

**The Customer's attention is particularly drawn to the provisions of clause 12.**

**1. INTERPRETATION**

1.1 Definitions. In these Conditions, the following definitions apply:

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

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.8.

**Contract:** the contract between JPA and the Customer for the supply of Goods and/or Services in accordance with these Conditions. The Contract shall be formed in accordance with clause 2.

**Customer:** the person or firm who purchases the Goods and/or Services from JPA.

**Deliverables:** the deliverables, other than the Goods, set out in the Order.

**Delivery Location:** has the meaning set out in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 15.1(a).

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

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, which are agreed in writing by the Customer and JPA.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, photos, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**JPA:** John Pulsford Associates Limited registered in England and Wales with company number 01180064 whose registered office is situated at Unit 4 Sphere Industrial Estate, Campfield Road, St Albans, Herts, AL1 5HT.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of JPA's quotation, as the case may be. The order shall provide full details of the Customer premises or location where delivery of the Goods and/or performance of the Services are to occur confirming access, floor number, facilities and amenities.

**Order Acknowledgement:** JPA's email acceptance of the Order which shall also include or refer to the Goods Specification.

**Receipt:** the signed delivery note from the Customer confirming the condition and delivery of the Goods and/or performance of the Services alongside any photographic evidence the JPA may take.

**Services:** the services, including the Deliverables, supplied by JPA to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided as set out in the Order Acknowledgement or such other written agreement between JPA and the Customer.

**Supplier Materials:** has the meaning set out in clause 8.1(j).

1.2 Construction. In these Conditions, the following rules apply :

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when JPA issues the Order Acknowledgement to the Customer's notified email address at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of JPA which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by JPA and any descriptions of the Goods or illustrations or descriptions of the Services contained in JPA's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing at any time on or prior to the Commencement Date.
- 2.6 Any quotation given by JPA shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue. The Customer acknowledges and understands that prices contained within any quote are based on the assumption that immediate uninterrupted access shall be given to the Customers premises and that the premises shall be clear and serviced by working lifts where delivery and/or the provision of the Services is to occur other than on the ground floor. If this is not the case additional charges shall be incurred.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. GOODS**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall
- (a) Ensure that the Goods Specification meets the Customer's requirements; and
  - (b) indemnify JPA against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by JPA in connection with any claim made against JPA for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with JPA's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 JPA reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

### **4. DELIVERY OF GOODS**

- 4.1 JPA shall ensure that
- each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and JPA reference numbers, the

type and quantity of the Goods (including the code number of the Goods, where applicable).

- 4.2 JPA shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree (**Delivery Location**) at any time after JPA notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall;
- (a) be completed on the completion of the unloading of the Goods at the Delivery Location; or
  - (b) where JPA are instructed to install the Goods, be completed on the completion of the installation of the Goods and provision of the Services at the Delivery Location.
- 4.4 The Customer shall provide at least 72 hours prior notice in writing in the event that it wishes to alter any agreed delivery date so as not to incur additional charges. If the Customer fails to provide the required notice under this clause 4.4 JPA shall be entitled to recover any costs incurred in accordance with clause 8.2 and/or clause 9.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. JPA shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide JPA with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 2 to 4 Business Days of JPA notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by JPA's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the day that JPA notified the Customer that the Goods were going to be delivered; and
  - (b) JPA shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance) however incurred.
- 4.7 If 20 Business Days after JPA notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, JPA may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 JPA may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. QUALITY OF GOODS

5.1 JPA shall use all reasonable endeavours to pass on any manufacturer's warranty to the Customer in relation to the Goods and otherwise warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description and any applicable Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if:

- (a) The Customer provides notice of any damage which is apparent on inspection to the Goods within 2 Business Days of delivery; or
- (b) Where the notice does not relate to damage covered by clause 5.2 (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (c) JPA shall be given a reasonable opportunity of examining such Goods; and
- (d) the Customer (if asked to do so by JPA) shall return such Goods to JPA's place of business at the Customer's cost,

JPA may, at its option and complete discretion, choose to repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 JPA shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2; or
- (b) the defect arises because the Customer failed to follow JPA's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the defect arises as a result of JPA following any drawing, design or Goods Specification supplied by the Customer; or

- (d) the Customer alters or repairs such Goods without the written consent of JPA; or
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, JPA shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by JPA under clause 5.2.

