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**DESIGN REALITY LIMITED**

**TERMS AND CONDITIONS FOR THE**

**SUPPLY OF GOODS, SERVICES AND MANUFACTURING SERVICES**

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## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

### 1 INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 DEFINITIONS

For the avoidance of doubt, these definitions apply to these Conditions.

<b>“Artwork”</b>	means any image or design provided in any form to the Company by the Customer for use by the Company in the performance of the Contract;
<b>“Business Day”</b>	means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in the United Kingdom;
<b>“Company”</b>	means <b>Design Reality Limited</b> , registered in England and Wales (company number 04579570) whose registered office is at Harrowden Court 66-80 Huxley Close, Park Farm Industrial Estate, Wellingborough, Northamptonshire, England, NN8 6AB;
<b>“Conditions”</b>	means the standard terms and conditions set out in this document and as amended from time to time in accordance with Condition 30;
<b>“Confidential Information”</b>	means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential;
<b>“Contract”</b>	means any contract between the Company and the Customer for the provision of Supplies by the Company to the Customer;
<b>“Controller”</b>	has the meaning given in the Data Protection Legislation;
<b>“Customer”</b>	means the person, firm or company identified in the Order who purchases the Supplies from the Company;
<b>“Data Protection Legislation”</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
<b>“Delivery”</b>	means completion of delivery of an Order in accordance with Condition 5;
<b>“Design Services”</b>	means services for the design, engineering or development of any product, including services to advise on or assist in any of those activities;

<b>“Equipment”</b>	means the equipment, including any tooling, that is necessary for the manufacture and assembly of the Manufactured Goods;
<b>“Free Issue Materials”</b>	means any goods provided to the Company by the Customer without charge, which are for use by the Company in the performance of the Contract;
<b>“Goods”</b>	means the goods, articles and materials (including Manufactured Goods) which are to be supplied by the Company as stated in the Quotation and any goods produced, developed, used and/or provided in connection with any Services;
<b>“Input Material”</b>	means any documents or other materials, and any designs, data or other information provided to the Company by the Customer relating to the Supplies, including, without limitation, the Specification, any Technology, any Artwork and any Free Issue Materials;
<b>“Intellectual Property Rights”</b>	means any and all patents, rights to inventions, utility models, copyright and related rights, logos, 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 rights, source codes, semi-conductor topography rights, reports, drawings, specifications, 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;
<b>“Losses”</b>	means losses (including all direct, indirect and consequential losses, which may include loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis);
<b>“Manufactured Goods”</b>	means any goods manufactured by the Company in connection with Manufacturing Services;
<b>“Manufacturing Services”</b>	means any services for the manufacture of Goods agreed in the Contract to be performed by the Company for the Customer as stated in a relevant Quotation;
<b>“Order”</b>	means the order made by the Customer for the Supplies and containing all the details of the Quotation;
<b>“Output Material”</b>	means any Prototypes, documents or other materials or other items produced, developed, used and/or provided in connection with the Design Services and any data or other information provided by the Company to the Customer relating to the Supplies;
<b>“Personal Data”</b>	has the meaning given in the Data Protection Legislation;

<b>“Prototype”</b>	means a sample or prototype produced or developed as part of Design Services as an early versions of a product (which as a prototype might subsequently be referred to in the Specification for separate Manufacturing Services);
<b>“Quotation”</b>	means the Company’s quotation to provide Supplies to the Customer;
<b>“Retail Prices Index”</b>	means the measure of inflation which measures the change in the cost of a representative sample of retails Goods and Services;
<b>“Services”</b>	means any services agreed in the Contract to be performed by the Company for the Customer as stated in the Quotation, including Design Services and Manufacturing Services;
<b>“Specification”</b>	means any design specification or product specification or other details agreed by the Customer and the Company of any Supplies required by the Customer, as such specification may be developed by agreement between the parties during the course of the Contract;
<b>“Supplies”</b>	means any Goods, Manufacturing Services, Design Services and/or any other Services provided by the Company to the Customer;
<b>“Technology”</b>	means all methods, techniques, discoveries, inventions (whether patentable or not), formulae, formulations, technical and product specifications, equipment, descriptions, plans, layouts, drawings, computer programs, assembly, quality control, installation and operating procedures, operating manuals, technical and marketing information, designs, data, know-how and other information relevant to the Manufactured Goods.

