

idverde Limited General Conditions

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

1 Interpretation

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

Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Charges	the charges payable by the Customer for the supply of Goods and/ or Services in accordance with clause 9.
Commencement Date	has the meaning set out in clause 2.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 17.7.
Contract	the contract between the Supplier and the Customer for the supply of Goods and/ or Services in accordance with these Conditions, the Special Conditions and any other special terms and conditions as may be agreed between the Supplier and the Customer from time to time.
Customer	the person or firm who purchases Goods and/ or Services from the Supplier.
Delivery Location	Means the place where the Goods are to be delivered to the Customer, as set out in the Order or as otherwise agreed between the parties.
Force Majeure Event	Means as defined in clause 15.1.
Goods	The goods (or any part of them) set out in the Order.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order	the Customer's order for Goods and/ or Services as set out in the Customer's acceptance of a quotation for Services by the Supplier, whether in writing or over the telephone, or overleaf or as otherwise specified in the Special Conditions, as the case may be.
Services	the services supplied by the Supplier to the Customer as set out in the Specification.
Site	means the site where the Services are to be carried out, as set out in the Order or as otherwise agreed in writing between the Customer and the Supplier.
Special Conditions	means the terms and conditions as set out in Annex 1 to these Conditions.
Specification	the description or specification of the Goods and/ or Services provided in writing by the Supplier to the Customer, provided in writing by the Customer to the Supplier (and agreed by the Supplier) or available on the Supplier's electronic and paper marketing materials, as the case may be.
Supplier	idverde Limited a company registered in England and Wales with company number 03542918 whose registered office is at Octavia House, Westwood Business Park, Westwood Way, CV4 8JP
Supplier Materials	has the meaning set out in clause 8.1.8.

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

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory 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;
- 1.2.4 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;
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails; and
- 1.2.6 in the event of a conflict between the terms and conditions of these Conditions, the Special Conditions and a Specification the order of precedence shall be as follows:
 - (a) a Specification; and then
 - (b) the Special Conditions; and then
 - (c) these Conditions.

2 Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/ or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order or, in the absence of the Supplier's written acceptance of the Order, when the Supplier commences provision of the Services or commences delivery of the Goods, as the case may be, at which point and on which date the Contract shall come into existence (**Commencement Date**). For the avoidance of doubt, the Supplier shall be under no obligation to accept any Order and shall do so at its sole discretion.
- 2.3 After placing an Order, the Customer may receive an email from the Supplier acknowledging receipt of that Order. This does not mean that the Order has been accepted and acceptance of the Customer's Order will only take place in accordance with clause 2.2 above.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website, are issued or published for the sole purpose of giving an approximate idea of the Goods and/ or Services described. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation for Goods and/ or Services given by the Supplier shall not constitute an offer, and, unless otherwise stated in the Special Conditions or otherwise agreed between the parties, is only valid for a period of 30 Business Days from its date of issue provided that the Supplier has not previously withdrawn it.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.9 The Customer warrants that it has full capacity and authority to enter into and to perform the Contract and that this agreement is executed by a duly authorised representative of the Customer.
- 2.10 Any quotation provided by the Supplier will be subject to change if any information, documents or drawings provided by the Customer, on which that quotation is based are inaccurate or incorrect.

3 Goods

- 3.1 The Goods are described in the Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4 Delivery of Goods

- 4.1 Unless otherwise specified in the Special Conditions or otherwise agreed between the parties, the Supplier shall deliver the Goods to

Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready.

- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 The Supplier shall ensure that delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods and, if the Order is being delivered in instalments, the outstanding balance of Goods remaining to be delivered.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods have been dispatched, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 - 4.6.1 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 the Supplier notified the Customer that the Goods had been dispatched; and
 - 4.6.2 The Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If within 10 Business Days after the day on which the Supplier notified the Customer that the Goods were dispatched the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 Quality of Goods

- 5.1 The Supplier warrants that on delivery, the Goods shall:
 - 5.1.1 conform in all material respects with the Specification; and
 - 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 The Customer shall inspect the Goods upon delivery and any reasonably apparent damage shall be noted on the delivery note. Any damage not reasonably visible upon inspection must be notified to the Supplier within 14 Business Days of the delivery date.
- 5.3 Subject to clause 5.4, if:
 - 5.3.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; the Supplier is given a reasonable opportunity of examining such Goods; and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - 5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 5.4.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

- 5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.4.5 the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions;
- 5.4.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 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.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6 Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 Hold the Goods on a fiduciary basis as the Supplier's bailee;
 - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.3.2 to clause 13.3.13; and
 - 6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.3.2 to clause 13.3.13 or if the Supplier reasonably believes that that's about to happen, then, without limiting any other right or remedy the Supplier may at any time:
 - 6.4.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 Supply of Services

- 7.1 The Supplier shall supply the Services to the Customer at the Site in accordance with the Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavors to meet any performance dates set out in the Specification or as otherwise agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. The Supplier shall notify the Customer of any changes to the Charges that are required as a result of such changes to the Services.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The Supplier may perform the Services to the Customer in instalments or stages and each separate instalment or stage will be invoiced and paid for in accordance with the provisions of the Contract. Each instalment or stage will be a separate Contract and no cancellation or termination of any one Contract relating to a stage will entitle the Customer to repudiate or cancel any other Contract or instalment or stage.

8 Customer's obligations

8.1 The Customer shall:

- 8.1.1 ensure that the terms of the Order and any applicable specification or information it provides to the Supplier meet its requirements and are complete and accurate;
- 8.1.2 co-operate with the Supplier in all matters relating to the Goods and Services;
- 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Site, the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and/ or Services, and ensure that such information is accurate in all material respects;
- 8.1.5 prepare the Site for the supply of the Services and/ or delivery of the Goods in accordance with the requirements of the Specification;
- 8.1.6 provide the Supplier with all relevant information on the nature of the Site including, without limitation, the location of any gas, water, electricity, internet or waste services within the Site;
- 8.1.7 obtain and maintain all necessary licences, permissions and consents (including, where relevant, planning permission, building regulations approval and listed building consent) which may be required before the date on which the Services are to start or the Goods are to be delivered. For the avoidance of doubt, the Supplier has no responsibility for advising the Customer what licences, permissions and consents may be required; and
- 8.1.8 keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Site in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions and authorisation.
- 8.2 If the Supplier's performance of any of its obligations under the Contract in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 8.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of all or any part the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 8.2.1 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - 8.2.2 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9 Charges and payment

- 9.1 The Charges for the Goods and/ or Services shall be calculated in accordance with the provisions of the Special Conditions.
- 9.2 The Charges shall be payable by the Customer to the Supplier in accordance with the provision of the Special Conditions.
- 9.3 The Customer shall 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). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 9.4 The Supplier may appropriate any payment made by the Customer to the Supplier to such of the invoices for the Goods and/ or Services as the Supplier thinks fit, despite any purported appropriation by the Customer.
- 9.5 Time for payment of the Charges shall be of the essence of the Contract.

- 9.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.
- 9.7 The Charges are exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/ or Services.
- 9.8 If the Customer fails to pay in full the amount due for payment, in accordance with the Special Conditions, the Supplier may suspend any or all of the performance of this Contract by giving not less than seven days' notice to the Customer of its intention to do so and stating the ground or grounds on which it intends to suspend performance. For the period of suspension pursuant to this clause, the Customer shall pay the Supplier a reasonable amount in respect of costs and expenses reasonably incurred by the Supplier as a result of the exercise of this clause. Such amount may be claimed in any subsequent invoice for payment issued by the Supplier.
- 9.9 The Supplier may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods and/ or Services to reflect any increase in the cost of the Goods and/ or Services that is due to:
 - 9.9.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 9.9.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - 9.9.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

10 Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 10.2 The Customer acknowledges that, in respect of any third-party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3 All Supplier Materials are the exclusive property of the Supplier.