## **6. TITLE AND RISK**

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery. JPA accepts no liability for any damage, costs, expenses or penalties that may arise due to any third party actions after completion of delivery to either the Goods and/or any other property. By way of example, if the Customer allows (whether with knowledge or not) any third party to deal with, move or interfere with the Goods after completion of delivery this shall be at the complete risk of the Customer and JPA accepts no liability whatsoever.
- 6.2 Title to the Goods shall not pass to the Customer until JPA has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
  - (b) any other goods that JPA has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as JPA's bailee;
  - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable; and
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on JPA's behalf from the date of delivery;

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(i), or JPA reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy JPA may have, JPA may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Customer grants to or shall procure for JPA a continuing licence to enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

7.1 JPA shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 JPA shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 JPA shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and JPA shall notify the Customer in any such event.

7.4 JPA warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

- (a) ensure that the terms of and information contained within the Order, the Goods Specification, the Service Specification and the Order Acknowledgement are complete and accurate;
- (b) ensure that the Goods and/or Services are sufficient to meet its requirements;
- (c) ensure that a suitable representative of the Customer is present on delivery of the Goods and/or completion of the provision of the Services in order to sign the Receipt;

- (d) allow or procure authorisation for JPA to take photographs to verify delivery of the Goods and/or performance of the Services as well as for future marketing initiatives under clause 10;
  - (e) co-operate with JPA in all matters relating to the Services;
  - (f) provide JPA, its employees, agents, consultants and subcontractors, with access to the Customer's premises, offices, accommodation and other facilities as reasonably required by JPA to provide the Services and/or to deliver the Goods;
  - (g) provide JPA with such information and materials as JPA may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - (h) prepare and clear all items from the Customer's premises or the relevant location for the supply of the Services and/or delivery of the Goods and generally ensure that it is safe and free of hazards. The Customer shall ensure that all entrances, stairwells, lifts and corridors are clear and unimpeded to all the movement of the Goods and/or performance of the Services within the Customer's premises. The Customer shall also ensure that all other tradesmen have cleared and vacated the relevant area of the Customer's premises;
  - (i) 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
  - (j) keep and maintain all materials, equipment, documents and other property of JPA (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain JPA Materials in good condition until returned to JPA, and not dispose of or use JPA Materials other than in accordance with JPA's written instructions or authorisation.
- 8.2 If JPA's performance of any of its obligations in respect of the Services is affected, prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) JPA shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays JPA's performance of any of its obligations;
  - (b) JPA shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from JPA's failure or delay to perform any of its obligations as set out in this clause 8.2;



- (c) JPA shall be entitled to apply the overtime charges referred to in clause 9.2 (c) in relation to any additional time incurred by JPA outside of the quoted time in the Order Acknowledgement; and
- (d) the Customer shall reimburse JPA on written demand for any costs or losses sustained or incurred by JPA arising directly or indirectly from the Customer Default.

## 9. CHARGES AND PAYMENT

9.1 The price for Goods shall be the price set out in the Order Acknowledgement or, if no price is quoted, the price set out in JPA's published price list as at the date of delivery. Unless otherwise stated the price of the Goods is inclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 The charges for Services shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with JPA's standard daily fee rates card (**Rates Card**) in force from time to time, as can be seen at ([www.jpa-furniture.com](http://www.jpa-furniture.com)) For the avoidance of doubt additional charges shall be incurred at those rates set out on the Rates Card or as otherwise agreed for site surveys, drawings, specifications and CAD plans (3D designs);
- (b) JPA's standard daily fee rates for each individual person are calculated on the basis of the working hours set out on the Rates Card;
- (c) JPA shall be entitled to charge an overtime rate shown on the Rates Card for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) JPA shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom JPA engages in connection with the Services including, but not limited to, travelling expenses, and any associated expenses, and for the cost of services provided by third parties and required by JPA for the performance of the Services, and for the cost of any materials; and
- (e) For the avoidance of doubt additional charges may be incurred for additional labour, down time or storage including, but not limited to situations where:
  - (i) A suitable lift is not working or available for delivery of the Goods to a location other than on the ground floor; or
  - (ii) Where access to the delivery location is not clear or is prevented by any third party; or
  - (iii) Where an authorised member of the Customers staff is unavailable to sign the Receipt.