1.2 In these Conditions (except where the context otherwise requires):

- 1.2.1 Words in the singular include the plural and vice versa and reference to any gender includes the others;
- 1.2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 A reference to “company” includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.4 A reference to a party includes its personal representatives, successors and permitted assigns;
- 1.2.5 References to legislation are to that legislation as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

1.2.7 A reference to writing or written includes fax and email.

1.3 Headings are for convenience only and shall not affect the interpretation of these Conditions.

1.4 The Contract shall be binding upon, and enure to the benefit of, the parties and their respective personal representatives, successors and permitted assignees, and references to any party shall include that party's personal representatives, successors and permitted assignees.

## **2 BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Supplies as specified in and in accordance with the Quotation and these Conditions.

2.2 The Order shall only be deemed to be accepted if the Order is on the terms of the Quotation and when the Company issues a written acceptance of the Order at which point and on which date the Contract shall come into existence and shall include the terms of the Quotation and these Conditions. No order shall be a valid Order if it seeks to vary, delete or add to the contents of the Quotation.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions, illustrations or descriptions of the Supplies contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Supplies described in them. They shall not form part of the Contract nor have any contractual force.

2.4 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 law, trade custom, practice or course of dealing.

2.5 Any Quotation given by the Company shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue provided such Quotation has not previously been withdrawn by the Company.

2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions. No other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.7 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.8 In the event of inconsistency between these Conditions, the Quotation and the Order, the order of precedence to resolve the inconsistency shall be as follows:

2.8.1 the Quotation,

2.8.2 these Conditions,

2.8.3 any Specification,

2.8.4 the Order.

## **3 SUPPLY OF GOODS AND SERVICES**

3.1 The Supplies are described in the Quotation.

- 3.2 These Conditions apply to the supply of Goods and provision of Services as follows:
- 3.2.1 Conditions 5, 6, 7, 8 and 9 apply to the supply of Goods and to the supply of Manufacturing Services;
  - 3.2.2 Conditions 10, 11 and 12 apply to the provision of Manufacturing Services; and
  - 3.2.3 unless otherwise specified all the other Conditions apply to the supply of any Goods or Services, including Manufacturing Services, as the context may require.

#### **4 WARRANTIES**

- 4.1 The Company shall provide the Supplies to the Customer in accordance with the Quotation in all material respects.
- 4.2 The Company warrants that all Services will be supplied with reasonable skill and care.
- 4.3 The Company warrants that the Manufactured Goods shall:
- 4.3.1 conform to the Specification;
  - 4.3.2 be free from material defects in material and workmanship and remain so for one (1) month after Delivery.
- 4.4 The Company warrants in relation to any other Goods that on delivery the Goods shall:
- 4.4.1 conform with the description in the Quotation;
  - 4.4.2 be free from material defects in design, material and workmanship; and
  - 4.4.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 4.5 The Company shall use all reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance and or delivery of the Supplies.
- 4.6 The Company gives no warranty that the Output Material resulting from any Services will be suitable for any purpose unless expressly specified in the Specification.
- 4.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 4.8 The Company will free of charge make good by repair, or at its option by the supply of a replacement, defects which upon delivery or under conditions of proper use appear in the Manufactured Goods and which arise solely from faulty materials or workmanship of the Company provided that the Goods are returned carriage paid to the Company's place of business within one (1) week after the date of delivery by the Company. If inspection by the Company does not disclose a defect within the terms of the warranty in Condition 4.3 the Company's regular charges will be payable. No claim will be accepted for expenditure in altering or repairing any Goods nor for any consequent loss or damage, without prior written approval of the Company.
- 4.9 The Company's liability under this Condition 4 is in lieu of any warranty or conditions implied by law as to the quality or fitness or suitability for any particular purpose or merchantable quality or condition of the Supplies and except as provided in this Condition 4 (but subject to Condition 19) the Company shall not be under any liability whether in contract tort or otherwise in respect

of defects in the Supplies or packaging thereof or for any injury damage or loss resulting from such defects or from any work done in connection therewith.

