

MKM Terms and Conditions for the Supply of Goods (Business Sales not via website)

NOTE: Your attention is in particular drawn to the provisions of clause 9.

1. Interpretation

1.1 Definitions In these Conditions, the following definitions apply:

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 16.6.

Contract: the contract between MKM and you for the sale and purchase of the Goods in accordance with these Conditions.

Force Majeure Event: has the meaning given in clause 11.

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

MKM / us/our: means the MKM company from whom you purchase Goods, being MKM Building Supplies Limited or one of our MKM branch companies listed on our website (<https://www.mkmbbs.co.uk/about-us/about-mkm/>).

Order: your order for the Goods, as set out in your purchase order form, your written acceptance of MKM's quotation, or overleaf, as the case may be.

Special Goods: means any Goods which are non-stock items and which are either (a) not manufactured by MKM or (b) specially manufactured, processed or produced to your design, specification, measurements or requirements (whether or not at your request).

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by you and MKM.

You: the person or firm who purchases the Goods from MKM.

1.1 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 a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes faxes and e-mails.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by you to purchase the Goods in accordance with these Conditions. You are responsible for ensuring that the terms of the Order and any applicable Specification submitted by you are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when MKM issues a written confirmation of your Order, or the relevant MKM Branch confirms the Order and agrees the delivery arrangements with you, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation assurance or warranty made or given by or on behalf of MKM which is not set out in the Contract.
- 2.5 A quotation for the Goods given by MKM shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.

3. Goods description/specification & third party claims

- 3.1 The Goods are described in MKM's quotation or confirmation of order or applicable Specification. MKM reserves the right to amend any Specification if required by any applicable statutory or regulatory requirements.
- 3.2 Any samples, drawings, descriptive matter, or advertising produced by MKM and any descriptions or illustrations contained in MKM's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.3 You are responsible for assessing and selecting the Goods which are required, and for ensuring you fully understand the nature and performance of the Goods, including any potentially harmful or hazardous effects of their use. If you require advice (including Health and Safety information) in relation to the Goods, a specific request for written advice should be made to MKM. We will be responsible for any advice given in response to your request only to the extent provided in clause 9.3.
- 3.4 Any estimate of quantities or advice given by MKM as to suitability of Goods for a particular purpose, and any plan or measurements given by MKM are intended for guidance only (based upon information supplied by you) and are provided without liability on the part of MKM. No allowances are usually made for wastage or installation or any other materials required. You must satisfy yourself that all Goods ordered are correct.
- 3.5 Where fine or special tolerances are required (exceeding those generally accepted in the building trade) for any Goods, MKM will not be responsible for meeting these, or any failure to do so, unless the tolerances concerned were notified to MKM in writing at the time of Order and MKM confirmed its acceptance of these to you in writing. MKM may supply Goods in either metric or imperial sizes (to the nearest equivalent size to those you specify) and MKM may charge for Goods in metric sizes.

- 3.6 We reserve the right to supply any Goods which are ordered by you in imperial measurements in the nearest equivalent metric measurements, (and the Goods may be charged for in metric measurements subject to us making the appropriate conversions).
- 3.7 To the extent that the Goods (including Special Goods) are manufactured, altered, processed or produced to your design, specification or measurements, you will fully indemnify MKM 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 professional costs and expenses) suffered or incurred by MKM in connection with:
- (a) any claim made against MKM for actual or alleged infringement of any third party's patent, copyright, design, trademark or any other industrial or intellectual property rights arising out of or in connection with our use of your design or specification; and/or
 - (b) any other claim arising from any such manufacture, alteration, processing or production, including (but not limited to) any defects in the Goods. This indemnity will be reduced in proportion to the extent that such liabilities, costs, expenses, damages and losses are due to our negligence.
- 3.8 You will fully indemnify MKM 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 professional costs and expenses) suffered or incurred by MKM in connection with any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such liabilities, costs, expenses, damages and losses are due to our negligence.
- 3.9 Clauses 3.7 and 3.8 shall survive termination or expiry of the Contract.

