

## TERMS AND CONDITIONS

### 1. Definitions

In this Agreement, the following words shall have the following meanings:

"the Customer"	
"the Services"	
"the Price"	
"the Payment Period"	all have the meaning set out overleaf, on the Specification Document.
"the Goods"	All parts, devices, apparatus, wiring and conduits supplied by Tugbury in performing the Services.
"Tugbury"	means Tugbury Ltd Centre, Treforest Industrial Estate, Pontypridd, Mid Glamorgan CF37 5UR.
"Third Party Goods"	means any goods or component parts to be supplied by Tugbury under any Agreement and which are manufactured by a third party.
"the Specification Document"	means the statement of work or quotation describing the Goods and Services to be provided by Tugbury set out overleaf.

### 12. GENERAL

- 12.1 These Terms and Conditions shall be supplementary to the Specification Document and in the event of any conflict the terms set out in the Specification Document shall take precedence over these standard Terms and Conditions.
- 12.2 These terms and conditions shall apply to the Agreement to the exclusion of all other terms and conditions and shall take precedence over any other terms and conditions submitted by the Customer regardless of circumstances or conflict.
- 12.3 The placing of a purchase order or acceptance by a Customer of the Specification Document shall be deemed as unequivocal acceptance of these terms and conditions.
- 12.4 These terms and conditions shall not be varied, other than by the Specification Document, unless any changes are specifically agreed in writing by Tugbury.
- 12.5 Tugbury shall use all reasonable endeavours to complete the Services within estimated time frames but time shall not be of the essence in the performance of any Services.
- 12.6 It is agreed that the Customer is not dealing as a consumer as defined by the Unfair Contract Terms Act 1977 and that these conditions are 'fair and reasonable' having regard to the custom and usage of the trade and all other circumstances.

### 13. PAYMENTS

- 13.1 Payments for sums due shall be made with 14 days of the date of the invoice or as specified in the Payment Period on the Specification Document. The invoice will be delivered upon completion of the work as set out in the Specification Document.
- 13.2 Tugbury reserves the right to deliver interim invoices for any work that is of more than one week in duration, in respect of Goods and Services delivered and performed to date. Such invoices may be delivered on a weekly basis until the work is completed.
- 13.3 If payment of any sum due under this Agreement is not received by any due date specified for that sum, Tugbury shall be entitled to charge interest on the outstanding amount at the rate of 5% per annum above the Bank of England base lending rate, accruing daily.

### 14. CUSTOMER'S OBLIGATIONS

- 14.1 To enable Tugbury to perform its obligations under this Agreement the Customer shall:
- 14.1.1 co-operate with Tugbury, including allowing access to the Customer's premises as reasonably required to perform the Services;
  - 14.1.2 provide Tugbury with any information reasonably required by Tugbury;
  - 14.1.3 obtain all necessary permissions and consents which may be required before the commencement of provision of the Goods and/or Services by Tugbury; and
  - 14.1.4 comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.
- 14.2 The Customer shall be responsible for providing a safe place of work for Tugbury and its contractors to perform the Services.
- 14.3 The Customer shall not unless expressly authorised by Tugbury accept delivery of any Goods or Third-Party Goods ordered by Tugbury. Any delivery notes must be notated with the words "not inspected at time of receipt".
- 14.4 The Customer shall be liable to compensate Tugbury for any costs or expenses incurred by Tugbury as a result of the Customer's failure to comply with Clause 4.

### 15. RETENTION OF TITLE AND RISK

- 15.1 Goods supplied by the Sellers shall be at the Customer's risk immediately on delivery to the Customer or into custody on the Customer's behalf (whichever is the sooner) and the Customer should therefore insure accordingly.
- 15.2 Title in the Goods shall not pass to the Customer until Tugbury has been paid in full for: -
- 15.2.1 all Goods supplied to the Customer; and
  - 15.2.2 all other sums which are or which become due to Tugbury from the Customer on any account
- 15.3 The Customer shall keep all Goods:
- 15.3.1 separate from all other goods of the Customer and readily identifiable (i) as Tugbury's property; and
  - 15.3.2 in good condition and insured on Tugbury's behalf for the full price to the reasonable satisfaction of Tugbury until such time as title passes to the Customer.
- 15.4 The Customer grants Tugbury, 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 Customer's right to possession has terminated, to recover them.