## **5 DELIVERY OF GOODS**

- 5.1 The Company shall deliver the Goods ex works. The place of delivery shall be at the Company's place of business unless otherwise agreed in writing. The Customer shall be responsible for collection of the Goods from the agreed place of delivery unless otherwise agreed in writing.
- 5.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by the Customer or by any third party, including any failure to provide the Company with information, access, items or anything else relevant to the supply of the Goods.
- 5.3 The Customer shall be deemed to have accepted the Goods as being in conformity with the Contract and shall be bound to pay for them unless written notice of defect or shortage is given to the Company within 3 Business Days of delivery.
- 5.4 Where Goods are damaged in transit and the Quotation includes carriage prior to delivery, the Company will repair or replace such Goods provided that the Company receives written notice of such damage within 3 Business Days of delivery and the Customer has not done or left undone any action which might invalidate any claim against the carrier.
- 5.5 If the Customer does not accept delivery within seven days after the date of notification that the Goods are ready for dispatch, the Customer must arrange and pay for storage of the Goods. The Company may arrange storage at the Customer's expense without prejudice to the terms of payment. The Company may store the Goods at its facilities and charge (at its standard storage rates) the Customer for such storage until the Goods are collected.

## **6 ACCEPTANCE AND DEFECTIVE PRODUCTS**

- 6.1 The Customer may reject any Goods delivered to it that do not comply with Condition 4, provided that:
- 6.1.1 notice of rejection is given to the Company:
- a) in the case of a defect that is apparent on normal visual inspection, within five Business Days of Delivery;
  - b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
- 6.1.2 none of the events listed in Condition 6.3 apply.
- 6.2 If the Customer fails to give notice of rejection in accordance with Condition 6.1, it shall be deemed to have accepted the Goods.
- 6.3 The Company shall not be liable for failure to comply with any warranty set out in Condition 4 if:
- 6.3.1 the Customer makes any further use of the Goods after giving notice in accordance with Condition 6.1;

- 6.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 6.3.3 the defect arises as a result of the Company following the Specification or any drawing or design supplied by the Customer;
  - 6.3.4 the Customer alters or attempts to repair the Goods without the written consent of the Company;
  - 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 6.3.6 the Manufactured Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 If the Customer rejects Goods under Condition 6.1 then the Customer shall be entitled to:
- 6.4.1 require the Company to repair or replace the rejected Goods; or
  - 6.4.2 require the Company to repay the price of the rejected Goods in full.
- 6.5 Once the Company has complied with the Customer's request, it shall have no further liability to the Customer for the failure to comply with Condition 6.1.
- 6.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Company.
- 6.7 The Customer shall return any defective Goods to the Company if so requested by the Company. Otherwise, the Goods are non-returnable, and the Customer shall not return any defective Goods to the Company.

## **7 CHANGES TO MANUFACTURED GOODS**

- 7.1 The parties acknowledge and agree that Output Material supplied by the Company may include Prototypes as early versions of newly developed items, and that there may be further development work to be carried out before they are supplied as Manufactured Goods.
- 7.2 Accordingly, if the Customer requires any changes to be made to the Specification of the Manufactured Goods (and/or any packaging or other get-up thereof), the Customer shall notify the Company of the same, and any additional design work required shall be carried out as a Service, which may require a variation to the Contract to reflect those additional services and any changes to the Specification and to pricing.
- 7.3 Any changes to the Specification made pursuant to this Condition 7 shall not relieve the Customer of its obligation to purchase and pay for any Manufactured Goods ordered under the Contract prior to the changes being made.

## **8 PRODUCT RECALL**

- 8.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market ("**Recall Notice**") it shall immediately notify the Company in writing enclosing a copy of the Recall Notice.
- 8.2 Unless required by law, or unless the recall relates only to an addition or modification to the Goods made by or on behalf of the Customer with no involvement of the Company, the



Customer may not undertake any recall or withdrawal without the written permission of the Company and only then in strict compliance with the Company's instructions about the process of implementing the withdrawal.