4. **Delivery**

- 4.1 MKM shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by installments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if MKM requires you to return any packaging materials to MKM, that fact is clearly stated on the delivery note. You must make any such packaging materials available for collection at such times as MKM reasonably requests. Returns of packaging materials shall be at MKM's expense. MKM will not be responsible for taking back any non-returnable packaging/pallets.
- 4.2 MKM shall deliver the Goods to the location set out in the Order (subject to clause 4.3) or such other location as the parties may agree (**Delivery Location**) at any time after MKM notifies you that the Goods are ready. Alternatively, you may by agreement with MKM collect the Goods from the relevant MKM's branch premises (or other location) specified by MKM prior to delivery (**Delivery Location**) within 3 Business Days of MKM notifying you that the Goods are ready.

- 4.3 Where MKM is delivering the Goods, delivery shall be completed on the Goods' arrival at the Delivery Location (or, where appropriate in the driver's opinion, to the nearest suitable road to the Delivery Location at which the vehicle can safely and lawfully unload). You are responsible for all steps that need to be taken for the protection of persons and property where Goods (or any associated packaging or containers) are delivered and deposited, including on any public highway, and you will indemnify us in respect of all or any costs, claims, losses or expenses which MKM may incur as a result of your failure to do so.
- 4.4 Unless MKM has agreed in writing to deliver and unload using a crane lorry/fork truck, you are responsible for promptly loading/unloading the Goods upon delivery, including providing all necessary equipment and personnel. MKM may charge you an additional fee if you delay in taking delivery of the Goods when tendered.
- 4.5 Any dates and times quoted for delivery are approximate only, and the time of delivery is not and will not be made of the essence by notice. You acknowledge in particular that in any Contract for Goods which are not MKM stock items, the time of delivery is subject to performance of third party suppliers, which is outside our control. MKM will not be liable to you for failure to deliver on any particular date or time. Without limiting the generality of the foregoing, MKM will under no circumstances whatever be liable to you, whether in contract, tort (including negligence) or otherwise, for any loss or damage you incur whether direct or indirect (including any liability you incur with any third party) resulting from any delay in delivery of the Goods, or failure to deliver the Goods within a reasonable time.
- 4.6 Where MKM is not delivering the Goods, if you fail to collect Goods within 3 Business Days of MKM notifying you that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or MKM's failure to comply with our obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which MKM notified you that the Goods were ready; and
 - (b) MKM shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).
- 4.7 If 30 Business Days after the day on which MKM notified you that the Goods were ready for delivery you have not taken delivery of them, MKM may resell or otherwise dispose of part or all of the Goods and charge you for any shortfall received below the price of the Goods agreed with you, together with reasonable storage and selling costs.
- 4.8 You are not entitled to reject the Goods if MKM delivers up to and including 5% more or less than the quantity of each type of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from you that the wrong quantity of Goods was delivered.
- 4.9 MKM may deliver the Goods by installments, which shall be invoiced and paid for separately. Each installment shall constitute a separate Contract. Any delay in delivery or defect in an installment shall not entitle you to cancel any other instalment.

Non-Delivery

- 4.10 The quantity of any consignment of Goods as recorded by MKM upon dispatch from MKM's place of business shall be conclusive evidence of the quantity received by you on delivery unless you can provide reasonable evidence showing otherwise.
- 4.11 MKM shall not be liable for shortages or discrepancies in the quantity of Goods (even if caused by MKM's negligence) unless written notice is given to MKM within 3 Business Days of the date of delivery (or in claims for non-delivery, within 3 Business Days of the date when the relevant Goods would in the ordinary course of events have been received).
- 4.12 MKM shall have no liability for any failure to deliver to the extent that such failure is caused by a Force Majeure Event or your failure to provide MKM with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.13 Any liability of MKM for non-delivery of Goods or shortages or discrepancies in the quantity of any Goods shall be limited to replacing any relevant Goods within a reasonable time, or (at MKM's option) issuing a credit note or refund at the pro-rata Contract price against any invoice raised for such Goods.

5. Quality

- 5.1 MKM warrants that (subject to the provisions of this clause 5) upon delivery the Goods shall conform in all material respects with their description and any applicable Specification, and shall be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
- (a) you give notice in writing to MKM of any defect within 3 Business Days of discovering that some or all of the Goods do not comply with the warranty set out in clause 5.1 (and in respect of defects which are obvious upon a reasonable inspection at the time of unloading, you advise MKM by telephone immediately and give notice in writing to MKM within 3 Business Days of unloading); and
 - (b) MKM is then given a reasonable opportunity to examine those Goods before they are used, further damaged or otherwise interfered with, and (if asked to do so by MKM) you return them to the relevant MKM Branch or other location, or allow us to collect the Goods concerned;

then MKM shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full. These Conditions shall apply to any repaired or replacement Goods supplied by MKM. (For the avoidance of doubt, we acknowledge that the costs to you of suspending works is relevant in determining what the reasonable opportunity to inspect the Goods will be, and clause 5.2(b) shall not apply to any works affecting the Goods which it is reasonably necessary for you to carry out for safety or emergency purposes).