11 Confidentiality

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
 - 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 12.1.2 fraud or fraudulent misrepresentation; or
 - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.2 Subject to clause 12.1:
 - 12.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or

- otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss; and
- 12.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Order that the event giving rise to liability relates to.
- 12.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.4 The Customer acknowledges that it is aware that the types of materials that the Goods are made out of are susceptible to UV degradation and discolouration. The Supplier shall have no liability to the Customer in respect of any loss or damage suffered by the Customer or any third party as a result of such UV degradation or discolouration.
- 12.5 This clause 12 shall survive termination of the Contract.

13 Termination

- 13.1 Without limiting its other rights or remedies, unless otherwise agreed between the parties, the Supplier may terminate the Contract by giving the Customer not less than 2 months' written notice.
- 13.2 For the avoidance of doubt, the Customer shall have no right to terminate the contract for convenience.
- 13.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable)
- fails to remedy that breach within 30 days of that party being notified in writing to do so;
- 13.3.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 13.3.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.3.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.3.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 13.3.6 a creditor or encumbrancer of the other party 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;
- 13.3.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 13.3.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 13.3.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 13.3.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3.2 to clause 13.3.9 (inclusive);
- 13.3.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 13.3.12 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 13.3.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 30 days after being notified in writing to do so.
- 13.5 Without limiting its other rights or remedies, the Supplier may suspend delivery of the Goods or provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 13.3.2 to clause 13.3.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

14 Consequences of termination

On termination of the Contract for any reason:

- 14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2 the Customer shall return all of the Supplier Materials, any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the premises where the Supplier Materials, any Goods are stored and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 14.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 14.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.
- 14.2 Where the Customer terminates the Contract in accordance with its terms, the Customer shall indemnify the Supplier in full and on demand for any claims, costs, losses, liabilities and expenses incurred by the Supplier in the provision of the Services up until the date of such termination.

15 Force majeure

- 15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall,

without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16 Data Protection

- 16.1 The Supplier shall use the Customer's personal information in accordance with its privacy policy available at playforce.co.uk.

17 General

17.1 Assignment and other dealings.

- 17.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

17.2 Notices.

- 17.2.1 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.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; 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; 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.
- 17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.3 Severance.

- 17.3.1 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.
- 17.3.2 If 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.

- 17.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy 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 its 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.

- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have

authority to act as agent for, or to bind, the other party in any way.

- 17.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.7 **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 agreed in writing and signed by the Supplier.
- 17.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 17.9 **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).

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Annex 1: Special Conditions Price