## **9 TITLE AND RISK**

- 9.1 Risk in the Goods passes to the Customer on completion of delivery.
- 9.2 Title in the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods and all other sums which are, or which become, due to the Company from the Customer on any account.
- 9.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 9.3.1 store the Goods (at no cost to the Company) separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - 9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 9.3.4 notify the Company immediately if it becomes subject to any of the events listed in Condition 20.2.1 to Condition 20.2.10; and
  - 9.3.5 give the Company such information as the Company may reasonably require from time to time relating to:
    - a) the Goods; and
    - b) the ongoing financial position of the Customer.
- 9.4 At any time before title to the Goods passes to the Customer, the Company may require the Customer to deliver up all Goods in its possession and if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **10 PROVISION OF TECHNOLOGY AND EQUIPMENT**

- 10.1 As soon as practicable after the Contract is made, the Customer shall at its own cost disclose to the Company such Input Material as is necessary to enable the Company to manufacture the Manufactured Goods in accordance with the Specification.
- 10.2 The Company shall determine what Equipment is needed for the manufacture of the Manufactured Goods and shall procure such Equipment from a third party on behalf of the Customer. The Company shall either arrange for the Equipment to be invoiced direct from the third party to the Customer, with the Equipment being delivered by the third party to the Company, or shall recharge the Customer for any Equipment paid for by the Company. In either case, the Company shall charge the Customer an administrative fee for making such arrangements or recharge, as part of the first invoice for each Order pursuant to Condition 14.4.3a).
- 10.3 To the extent the procurement of Equipment involves the supply of Equipment by the Company to the Customer, the Company shall pass on to the Customer any warranties given by the third

party supplier of the Equipment but (subject to Condition 19) gives no additional warranty and shall have no liability in respect of the Equipment.

- 10.4 Subject to payment by the Customer of all applicable fees pursuant to Condition 14, the Equipment shall be and shall remain the absolute property of the Customer.
- 10.5 The Equipment shall be at the risk of the Customer and the Customer shall be responsible for insuring the Equipment to its full replacement value.
- 10.6 The Customer shall reimburse the Company for the costs of any repair or replacement of the Equipment, except to the extent necessitated by a default on the part of the Company. The Customer shall in addition pay the Company an administrative fee for arranging any such repair or replacement.

## **11 SAMPLES**

- 11.1 Where the Company has already (as part of Services provided by the Company) submitted to the Customer for approval pre-production samples of the Manufactured Goods the Company shall not be required to commence manufacture of the Manufactured Goods until the Customer has communicated its approval of the samples to the Company in writing (such approval not to be unreasonably withheld or delayed).
- 11.2 The Customer's approval of the samples constitutes irrevocable confirmation that:
  - 11.2.1 the Manufactured Goods manufactured in conformity with the samples (or differing only within normal industrial limits) will comply with the Specification; and
  - 11.2.2 the Manufactured Goods will meet the industry standards and requirements of quality specified in Condition 4.3, except for defects which are not capable of being revealed on reasonable inspection by the Customer.

## **12 NON-COMMERCIALISATION**

- 12.1 In the event that:
  - 12.1.1 the Company completes Delivery and the Customer fails to collect the Manufactured Goods within 1 month after the delivery date; or
  - 12.1.2 the Contract is terminated by the Company pursuant to Condition 20,then the Customer hereby grants the Company a non-exclusive, non-transferable, royalty-free, perpetual licence (including the right to grant sub-licences) to use the Customer's Intellectual Property Rights in the Input Material for the purposes of manufacture, sale and commercialisation of the Manufactured Goods.