- 5.3 MKM shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) if you make any further use of such Goods after giving notice in accordance with clause 5.2;
 - (b) if the defect arose because you failed to follow MKM's instructions as to the appropriate storage, movement, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) if the defect arose as a result of MKM following any drawing, design or Specification supplied by you;
 - (d) if you alter or repair the Goods without MKM's written consent;
 - (e) if the defect arose as a result of fair wear and tear, willful damage or negligence (other than by MKM) or acts or omissions by you, your agents or sub-contractors; or
 - (f) if the Goods differ from their description or any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, MKM shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 5.1. In particular, MKM will not be responsible for either the cost of removing the Goods from any location where they are installed or fixed (or making good the location after removal) or for the cost of installing or fixing any repaired or replacement Goods supplied.
- 5.5 You acknowledge that where we supply Special Goods, these are not MKM stock items, and will usually have been specially manufactured or purchased from a third party supplier, and the warranty which we are able to provide to you in respect of any defects will be limited to that which the third party supplier provides to us. This may be different to (and more limited than) the warranty contained in clause 5.1. Details of the applicable warranty on such items is available from us upon request (and we will usually confirm details to you when we supply the Special Goods).
- 5.6 Upon request, MKM will provide you with information about any relevant manufacturer's guarantee offered and available to you in respect of Goods, and use reasonable endeavours to make this available for you in appropriate circumstances. Please note however that MKM is not legally responsible for any obligation under manufacturer's guarantees.
- 5.7 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.

6. Title and risk

- 6.1 The risk in the Goods will pass to you at the time of delivery (or deemed delivery where clause 4.6(a) above applies).
- 6.2 Ownership of the Goods shall not pass to you until MKM receives payment in full (in cash or cleared funds) for the Goods and any other goods that MKM has supplied to you in respect of which payment has become due or (if later) at the time of delivery.
- 6.3 Until title to the Goods has passed to you, you must:

- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as MKM's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify MKM immediately if you become subject to any of the events listed in clause 8.3; and
 - (e) give MKM the location of the Goods (or such other information relating to the Goods as MKM may require) upon request from time to time.
- 6.4 Subject to clause 6.5, you may resell or use the Goods in the ordinary course of your business at full market value (but not otherwise) before MKM receives payment for the Goods, in which case:
- (a) you do so as principal and not as MKM's agent; and
 - (b) title to the Goods shall pass from MKM to you immediately before the time at which resale by you occurs.
- 6.5 If before title to the Goods passes to you, you become subject to any of the events listed in clause 8.3, or MKM notifies you that your right of possession has terminated, then, without limiting any other right or remedy MKM may have:
- (a) your right to resell the Goods or use them in the ordinary course of your business ceases immediately; and
 - (b) MKM may at any time:
 - (i) require you to deliver up all Goods in your possession which have not been resold, or irrevocably incorporated into another product; and/or
 - (ii) you grant MKM and our agents an irrevocable licence to enter any of your premises (or of any third party) where the Goods are stored, with or without vehicles, in order to inspect and recover them.

7. Price, payment and interest

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in MKM's published price list in force as at the date of delivery.
- 7.2 MKM may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond MKM's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour or overheads, materials and other manufacturing costs);
 - (b) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

