

Britannia Kitchen Ventilation Limited

Terms and Conditions for the Supply of Goods & Services

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (Conditions).

“we”, “us”, “our” and “ours”: (in each case including where the initial letter is capitalised) means Britannia Kitchen Ventilation Limited.

“you”, “your” and “yours”: (in each case including where the initial letter is capitalised) means you, the person, firm or company who purchases the Goods and/or the Services from us.

Acknowledgment of Order: our acknowledgment of order, as referred to in Condition 2.2 (a), and including any Acknowledgement of Order in respect of any additional Goods and/or Services.

Contract: as defined in Condition 2.2.

Contract Works: the Services that comprise installation of the Goods or other work which we agree to carry out whether or not through an agent and whether or not independently of the supply of the Goods.

Your Equipment: any equipment, systems, cabling or facilities provided by you or at the Site and used directly or indirectly in the supply of the Services.

Deliverables: all products and materials developed by us or our agents, subcontractors, consultants and employees in relation to the Services and/or the Goods in any form, including specifications (including drafts) manuals and copies of Documents OR if specified, the deliverables specified in our Acknowledgment of Order.

Design and Construction Notes: our design and construction notes setting out project-specific requirements to be observed by you, your agents, contractors or employees.

Document: includes in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Due Date for Payment: has the meaning set out in Condition 9.8.

Final Date for Payment: has the meaning set out in Condition 9.8.

Goods: the goods to be supplied by us pursuant to the Contract, as identified or referred to in the Proposal, together with any additional goods which we supply, or agree to supply, to you.

In-put Material: all Documents, information and materials provided by you relating to the Services and the Goods including computer programs, data, reports and specifications, dimensions, measurements, availability of power, gas and water and the in-put materials specified or referred to in the Proposal and/or in the Acknowledgment of Order.

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

Notice: a notice referred to in these Conditions.

Pre-existing Materials: all Documents, information and materials provided by us relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications and as may be additionally defined in the Acknowledgment of Order.

Pro-forma Invoice: our invoice presented for payment for goods and/ or services prior to the despatch of the goods or the commencement and carrying out of the services.

Proposal : our letter of quotation and specification setting out our proposals and a quotation for the supply of goods, or the installation of goods, or the supply and installation of goods, the acceptance of which by you shall only be on these terms and conditions including any quotation for additional services and/or goods.

Services: the services to be provided by us under the Contract as set out in or referred to in the Acknowledgment of Order, together with any other services which we provide, or agree to provide, to you.

Site: the place of delivery and or installation.

Special Conditions: as set out in the Proposal.

VAT: value added tax chargeable under English law for the time being and any similar or additional tax.

1.2 Headings in these conditions shall not affect their interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to **writing** or **written** includes faxes and email, except that a Notice must be in writing.

1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.7 References to conditions and schedules are to the conditions and schedules of the Contract.

1.8 Where the words include(s), including or in particular are used, they are deemed to have the words “without limitation” following them.

2. APPLICATION OF CONDITIONS

2.1 These Conditions and the Special Conditions shall:

- (a) apply to and be incorporated into the Contract; and
- (b) prevail over any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by you or implied by law, trade custom, practice or course of dealing.

2.2 Your purchase order, or your acceptance of a Proposal for Services and/ or Goods by us, constitutes an offer by you to purchase the Services and/or Goods specified in it on these Conditions. We will not accept an offer placed by you other than by a written acknowledgement issued and signed by us (the **Acknowledgment of Order**), when a contract (“the Contract”) for the supply of Goods and/or Services and purchase of the Goods and/or Services on these Conditions will be established. Your standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Proposals are given by us on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any Proposal is valid for a period of 30 days from its date, provided that we have not previously withdrawn it.

3. COMMENCEMENT AND DURATION

3.1 Subject to Condition 4.2 we will provide the Services and/or Goods to be supplied under the Contract on the date or during the period or periods specified in the Acknowledgment of Order and you shall afford us access to the Site on such date or during such period or periods.