## **13 CUSTOMER OBLIGATIONS**

- 13.1 The Customer shall:
  - 13.1.1 co-operate with the Company in all matters relating to the Supplies;
  - 13.1.2 be responsible for ascertaining if the Supplies are suitable for the purpose required;
  - 13.1.3 obtain and maintain a suitable policy of insurance to cover all risks and liabilities under the Contract and shall produce such policy of insurance for inspection by the Company upon request;

- 13.1.4 promptly provide the Company with such Input Material and other information as the Company may from time to time require;
  - 13.1.5 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Supplies and the use of any Input Material, in all cases before the date on which the Supplies are to start;
  - 13.1.6 keep and maintain any Output Material in good condition and shall not dispose of or use the Output Material other than in accordance with the Company's written instructions or authorisation.
- 13.2 In relation to any Manufacturing Services, the Customer grants to the Company a non-exclusive, non-transferable, royalty-free licence (including the right to grant sub-licences) to use the Customer's Intellectual Property Rights for the purpose of performing its obligations under the Contract.
- 13.3 Notwithstanding the above, the Company's use of the Customer's trademarks is limited to applying them to the Manufactured Goods in the form and manner determined by the Specification.
- 13.4 The Customer shall indemnify and hold harmless the Company from and against all Losses arising from loss, damage, liability, injury to the Company, its employees and third parties, infringement of third party intellectual property, or third party Losses by reason of or arising out of any information supplied by the Customer including, but not limited to Input Material and instructions.
- 13.5 The Customer shall pay for any and all expenses should it require to test or to inspect the Goods before delivery and the Company reserves the right to stipulate the venue for such testing. If after seven days' notice that the Company is to proceed with the tests there is delay on the part of the Customer or its representatives in attending such tests, payment shall be deemed to be due as if the tests have been completed and dispatch has been made.
- 13.6 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Supplies or termination of the Contract, as applicable, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Supplies.

## **14 PRICE AND PAYMENT**

- 14.1 The price for Supplies:
- 14.1.1 shall be the price set out in the Quotation, unless otherwise agreed by the Company in writing;
  - 14.1.2 shall be exclusive of value added tax ("VAT"), which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice; and
  - 14.1.3 shall be exclusive of all taxes, costs and charges of packaging, insurance, transport of the Supplies, which shall be added to the price and invoiced to the Customer.
- 14.2 The Customer shall pay to the Company any additional sums which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer.

- 14.3 The Company reserves the right to:
- 14.3.1 increase the price of the Supplies due to any change requested by the Customer, or any delay caused by any instructions of the Customer or any failure of the Customer to give the Company adequate information or instructions; and
  - 14.3.2 increase the price of the Supplies on an annual basis with effect from each anniversary of the date of the Contract in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, with the first such increase taking effect on the first anniversary of the date of the Contract and being based on the latest available figure for the percentage increase in the Retail Prices Index.
- 14.4 The price for the Supplies shall be paid by the Customer to the Company as specified in the Quotation, or, if not so specified, as follows:
- 14.4.1 if the Company has agreed monthly credit terms with the Customer, the Company's invoices must be paid by the last day of the month following the date of the invoice; or
  - 14.4.2 if no credit terms have been agreed, then full payment must be made when the Customer's order is placed; or
  - 14.4.3 if the Quotation is for the provision of Manufacturing Services, payment shall be as follows:
    - a) 50% of the price (plus all of any amounts due in respect of the Equipment as set out at Condition 10.2) on acceptance of the Order pursuant to Condition 2.2; and
    - b) 50% of the price on delivery of the initial consignment of Manufactured Goods.
- 14.5 Time for payment shall be of the essence.
- 14.6 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 14.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 14.8 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 14.9 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition.
- 14.10 Any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 22 shall entitle the

Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise:

14.10.1 to suspend or cancel the performance or delivery of any Supplies;

14.10.2 to withdraw or reduce any agreed monthly credit limit; and

14.10.3 to treat the Contract as having been repudiated by the Customer.

- 14.11 Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall in respect of all debts of the Customer to the Company have a general lien on all goods and property belonging to the Customer in the Company's possession (whether worked on or not) and shall be entitled upon the expiration of fourteen days' notice to the Customer, to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

## **15 INTELLECTUAL PROPERTY RIGHTS**

- 15.1 As between the Customer and the Company, all Intellectual Property Rights and all other rights in the Supplies and Output Material (where applicable) shall be owned, and remain at all times owned, by the Company.