- (c) any delay caused by any of your instructions or your failure to give MKM adequate or accurate information or instructions.
- 7.3 Unless you are collecting the Goods or unless otherwise specified by MKM, the price of the Goods is inclusive of the costs and charges of insurance and transport of the Goods to the Delivery Location.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). You must, on receipt of a valid VAT invoice from MKM, pay to MKM such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 MKM may invoice you for the Goods on or at any time after the completion of delivery (or deemed delivery where clause 4.6(a) above applies).
- 7.6 If you have a credit account with MKM, you must pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by MKM. If you do not have a credit account with MKM (or your credit limit does not allow), payment shall be made at the time of Order, or if MKM so specifies, at the time of delivery.
- 7.7 You must pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Time for payment by you is of the essence. MKM may at any time, without limiting any other rights or remedies MKM may have, set off any amount owing to us by you against any amount payable by MKM to you.
- 7.8 If you wish to make payment to us by credit card, we reserve the right to charge you a 2.5% surcharge. We may alter the amount of this surcharge at any time by announcement on our website, and the current rate will apply at the time you make payment to us.
- 7.9 If you fail to make any payment due to MKM under the Contract by the due date for payment, then in addition to our rights under 8.2 you will pay interest on the overdue amount on a daily basis at the rate of 4% per annum above Lloyds Bank plc's base rate from time to time or, at MKM's option, you will pay interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) from the due date for payment until payment is made in full, whether before or after any judgment, together with all costs and expenses incurred by us in recovering sums due or exercising our rights. You must pay the interest together with the overdue amount.
- 7.10 You are only entitled to a credit account at MKM's discretion, and subject to satisfactory references. MKM may specify a maximum amount of credit allowable upon your account and withdraw your credit facilities without explanation. You should be aware that in order to fulfil your request for a credit account, we may undertake a credit check against you (and possibly also your directors) and a record of our searches may be visible on credit records searched for a period of time afterwards, and could affect your (or your directors') credit score and ability to get further credit. Further terms and details will be provided to you as part of your credit account application.

8. Cancellation & suspension

- 8.1 You can only cancel a Contract or return Goods to us which you do not require with our consent, which is at MKM's sole discretion. Any such cancellation or returns we allow will be on such terms as we specify. In particular, we will usually charge you a handling fee to cover our loss (including loss of profit) and all associated costs, charges

and expenses we incur on cancelled Contracts or Goods. Please note that MKM will not agree to cancel Contracts for (or allow returns of) Special Products as these will usually have been specially manufactured or purchased by us from third party suppliers and are not returnable by us.

8.2 If you become subject to any of the events listed in clause 8.3, or if you fail to pay any amount due under this Contract on the due date for payment, MKM may terminate the Contract with immediate effect by giving written notice to you.

8.3 For the purposes of clause 8.2, the relevant events are:

- (a) you suspend, or threaten to suspend payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (being a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your 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) have any partner to whom any of the foregoing apply;
- (b) your commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up, other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or your solvent reconstruction;
- (d) (being a company) 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 you;
- (e) (being a company) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
- (g) (being an individual) you are the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer 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 your assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in clause 8.3(a) to clause 8.3(h) (inclusive);

- (j) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;
 - (k) your financial position deteriorates to such an extent that in MKM's opinion your capability to adequately fulfill your obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), is incapable of managing your own affairs or become a patient under any mental health legislation.
- 8.4 On termination of the Contract for any reason, you must immediately pay to MKM all of MKM's outstanding unpaid invoices and interest. Termination of the Contract, however arising, shall not affect our (or your) rights, remedies, obligations and liabilities that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 8.5 Without limiting our other rights or remedies, MKM may suspend supplies of Goods under the Contract or any other contract between you and MKM if you become subject to any of the events listed in clause 8.3(a) to clause 8.3(l), or MKM reasonably believes that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment. In any of these circumstances, MKM may also require payment from you in cleared funds in advance of any further deliveries of Goods.
- 8.6 If as a result of your breach of this Contract (including if you fail to pay any amount due under this Contract on the due date for payment) MKM incurs third party costs, such as tracing or debt collection agency costs, or if we take legal proceedings to enforce our rights under the Contract, you will fully indemnify us against all reasonable costs (including legal costs) which we incur, in addition to the amounts already due.

9. Limitation of liability

- 9.1 Nothing in these Conditions shall limit or exclude MKM's liability for:
- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for MKM to exclude or restrict liability.
- 9.2 In relation to any Goods (including Special Goods) which are specially manufactured, processed, altered or produced to your design, specification or measurements then, we will not be liable to you except in the following circumstances (subject always to clause 9.1):
- (a) misrepresentation by us which was made (or confirmed) in writing;
 - (b) the Goods do not comply with such design, specification or measurements; or

- (c) we provide you with a written warranty signed by us that the Goods are fit for your intended purpose, and they are not.
- 9.3 Subject always to clause 9.1, we will not be liable to you for any misrepresentation made by MKM, our employees or agents to you, your employees or agents regarding the condition of the Goods, their fitness for any purpose or as to quantity or measurements, unless the representation is made (or confirmed) by MKM in writing.
- 9.4 Save as expressly set out in these Conditions, all warranties and other terms implied by statute or common law are, to the extent permitted by law, excluded from the Contract.
- 9.5 Subject to clause 9.1:
- (a) MKM shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any pure economic loss, loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential, or any other indirect losses whatsoever and howsoever caused in connection with the Contract; and
 - (b) MKM's total liability to you in respect of all claims and 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 price of the Goods.