4. OUR OBLIGATIONS

4.1 We will use reasonable endeavours to supply the Goods and Services, and to deliver the Deliverables to you, in accordance in all material respects with the Acknowledgment of Order.

4.2 We will use reasonable endeavours to meet any performance dates specified in the Acknowledgment of Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 We may sub-contract any part of our obligations under the Contract

5. CUSTOMER'S OBLIGATIONS

5.1 You must:

- (a) co-operate with us in all matters relating to the Services and the Goods;
- (b) provide us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Site, office accommodation, data and other facilities as we may reasonably require;
- (c) provide us, in a timely manner, such In-put Material and other information as we may reasonably require and ensure that it is accurate in all material respects;
- (d) accept and be responsible (at your own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from such premises in accordance with all applicable laws, before and during the supply of the Services and Goods at those premises, and informing us of all of your obligations and actions under this condition 5.1(d);
- (e) inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
- (f) ensure that Your Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and/or the Goods and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and/or the Goods, the use of In-put Material and the use of the your Equipment, in all cases before the date on which the Services are to start;
- (h) comply with our Design and Construction Notes; and
- (i) maintain in accordance with our recommendations the Goods when installed.

5.2 If our performance of our obligations under the Contract is prevented or delayed by any act or omission of you, your agents, subcontractors, consultants or employees, or any Health and Safety requirements, we will not be liable for any costs, charges or losses sustained or incurred by you arising directly or indirectly from such prevention or delay.

5.3 If you delay or prevent us from having access to the Site, we may accept your conduct as a repudiation of the Contract discharging us from performance of our obligations under the Contract and entitling us to claim damages from you for breach of contract.

5.4 You shall indemnify us in respect of and be liable to pay to us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Contract, subject to our confirming such costs, charges and losses to you in writing.

5.5 Where the Proposal and/or the Acknowledgment of Order refers to In-put Material, you warrant the accuracy of such input material and acknowledge that we have relied on and will rely on such In-put Material.

6. OUR RIGHTS IN THE PROPERTY

6.1 The risk in the Goods shall pass to you upon delivery or upon tendering of the Goods for delivery whether or not services are also to be performed. You must insure accordingly.

6.2 The title to and property in the Goods shall remain with us and shall only be transferred to you when we have received in cash or cleared funds, payment in full of the price of the Goods and all Services and all other monies due and owing to us by you on any account whatsoever.

6.3 Until such time as the title to and property in the Goods passes to you, you must keep the Goods separate to goods of yours and of third parties and properly stored, protected, insured and identified as our property.

6.4 Until such time as the title to and the property in the Goods passes to you, we shall be entitled at any time to require you to deliver up the Goods to us and, if you fail to do so immediately, to enter upon any premises of yours or of any third party where the Goods are or may be stored and repossess the Goods. We shall do as little damage as possible in exercising this right but we shall not be responsible for any damage so caused.

6.5 We are entitled to maintain an action for the price of the Goods even though the property in them may not have passed to you.

6.6 You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain our property, but if you do so, all monies owing by you to us shall (without prejudice to any other right or remedy of ours) immediately become due and payable.

7. NON DELIVERY

7.1 We will be entitled to charge for storage of the Goods or any part of them not delivered because you (or your agents, employers or contractors) are unable to accept them when they are ready for delivery.

8. DAMAGE TO GOODS

8.1 You shall indemnify us from and against all damage occasioned by any trespass or any act, omission or default of yours or by any other person not in our employ occasioning damage to the Goods or any of the Contract Works.

9. CHARGES AND PAYMENT

9.1 In consideration of the supply of the Goods and the provision of the Services by us, you shall pay the cost of the Goods as set out in the Proposal and pay the charges for the supply of the Services as set out in the Proposal together with any charges for additional services and goods.

9.2 Additional Services and Goods

- (a) if you ask us to undertake additional services and/or supply additional goods, we will give you a Proposal for the time, cost, materials and goods involved, and on receipt of your written acceptance of that Proposal and our Acknowledgment of Order, we will undertake the additional services and supply the goods subject to these Conditions as if the additional services and goods were in all respects Goods and Services.