- 15.2 Subject to payment in full by the Customer in accordance with Condition 14, the Company licenses such Intellectual Property Rights to the Customer on a non-exclusive, worldwide basis to such extent, and no wider, as is necessary to enable the Customer to make personal use of the Supplies as received, solely for any purpose specified in the Quotation. The Customer shall not use those Intellectual Property Rights to provide to any third party any services or goods similar to the Supplies. This licence shall automatically terminate upon termination of the Contract.

- 15.3 The Customer acknowledges that, where the Company does not own the relevant Output Material, the Customer's use of rights in such Output Material pursuant to Condition 15.2 is conditional on the Company obtaining a written licence (or sub-licence) from, or otherwise obtaining the consent of, the relevant licensor or licensors (at the Customer's cost) on such terms as will entitle the Company to license such rights to the Customer.

- 15.4 The Customer agrees not to sub-license, deal with, charge, assign or otherwise transfer the rights granted under Condition 15.2 without the prior written consent of the Company.

## **16 DATA PROTECTION**

- 16.1 The parties acknowledge and agree that the only Personal Data that will be shared and processed pursuant to the Contract is the contact details of the employees of the parties, as necessary for the administration and performance of the Contract ("**Shared Personal Data**").

- 16.2 Accordingly, the parties agree that the Customer and the Company are each independent Controllers in respect of the Shared Personal Data.

- 16.3 Each party shall separately comply with all obligations on it under the Data Protection Legislation and shall not by any act or omission cause the other party to be in breach of its obligations under the Data Protection Legislation.

## **17 CONFIDENTIALITY**

- 17.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any Confidential Information

concerning the business, affairs, customers, clients, suppliers technical or commercial know-how, specifications, inventions, processes or initiatives of the other party, except as permitted by Condition 17.2.

17.2 Each party may disclose the other party's Confidential Information:

17.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Condition; and

17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **18 INDEMNITY**

18.1 The Customer shall indemnify and keep indemnified the Company in full and hold it harmless on demand from and against any and all Losses suffered or incurred by the Company or for which the Company may become liable arising out of or in connection with:

18.1.1 any claim made against the Company for any infringement or alleged infringement of any Intellectual Property Rights arising out of, or in connection with the use of the Customer's Intellectual Property Rights, the Input Material or the Equipment in accordance with the terms of the Contract; and

18.1.2 any claim made against the Company arising out of, or in connection with the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract; and

18.1.3 any claim made against the Company arising out of, or in connection with the sale or use of the Manufactured Goods.

18.2 The Company reserves the right to cease work on the Contract if it should have reason to believe that the Supplies are the cause of any claim or potential claim against the Company, in which case the property in the work done shall not pass to the Customer (except at the Company's discretion) and the Company shall be entitled to be paid for work done and materials supplied.

## **19 LIMITATION OF LIABILITY**

19.1 This Condition sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

19.1.1 any breach of the Contract;

19.1.2 any use made by the Customer of the Supplies, the Output Material, or any part of them; and

19.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

- 19.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 19.3 Nothing in the Contract limits the liability of the parties for:
- 19.3.1 death or personal injury resulting from negligence;
  - 19.3.2 fraud or fraudulent misrepresentation;
  - 19.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - 19.3.4 defective products under the Consumer Protection Act 1987; or
  - 19.3.5 any other liability which cannot be limited or excluded by applicable law.
- 19.4 Subject to Condition 19.3, the Company shall not be liable for:
- 19.4.1 loss of profits;
  - 19.4.2 loss of sales or business;
  - 19.4.3 depletion of goodwill and/or similar losses;
  - 19.4.4 loss of anticipated savings;
  - 19.4.5 loss of goods;
  - 19.4.6 loss of agreements or contracts;
  - 19.4.7 loss of use;
  - 19.4.8 loss of corruption of data or information;
  - 19.4.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
  - 19.4.10 any loss or damage against which it is customary in the trade for the Customer to insure against;
  - 19.4.11 any Losses suffered by the Customer relating to any product made, sold or used in any way based on the results of the Services;
  - 19.4.12 any Losses resulting from or in connection with use of Input Material;
  - 19.4.13 any Losses resulting from or in connection with use of the Supplies in a way or for a purpose not specified in the Quotation; or
  - 19.4.14 any Losses resulting from or in connection with any act or omission of the Customer which prevents, delays or otherwise affects the Company's performance of its obligations under the Contract.
- 19.5 Subject to Condition 19.3 and without prejudice to Condition 19.4, the Company's total liability in connection with the performance, or contemplated performance, of the Contract for any claim or claims, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever shall in no circumstances

exceed 150% (one hundred and fifty percent) of amounts received by the Company from the Customer in respect of the Contract.

