods or Services (as the case may be) except as expressly provided in these Terms.

11.3 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987 or any liability for fraudulent misrepresentation the Company's maximum liability to the Client shall not exceed the amount of its insurance cover in any event. The Company maintains insurance cover in respect of Public Liability and Product Liability of £10,000,000 and in respect of loss or damage to data in the sum of £5,000,000.

11.4 Nothing in these conditions shall exclude or limit the Company's liability for death or personal injury resulting from negligence or for fraudulent misrepresentation.

11.5 The Company shall not be liable for any defect in workmanship or loss or damage to the Client's property if such work or loss or damage is as a result of the instructions of or details provided by the Client in reliance upon which the Company has prepared the Specification or part thereof.

### **THE CLIENTS ATTENTION IS ALSO DRAWN TO CLAUSE 9.2 ABOVE**

## 12. Force Majeure

12.1 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

12.1.1. Act of God, explosion, flood, tempest, fire or accident;

12.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

12.1.3 terrorist attack, nuclear, chemical or biological contamination;

12.1.4 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

12.1.5 import or export regulations or embargoes;

12.1.6 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

12.1.7 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

12.1.8 power failure or breakdown in machinery.

## 13. Termination

- 13.1. The Company may terminate the Contract forthwith by notice in writing if:-
  - 13.1.1. the Client shall be in breach of these conditions;
  - 13.1.2. the Client makes any voluntary arrangement with his creditors or becomes subject to an administration order;
  - 13.1.3. if the Client becomes bankrupt (if an individual);
  - 13.1.4. if the Client goes into liquidation (if a company) otherwise for the purposes of amalgamation or reconstruction
  - 13.1.5. a receiver is appointed to the Client; or
  - 13.1.6. a resolution of winding up is passed or a Court Order made to that effect;
  - 13.1.7. the performance of the Services is suspended or delayed for 30 days for a reason beyond the control of the Company; or
  - 13.1.8. the Client and the Company cannot agree an amended Specification and/or an amended Price in accordance with clause 3.4.
- 13.2. Termination by the Company shall be without prejudice to any other rights and remedies of the Company.
- 13.3. On termination in accordance with this clause 13 the Price shall immediately become due and payable by the Client to the Company.
- 13.4. If the Company has the right to terminate in accordance with clauses 13.1.2 to 13.1.6 inclusive the Company may give any liquidator, receiver, administrative, receiver, manager or other appropriate person the option of continuing the Contract.

## 14. General

- 14.1. The Contract shall be governed in all respects by English law and shall be subject to the non exclusive jurisdiction of the courts of England.
- 14.2. Any notice or other document to be given under the Contract shall be in writing and shall be deemed to have been duly delivered within two days of posting if by first class post, airmail post, or registered post to the principal place of business or last known address or registered office (if a company)
- 14.3. The Company reserves the right to correct any clerical omissions or errors without notice.
- 14.4. If any part of these conditions shall be declared illegal, invalid or unenforceable such part shall be severed from the conditions and shall not in anyway prejudice or affect the remaining parts of the conditions which shall continue in full force and effect.
- 14.5. Unless stated otherwise time shall not be of the essence of the Contract.
- 14.6. Any waiver by the Client or the Company of any breach of the Contract by the other shall not affect the rights of either party and shall not be deemed to be a waiver of any prior subsequent or continuing breach of that or any other provision by either party and any forbearance of delay by either party in exercising any of its rights under these conditions shall not be construed as a waiver.



- 14.7 The Client may not assign any part of the Contract without the Company's express written consent.
- 14.8 The Contracts (Rights of Third Parties) Act 1999 does not apply so as to give to a person who is not a party to this agreement a right under it.