9.3 The total price for the Services and Goods shall be the amount set out in the Proposal together with the price of any additional Services and Goods. The total price shall be paid to us (without deduction or set-off). Charges for additional services shall be paid as provided in the Proposal referred to in condition 9.2 (a). We will submit invoices in accordance with this Condition 9.

9.4 We shall add VAT at the appropriate rate to our invoices and you shall pay the charges set out in the Proposal together with VAT payable.

9.5 You shall pay each Pro forma invoice we submit to you on the Due Date for Payment, in full and in cleared funds, before we provide the Services and Goods.

9.6 If we obtain a satisfactory credit reference report (and you agree to our obtaining such a report), we may provide the Services and Goods up to the credit limit (“Credit Limit”) contained in the report. We shall submit an invoice (or invoices) up to the Credit Limit and payment shall be due on the Due Date for Payment and you must pay each invoice by the Final Date for Payment.

9.7 We reserve the right to require payment against a pro-forma invoice if the credit limit in any report is reduced or removed, and to withdraw credit for any reason at any time without any obligation to provide any reasons for so doing.

9.8 Without prejudice to any of our other rights or remedies, if you fail to pay on the Due Date for Payment, we may:

- (a) charge simple interest on such sum from the Final Date for Payment at the annual rate of 8% above the base lending rate from time to time of the Royal Bank of Scotland PLC, accruing on a daily basis and you must pay the interest immediately on demand. We may claim interest (and compensation) under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services and/or withhold supply of all Goods until payment has been made in full.
- 9.9 Due Date for Payment means:**
- (a) in the case of a Pro Forma Invoice the date of the Pro Forma Invoice and the Final Date for Payment shall be seven days after the date of the Pro Forma Invoice;
- (b) in the case of a satisfactory credit reference report having been obtained and Goods and/or Services being provided up to the Credit Limit, the date of the invoice, and the Final Date for Payment shall be 30 days after the date of the invoice.
- 9.10** Time for payment shall be of the essence of the Contract.
- 9.11** All sums payable to us under the Contract shall become due immediately on its termination, despite any other provision. This condition 9.11 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 9.12** We may, without prejudice to any other rights we may have, set off any liability of you to us against any liability of us to you.
- 9.13** All sums payable by you under this Contract shall be paid in full without any set off or counter claim and (save in so far as required by law to the contrary) free and clear of and without any deduction or withholding whatsoever. If you are at any time required (whether by law or otherwise) to make any deduction or withholding from any payment to us, then you will immediately pay us such additional amount as will result in our receiving the full amount we would have received had no such deduction or withholding been required. You agree with us not to set off for any reason any money payable by you to us under the Contract, or any other contract between you and us.
- 9.14** Not later than 5 days after the Due Date for Payment you shall give notice specifying the amount of the payment made or proposed to be paid. You may not withhold payment after the Final Date for Payment unless you have given an effective notice of intention to withhold payment. To be effective the notice must specify (i) the amount proposed to be withheld and the ground for withholding payment or (ii), if there is more than one ground, each ground and the amount attributable to it and (iii) and must be given not later than five days before the Final Date for Payment.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1** As between you and us, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by us. Subject to condition 10.2, we license all such rights to you free of charge and on a non-exclusive basis to such extent only as is necessary to enable you to make reasonable use of the Deliverables and the Services. If we terminate the Contract under condition 14.1 OR the Contract terminates, this licence shall automatically terminate.
- 10.2** You acknowledge that, where we do not own any Pre-existing Materials, your use of rights in Pre-existing Materials is conditional on our obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.
- 11. CONFIDENTIALITY AND OUR PROPERTY**
- 11.1** You 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 you by us, our employees, agents, consultants or subcontractors and any other confidential information concerning our business or products which you may obtain.
- 11.2** You may disclose such information:
- (a) to your employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out your obligations under the Contract; and
- (b) as may be required by law, court order or any governmental or regulatory authority.
- 11.3** You shall ensure that your employees, officers, representatives, advisers, agents or subcontractors to whom you disclose such information comply with this condition 11.
- 11.4** You shall not use any such information for any purpose other than to perform your obligations under the Contract.
- 11.5** All materials, equipment and tools, drawings, specifications and data supplied by us to you (including Pre-existing Materials) shall, at all times, be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good condition by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.