- 1.1 The price for the Goods and/ or the Services will be the price specified in the Order and is subject to a minimum order value of £1,500 exclusive of VAT, or as otherwise notified in writing to the Customer by the Supplier from time to time ("Minimum Order Value"). The Supplier may, at its discretion, accept an order of less than the Minimum Order Value however in those circumstances, an additional charge, as notified to the Customer by the Supplier from time to time may be payable by the Customer.
- 1.2 All amounts payable by the Customer under the Contract are inclusive of:
 - 1.2.1 Delivery and installation of Goods on the UK mainland (for the avoidance of doubt, additional charges will be payable in respect of any delivery or installation off the UK mainland (including Northern Ireland)); and
 - 1.2.2 Where delivery is to the UK mainland, any cost of packaging and carriage of any Goods.
- 1.3 In addition to any additional charges which may be payable under the general terms and conditions to which these special conditions are annexed ("General Conditions"), additional charges may be payable by the Customer to the Supplier, at the Supplier's discretion, as notified to the Customer from time to time, in the following circumstances:
 - 1.3.1 In respect of playground services (defined as The provision of playgrounds, play equipment, safer surfacing, sports pitches, sports equipment, sports surfaces and associated hard/soft landscaping, street furniture, groundworks, fencing and maintenance, for schools, local authorities, parish councils, leisure attractions, holiday parks, housing developments and hospitality venues), the Supplier's Charges are based on the assumption that delivery of the Goods and/ or performance of the Services will take place on a grass surface. Additional Charges may be payable by the Customer to the Supplier in the event that delivery of any part of the Goods and / or Services is required to take place on a non-grass surface;
 - 1.3.2 The Supplier's Charges are based on the assumption that there is easy access to the Customer's premises or the delivery site to allow the Supplier to perform the Services and/ or deliver the Goods, in the event that access to the Customer's premises or the delivery site is poor, additional charges may be payable; and
 - 1.3.3 In the event that there are any other changes to the Services, Goods, the Specification or the details set out in the Order;
 - 1.3.4 Where the Supplier's visit to the Customer's delivery site for the purpose of delivering the Goods or performing the Services is aborted for any reason; In the event that hard digging is required (defined as where the Supplier is unable to dig through soil with a hand shovel, including, without limitation, where there is a compacted formation, a concrete foundation or large pieces of rubble and stone)
 - 1.3.5 In the event that by reason of the condition of the ground, the Supplier is unable to use the machinery it intended to use in the provision of the Services.
 - 1.3.6 In the event that there are obstacles at the delivery site, which the Supplier reasonably requires to be cleared before the Supplier provides the Services or delivers the Goods;
 - 1.3.7 The price for the Goods and/ or Services does not include the Supplier removing and materials and/ or waste from the delivery site and additional charges will be payable by the Customer to the Supplier if that is required;
 - 1.3.8 If the top soil at the delivery site is not, in the Supplier's reasonable opinion, of sufficient quality or depth to allow the Supplier to perform the Services or deliver the Goods;
 - 1.3.9 If the Supplier is delayed, incurs additional costs and/or losses, and/or the Supplier is required to carry out additional Services as a result of:
 - (a) a failure by the Customer to ensure that any preparatory work carried out by the Customer or a third party is, in the Supplier's reasonable opinion, of a satisfactory quality to enable the Supplier to carry out the Services in accordance with the Specification
 - (b) adverse weather on the Site;

- (c) an error, mistake, inaccuracy or ambiguity in the information provided by the Customer in respect of the Site layout; or
- (d) any other fault of the Customer.

- 1.3.10 If the Supplier is delayed in the provision of the Services for any reason the delay runs into "out of season".
- 1.3.11 Where any third-party costs relating to the Services, including the cost of any materials or third-party sub- contractors increase (including, without limitation, where Services are required to be carried out "out of season" for those particular Services and the Supplier's costs increase as a result of that).
- 1.4 The Customer acknowledges that the Charges are calculated on the basis of information provided by the Customer. In the event that the information provided by the Customer (including any drawings or measurements) is inaccurate or incomplete, the Charges payable by the Customer may change. The Supplier shall notify the Customer of any changes to the Charges under this clause 1.6.

2 International Delivery

- 2.1 Unless otherwise stated in the applicable bill of quantity, delivery of the Goods outside the UK will be made EX WORKS at the place specified in the applicable bill of quantity during idverde's during business hours.

3 Payment

- 3.1 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the delivery of the Goods or performance of the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, delivery of the Goods and for the cost of any materials.
- 3.2 The Supplier reserves the right to increase its Charges, including, without limitation, to take into account any additional costs incurred by the Supplier in the provision of the Services. The Supplier will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 1 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer.
- 3.3 Unless otherwise agreed in writing between the parties:
 - 3.3.1 The Customer shall pay a non-refundable deposit of 25% of the Charges within 15 days of the Commencement Date. Such amount is non-refundable and in the event that the Contract is terminated for any reason and the Services under a Contract are not provided, the Customer shall not be entitled to be paid back such deposit;
 - 3.3.2 subject to clause 2.3.1, Charges shall be paid in intervals of not less than one month beginning one month after commencement of the performance of this Contract;
 - 3.3.3 the Supplier shall submit to the Customer an invoice for each instalment of the Charges (which may include sums for payments to be made to sub-contractors or suppliers) specifying the sum that the Supplier considers will become due on the payment due date and the basis on which that sum is calculated;
 - 3.3.4 Payment shall be due on the date the Customer receives each invoice;
 - 3.3.5 The final date for payment shall be 30 days after the date on which the payment becomes due;
 - 3.3.6 No later than five days after payment becomes due the Customer shall notify the Supplier of the sum that the Customer considers to have been due at the payment due date and the basis on which that sum is calculated (the Payment Notice);
 - 3.3.7 Unless the Customer has served a notice under clause 3.3(f), it shall pay the Supplier the sum referred to in the Payment Notice (or if the Customer has not served a Payment Notice, the sum referred to in the invoice) (the 'Notified Sum') on or before the final date for payment;