10. Intellectual Property Rights

- 10.1 The supply of Goods by MKM shall not confer any right upon you to use any of MKM's trade marks or any patents, design rights or other industrial or intellectual property rights, and at all times such intellectual property rights shall remain the absolute property of MKM (or our suppliers).
- 10.2 All MKM materials, equipment, documents and other property which are not sold to you are MKM's exclusive property. All written information, drawings, artwork, images and diagrams (excluding the Goods themselves) prepared by MKM in relation to the supply of Goods and the copyright therein and all other items owned by MKM and used in the production of the Goods shall remain the property of MKM and shall be returned by you on demand. All such information shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without MKM's prior written consent.

11. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods,

storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. Health & Safety

Certain Goods supplied by MKM could, if incorrectly used, give rise to risks to health and safety. Information in respect of such Goods is available from MKM. It is your responsibility to ensure compliance by your employees, agents and customers with any safety instructions given by MKM or the relevant manufacturer in relation to those Goods and to take other steps or precautions, having regard to the nature of the Goods, as reasonably necessary to preserve the health and safety of any person handling, using or disposing of them.

13. Disposal of Waste / WEEE compliance

13.1 It is your responsibility to ensure the safe and lawful disposal of any waste arising from the Goods and to comply with all applicable laws, regulations and waste management licences relating to such waste. You agree to indemnify MKM against all costs, claims, liabilities and expenses arising from any failure by you to do so.

13.2 In particular, you agree that where any Goods supplied are electrical equipment, you will be responsible for ensuring (and bearing all costs relating to) the collection, treatment, recovery and environmentally sound disposal of the Goods when they become waste, in accordance with the WEEE Directive (Directive 2002/96/EC) and related UK regulations and laws. You also agree to be responsible for compliance with such requirements (and bearing all related costs) in respect of any electrical equipment which is being replaced by the Goods as a new equivalent product or as a new product fulfilling the same function. You will fully indemnify MKM and hold us harmless (and any other person who is the producer of the Goods within the meaning of the WEEE Directive) from all such costs referred to in this clause 13.2.

14. Anti-bribery Compliance

You agree that you will not, in connection with the Goods under the Contract, bribe or attempt to bribe MKM, or any of our employees, agents or affiliates nor cause MKM to be in violation of any applicable bribery or anti-money laundering laws. We may terminate the Contract if you breach of this clause. You agree indemnify MKM against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by MKM arising out of or in connection with any breach of this clause, whether or not the Contract has expired or been terminated.

15. Incentive/Loyalty Schemes

15.1 From time to time, MKM may offer its customers (which may include you) the opportunity to participate in or enter specific incentive/loyalty schemes.

15.2 For the avoidance of doubt, the benefits associated with such incentive/loyalty schemes which are earned by any business holding an MKM Account (including you) are intended solely for the benefit of the named MKM Account holder, and not any director or employee of that business or any other person.

15.3 You acknowledge and agree that by participating in or entering any incentive/loyalty scheme we operate or provide that:

- (a) it will be your responsibility as our customer (not MKM's) to determine who has access to any benefits associated with such incentive/loyalty schemes on your behalf, and any decision entitling individuals to be the recipients of incentives rests with you, not MKM; and
- (b) benefits associated with incentive/loyalty schemes may be subject to tax and/or National Insurance contributions. You agree to be responsible for and fully indemnify MKM to the fullest extent permitted by law against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by MKM arising out of or in connection with receipt of such benefits, including any liability for VAT, corporation tax, income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim.

16. General

16.1 Assignment and other dealings

- (a) MKM may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
- (b) You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all or any of your rights or obligations under the Contract without the prior written consent of MKM.

16.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9am on the second Business Day after posting; 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 or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.4 **Waiver** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **Third party rights** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.6 **Variation** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by MKM.
- 16.7 **Governing law** The 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 the law of England and Wales.
- 16.8 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).