### 16. WARRANTY

- 16.1 Tugbury's liability in respect of any defects in material and workmanship in Third Party Goods, shall be limited to passing the Customer the benefit of any guarantee or warranty given by the manufacturer of such Third Party Goods for such period as is given by such manufacturer to Tugbury and subject to the terms of warranty given by such third party manufacturer (details of which can be supplied to the Customer on request) provided that:
- 16.1.1 the manufacturer's warranty does not apply to any Third-Party Goods, products or components in them which have been serviced or repaired by any party other than the manufacturer's authorised representative; and
  - 16.1.2 it is the sole responsibility of the Customer to ensure that compliance with the manufacturer's recommended service intervals and other instructions is achieved.
- the Customer shall not remove or deface the manufacturer's seals, barcodes and/or serial numbers.
- 16.2 Tugbury's liability in respect of any defects in material and workmanship in Third Party Goods, shall be limited to passing the Customer the benefit of any guarantee or warranty given by the manufacturer of such Third-Party Goods for such period as is given by such manufacturer to Tugbury and subject to the terms of warranty given by such third party manufacturer (details of which can be supplied to the Customer on request) provided that:
- 16.2.1 the manufacturer's warranty does not apply to any Third-Party Goods, products or components in them which have been serviced or repaired by any party other than the manufacturer's authorised representative; and
  - 16.2.2 it is the sole responsibility of the Customer to ensure that compliance with the manufacturer's recommended service intervals and other instructions is achieved.
- the Customer shall not remove or deface the manufacturer's seals, barcodes and/or serial numbers.

- 2.1 The warranties in 6.1 and 6.2 do not apply in the following circumstances:

- 2.1.1 where the defect arises from fair wear and tear, wilful damage, negligence or misuse of the Goods, abnormal usage conditions, failure to follow Tugbury's instructions (whether oral or in writing), failure to maintain or service the Goods in accordance with any manufacturer's recommendations, misuse or alteration or repair of the Goods without the Tugbury's approval;
  - 2.1.2 if the total price for the Goods or Services have not been paid by the due date for payment;
- 2.2 Any warranty given under this clause 6.2 above shall relate to the relevant Agreement and may not be transferred by the Customer to a third party.
- 2.3 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Goods and Services to be provided by Tugbury.
- 2.4 Where Goods are returned in a warranty period there shall be no extension of the original warranty period unless expressly agreed in writing by the parties.
- 2.5 The cost of returning the Goods to Tugbury shall be at the Customer's expense.
- 2.6 Tugbury reserves the right to charge for any costs of labour incurred in rectifying any defect in Goods supplied by a Third Party but installed by Tugbury.

### 3. LIMITATION OF LIABILITY

- 3.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of Tugbury to the Customer in respect of any claim whatsoever whether for a breach of this Agreement, any representation, tortious act or omission (including negligence) shall be limited to the price paid by the Customer for the Agreement to which the claim relates.
- 3.2 In no event shall Tugbury be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or Tugbury had been made aware of the possibility of the Customer incurring such a loss.
- 3.3 Nothing in these terms and conditions shall exclude or limit Tugbury's liability: -
- 3.3.1 for death or personal injury resulting from Tugbury's negligence or that of its employees, agents or sub-contractors; or
  - 3.3.2 for any matter for which it would be illegal for Tugbury to exclude or attempt to exclude its liability; or
  - 3.3.3 for fraud or fraudulent misrepresentation; or
  - 3.3.4 for any liability incurred by the Customer as a result of any breach as to title implied in s.2 of the Supply of Goods and Services Act 1982.

### 4. FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

### 5. INDEPENDENT CONTRACTORS

Tugbury and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. Tugbury may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Customer and such engagement shall not relieve Tugbury of its obligations under this Agreement or any applicable Specification Document.

### 6. ASSIGNABILITY AND SUB-CONTRACTING

- 6.1 This contract may not be assigned or transferred by the Customers without the prior written consent of Tugbury.
- 6.2 Tugbury may sub-contract any of their obligations under the contract.

### 7. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

### 8. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

### 9. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

### 10. NO THIRD-PARTY RIGHTS

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

### 11. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.