- 9.3 JPA reserves the right to:
- (a) Require up front or part payment from the Customer prior to provision of the Goods or performance of the Services;
  - (b) increase its standard daily fee rates for the charges for the Services; and
  - (c) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to JPA that is due to:
    - (i) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
    - (ii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give JPA adequate or accurate information or instructions in respect of the Goods.
- 9.4 JPA shall invoice the Customer on or at any time after completion of delivery and/or performance of the Services.
- 9.5 The Customer shall pay each invoice submitted by JPA:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by JPA, and
- time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by JPA to the Customer, the Customer shall, on receipt of a valid VAT invoice from JPA, pay to JPA such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.7 Without limiting any other right or remedy of JPA, if the Customer fails to make any payment due to JPA under the Contract by the due date for payment (**Due Date**), JPA shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be

entitled to assert any credit, set-off or counterclaim against JPA in order to justify withholding payment of any such amount in whole or in part. JPA may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by JPA to the Customer.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by JPA.
- 10.2 The Customer acknowledges that all Intellectual Property Rights in or arising out of any specification for the Goods, including any relevant plans or drawings created or supplied by JPA shall be owned by JPA.
- 10.3 The Customer authorises JPA to take photographs of the Goods, the Goods once they are installed on the Customers site and/or completed Services for use by JPA in any marketing material and on any medium and acknowledges that any Intellectual Property Rights in or arising out of or in connection with the photographs shall be owned by JPA.
- 10.4 All Supplier Materials are the exclusive property of JPA.

## **11. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are marked as confidential and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

## **12. LIMITATION OF LIABILITY:**

- 12.1 Nothing in these Conditions shall limit or exclude JPA's liability for:
  - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
  - (b) fraud or fraudulent misrepresentation.

12.2 Subject to clause 12.1:

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

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

### **13. TERMINATION**

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company);
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;

- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1 (f)(inclusive);
  - (h) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
  - (i) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2 Without limiting its other rights or remedies, JPA may terminate the Contract:
- (a) by giving the Customer 4 weeks' written notice;
  - (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.3 Without limiting its other rights or remedies, JPA shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and JPA if:
- (a) the Customer fails to pay any amount due under this Contract on the due date for payment; or
  - (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(i), or JPA reasonably believes that the Customer is about to become subject to any of them.
- 14. CONSEQUENCES OF TERMINATION & LIQUIDATED DAMAGES**
- 14.1 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to JPA all of JPA's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, JPA shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) at the sole discretion of JPA the Customer shall upon receipt of notice from JPA return all of JPA Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then JPA may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract. For the

avoidance of doubt this shall not replace the obligation for payment under clause 14.1 (a) and shall be at JPA's discretion;

- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14.2 If the Customer tries, after delivery of the Order Acknowledgment but prior to delivery of the Goods and/or performance of the Services, to terminate the Contract contrary to clause 13:

- (a) during the manufacture and productions of the Goods the Customer shall pay JPA on demand the costs incurred by JPA up to and at the date of termination whether or not invoiced (including but not limited to material costs, subcontractors fees, labour costs etc.) in accordance with clause 9 (where relevant) as liquidated damages; or
- (b) once the Goods have been manufactured and are in a condition to be sent to the Customer (whether notified or not) the Customer shall pay JPA on demand the full price to be paid for the Goods and/or Services in accordance with clause 9.

The escalating costs under this clause 14.2 are due to the stage of production of the Goods and/or provision of the Services and the parties confirm that this sum represents a genuine pre-estimate of JPA's loss should the Customer seek to cancel the Contract at those times specified. The Customer acknowledges that the Goods are manufactured to order and once produced are very difficult to sell to third parties and that full payment represents the genuine loss that JPA would suffer. JPA will still use reasonable endeavours to try to resell the Goods and shall apply any receipt of payment by JPA for Goods sold to third parties against the liability owed by the Customer under this clause 14.2 and where payment has been made JPA shall either provide credit to or reimburse the Customer.

## 15. GENERAL

15.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of JPA including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown

of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- (b) JPA shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents JPA from providing any of the Services and/or Goods for more than 4 weeks, JPA shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

#### 15.2 Assignment and subcontracting:

- (a) JPA may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of JPA, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### 15.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 10.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

#### 15.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No



failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by JPA.

15.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.