3.3.8 Not less than five days before the final date for payment the Customer may give to the Supplier a notice that it intends to pay less than the notified sum (a Pay Less Notice). Any Pay Less Notice shall specify the sum that the Customer considers to be due on the date the notice is served and the basis on which that sum is calculated.

3.4 The Customer shall pay each invoice submitted by the Supplier:

3.4.1 in pound sterling;

3.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.

4 Warranties and Remedies

4.1 Where relevant, the Supplier shall use its reasonable endeavours to assign the benefit of any third-party manufacturer's warranty that may apply in respect of the Goods.

4.2 The Customer acknowledges that any natural materials and resources used in the Goods may carry natural imperfections such as surface cracks, shakes, knots and holes ("Natural Imperfection"). Any such Natural Imperfections existing in the Goods or fair wear and tear over the Warranty Period, shall not amount to a breach of the terms of the Contract and the Customer shall not be entitled to claim against the Supplier in respect of that.

4.3 If within the warranty period, being 12 months from the date of performance of the Services and/ or delivery of the Goods ("Warranty Period"), the Services and/ or the Goods are proved to the reasonable satisfaction of the Supplier, to not have been provided with reasonable care and skill, the Supplier shall re- perform the Services or, at its option, repair or replace the defective Goods or refund the Customer the Charges for such Goods, without further charge to the Customer.

4.4 Clause 3.1 shall not apply where the Customer has failed to notify the Supplier of any defect or suspected defect within 14 days of the performance of the Services or delivery of the Goods, where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Customer where the defect is not one which should be apparent on reasonable inspection.

4.5 Any re-performed Services will be liable for further re-performance where relevant under clause 3.1 for the unexpired portion of the relevant Warranty Period.

4.6 The remedies specified in this clause 3 shall be the Customer's sole and exclusive remedies in respect of the breaches specified.

4.7 In respect of playground services, the European Standard EN1176 and EN1177 recommend impact attenuating materials, depths and critical fall heights for play equipment. Any recommendations made by the Supplier in relation to the Services or the Goods purchased by a Customer will be in accordance with these standards, however the Supplier shall not be liable for:

4.7.1 any specifications, designs or requests received from the Customer; and

4.7.2 any Goods purchased by the Customer from the Supplier which are manufactured by a third party which do not conform with these standards.

5 Customer Obligations

5.1 The Customer shall be responsible for ensuring that any preparatory work (as may be agreed between the Supplier and the Customer) or separate installations required to be undertaken by the Customer or any third party, is completed before the Supplier commences the provision of the Services and that such preparatory work is of a sufficient quality to enable the Supplier to carry out the Services. For the avoidance of doubt, the Supplier shall not be responsible for and shall have no liability to the Customer in respect of any delay in the provision of the Services arising from the Supplier's failure to comply with this provision.

6 Adjudication

6.1 Notwithstanding any other provision of this Contract, either party may refer a dispute arising under this Contract to adjudication at any time. If a party wishes to refer a dispute to adjudication, Part I of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply.

7 CDM

7.1 Insofar as The Construction (Design and Management) Regulations 2015 ("CDM Regulations") apply to the provision of Services, each party acknowledges that he is aware of and undertakes to the other than in relation to the Services and/or the Site he will duly comply with the CDM Regulations.