## **20 TERMINATION**

- 20.1 The Customer may not cancel any Order for Supplies for which a written acknowledgment of the Order has been issued by the Company and if the Customer cancels, or purports to cancel any such Order (or the Contract or any part thereof), then the Company may, by notice in writing to the Customer, elect to treat the Contract as repudiated.
- 20.2 Without prejudice to any other rights or remedies which it may have, either party may terminate the Contract without liability to the other immediately on giving written notice if:
- 20.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
  - 20.2.2 one party commits a material breach of its obligations under the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days after the receipt of notice in writing to do so;
  - 20.2.3 one party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - 20.2.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
  - 20.2.5 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 20.2.6 the Customer 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 a natural person) 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;
  - 20.2.7 a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
  - 20.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 20.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Condition; or



20.2.10 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

## **21 CONSEQUENCES OF TERMINATION**

21.1 On termination by the Company pursuant to Condition 20.2:

21.1.1 the Customer shall pay to the Company at the rates specified in the Quotation (or if not so specified at the Company's standard rates) for all work done, materials used and Supplies provided or performed up to and including the date of termination, regardless of whether the Customer has received benefit; and

21.1.2 the Customer shall in addition indemnify the Company against any Losses incurred by the Company in connection with the non-performance of the Contract including the cost of any material, plant or tools used or intended to be used and the cost of labour and other overheads including a percentage in respect of profit.

21.2 On any termination of the Contract:

21.2.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices;

21.2.2 in respect of Supplies provided but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

21.2.3 the Customer shall promptly return all Supplies and Output Material which have not been fully paid for, and if the Customer fails to do so immediately on request, then:

a) the Company may enter the Customer's premises and take possession of them; and

b) until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract and the Customer will certify compliance with this Condition in writing if requested to do so by the Company;

21.2.4 the Customer shall promptly return to the Company all documents and materials (and any copies) containing the Customer's Confidential Information; and

21.2.5 the Customer shall promptly erase all of the Company's Confidential Information from its computer systems.

21.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

21.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **22 FORCE MAJEURE**

22.1 Neither party shall have any liability to the other under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control including (without limitation)

strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, pandemic, epidemic, 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 any suppliers or subcontractors.

## **23 ASSIGNMENT**

23.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Contract.

23.2 The Company may at any time assign, transfer, charge, mortgage, 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.

## **24 NOTICES**

24.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, shall include the "Quote Number" as stated on the Quotation, and shall be:

24.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or the address specified in the Quotation or such other address as may be notified by one party to the other; or

24.1.2 sent by email to [Accounts@designreality.co.uk](mailto:Accounts@designreality.co.uk) (unless otherwise specified in the Quotation)

24.2 Communications addressed to the Company shall be marked for the attention of the person at the Company identified on the Quotation.

24.3 Any notice or communication shall be deemed to have been received:

24.3.1 if delivered by hand, at the time the notice is left at the proper address;

24.3.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

24.3.3 if sent by email, when acknowledged by a reply email.

24.4 This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **25 SEVERANCE**

25.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this Condition the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

## **26 WAIVER**

26.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. 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.

- 26.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## **27 NO PARTNERSHIP OR AGENCY**

- 27.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **28 ENTIRE AGREEMENT**

- 28.1 The Contract constitutes the whole agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter.
- 28.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

## **29 THIRD PARTY RIGHTS**

- 29.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **30 VARIATION**

- 30.1 The Company may, from time to time and without notice, change the Supplies in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Supplies. If the Company requests a change to the scope of the Supplies for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 30.2 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

## **31 COUNTERPARTS**

- 31.1 Any contract made on the basis of these Conditions may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.

## **32 GOVERNING LAW AND JURISDICTION**

- 32.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 32.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.