- 12. LIMITATION OF LIABILITY - YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 12.1** This condition 12 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents, consultants, and subcontractors) to you in respect of:
- (a) any breach of the Contract;
- (b) any use made by you of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 12.2** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3** Nothing in these Conditions limits or excludes our liability:
- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by us.
- 12.4** Subject to condition 12.2 and condition 12.3:
- (a) we shall not be liable for:
- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill and/or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.
- 13. DATA PROTECTION**
- You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of us.
- 14. TERMINATION**
- 14.1** Without prejudice to any other rights or remedies which we may have, we may terminate the Contract without liability to you immediately on giving notice if:
- (a) you fail to pay any amount due under the Contract on the due date for payment and remain in default not less than seven days after being notified in writing to make such payment; or
- (b) you commit a breach of any of the terms of the Contract and (if such a breach is remediable) fail to remedy that breach within 7 days of your being notified in writing of the breach; or
- (c) you repeatedly breach any of the terms of the Contract in such a manner as to reasonably justify the opinion that your conduct is inconsistent with your having the intention or ability to give effect to the terms of the Contract; or
- (d) 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) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 OR (being a natural person) 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; or
- (e) you 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 ; or
- (f) 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 you ;
- (g) 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; or
- (h) a floating charge holder over the assets that you have become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets; or
- (j) a creditor or encumbrancer of you 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; or
- (k) 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 condition 14.1(d) to condition 14.1(j) (inclusive); or
- (l) you suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of your business; or
- (m) there is a change of control of you (as defined in section 574 of the Capital Allowances Act 2001).
- 14.2** On termination of the Contract for any reason:
- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services and/ or Goods supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
- (b) you shall, within a reasonable time, and in any event not later than 7 days return all of the Pre-existing Materials, Deliverables and Goods. If you fail to do so, then we may enter your premises and to the extent that you have possession, the Site, and take possession of them. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 14.3** On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:
- (a) condition 10;
- (b) condition 11;
- (c) condition 12;
- (d) condition 14; and
- (e) condition 24.
- 15. FORCE MAJEURE**
- We shall have no liability to you under the Contract if we are prevented from, or delayed in performing, our obligations under the Contract or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving our workforce or that of 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.
- 16. VARIATION**
- 16.1** We may, from time to time and without notice, change the Services and/or the Goods 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 Services and /or the Goods. If we request a change to the scope of the Services for any other reason, you shall not unreasonably withhold or delay consent to it.
- 16.2** Subject to condition 16.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 17. WAIVER**
- 17.1** 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.
- 17.2** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 18. SEVERANCE**
- 18.1** If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 18.2** If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 19. REPRESENTATIONS**
- 19.1** You acknowledge that, in entering into the Contract, You have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than for breach of contract, as expressly provided in the Contract.
- 19.2** Nothing in this condition shall limit or exclude any liability for fraud.
- 20. ASSIGNMENT**
- 20.1** You shall not, without our prior written consent, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2** We may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of 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.

- 20.3** Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
- 21. NO PARTNERSHIP OR AGENCY**
Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 22. RIGHTS OF THIRD PARTIES**
A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 23. NOTICES**
- 23.1** Any Notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party as follows:
- (a) us - Britannia Kitchen Ventilation Limited, 10 Highdown Road, Leamington Spa, Warwickshire CV31 1XT;
 - (b) you - at your address shown in the Proposal, the Acknowledgment of Order or your registered office.
- 23.2** Any Notice shall be deemed to have been duly received if delivered personally, when left at the address as referred to in condition 23.1 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 23.3** This condition 23 shall not apply to the service of any proceedings or other documents in any legal action.
- 23.4** A notice required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.
- 24. GOVERNING LAW AND JURISDICTION**
- 24.1** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 24.2** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.