

**Fireco Limited**  
**Terms and Conditions of Sale**

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**The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).**

## **1. Interpretation**

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

### **1.1 Definitions:**

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

**"Commencement Date"** has the meaning given in clause 2.2.

**"Conditions"** these terms and conditions as amended from time to time in accordance with clause 17.8.

**"Contract"** the contract between Fireco and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**"Control"** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

**"Customer"** the person or firm who purchases the Goods and/or Services from Fireco.

**"Deliverables"** the deliverables set out in Fireco's quotation to be produced by Fireco for the Customer and/or any documents, plans, designs and/or specifications produced by Fireco as a consequence of the Services.

**"Delivery Location"** has the meaning given in clause 3.2.

**"Deposit"** a sum collected by Fireco from the Customer pursuant to clause 10.

**"Fire Doors"** means: (i) Goods or materials to be supplied in accordance with this agreement which are fire doors, and (ii) Goods or materials Installed in accordance with this agreement where such installation includes fire doors.

**"Fireco"** Fireco Limited registered in England and Wales with company number 02965550.

**"Fireco Materials"** has the meaning given in clause 8.1.7.

**"Force Majeure Event"** has the meaning given to it in clause 16.

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

**"Intellectual Property Rights"** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 the supply of Goods and/or Services, as set out in the Customer's written acceptance of Fireco's quotation (and, for the avoidance of doubt, any

reference to an estimate or a quote in this agreement shall be the relevant sum provided for by Fireco in a quotation where such quotation is offered by the Customer in accordance with clause 2.1).

**“Services”** the services, including the Deliverables, supplied by Fireco to the Customer as set out in the Service Specification.

**“Service Specification”** the description or specification for the Services provided in writing by Fireco to the Customer.

## **1.2 Interpretation:**

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 personal representatives, successors and permitted assigns.

1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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

## **2. Basis of contract**

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

2.2 The Order shall only be deemed to be accepted when Fireco issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Fireco and any descriptions of the Goods or illustrations or descriptions of the Services contained in Fireco’s catalogues, websites, quote or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force. (For the avoidance of doubt, this clause 2.3 shall not apply to the Service Specification.)

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by Fireco shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue (unless otherwise agreed in writing).

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

### **3. Goods and Delivery**

3.1 The Goods are described on Fireco's website or in the quotation given by Fireco to the Customer (as appropriate).

3.2 Fireco shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of dispatch, all of the relevant Fireco reference numbers (where applicable) and the type and quantity of the Goods. Fireco shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Fireco notifies the Customer that the Goods are ready.

3.3 The delivery costs shall be shown in the quotation and in respect of Fire Doors only such costs are for delivery to the location set out in the quotation and if another location is agreed Fireco may at its sole discretion increase the delivery costs.

3.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

3.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Fireco 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 Fireco with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.6 Without prejudice to clause 13, Fireco shall have no liability to the Customer or any other person for any failure to deliver the Goods in any circumstances.

3.7 In respect of deliveries containing Fire Doors:

3.7.1 if the Customer fails to accept delivery of the Goods within three Business Days of Fireco notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Fireco's failure to comply with its obligations under the Contract in respect of the Goods:

a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Fireco notified the Customer that the Goods were ready; and

b) Fireco shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

3.7.2 if ten Business Days after the day on which Fireco notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, Fireco may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods; and

3.7.3 Fireco 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.

#### **4. Quality of Goods**

4.1 Fireco warrants that on delivery the Goods shall:

- 4.1.1 conform in all material respects with their description and any applicable specification (at the time of delivery);
- 4.1.2 be free from material defects in design, material and workmanship for a period of 24 months from the date of delivery; and
- 4.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

4.2 Subject to clause 4.3, if:

- 4.2.1 the Customer gives notice in writing to Fireco within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- 4.2.2 Fireco is given a reasonable opportunity of examining such Goods; and
- 4.2.3 the Customer (if asked to do so by Fireco) returns such Goods to Fireco's place of business at the Customer's cost (unless otherwise agreed in writing);

Fireco shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.3 Fireco shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 if:

- 4.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;
- 4.3.2 the defect arises because the Customer failed to follow Fireco'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 regarding the same (and, where Goods are Fire Doors, such Goods must be installed by an installer holding a relevant qualification recognised by: (a) United Kingdom Accreditation Service, (b) BM Trada or (c) FIRAS;
- 4.3.3 the defect arises as a result of Fireco following instructions, drawing or design supplied by the Customer;
- 4.3.4 the Customer alters or repairs such Goods without the written consent of Fireco;
- 4.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 4.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.4 In the event that any Goods are not manufactured by Fireco:

- 4.4.1 Fireco shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1; and
- 4.4.2 the Customer's sole remedy shall be the warranty, if any, offered by the manufacturer.

4.5 Except as provided in this clause 4, Fireco shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.6 These Conditions shall apply to any repaired or replacement Goods supplied by Fireco.

## **5. Title and Risk**

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until Fireco receives payment in full (in cleared funds) for the Goods and any other goods that Fireco 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.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

5.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Fireco's property;

5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Fireco's behalf from the date of delivery; and

5.3.4 notify Fireco immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4.

5.4 At any time before title to the Goods passes to the Customer, Fireco may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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.

## **6. Supply of Services**

6.1 As soon as reasonably practicable after the Commencement Date, Fireco shall issue the Service Specification to the Customer.

6.2 The Customer shall notify Fireco in writing of any amendments that it wishes to make ("**Customer Notice**") to the Services Specification within 5 Business Days of its receipt of the Services Specification. Fireco and the Customer shall each use reasonable endeavours to negotiate any reasonable amendments to the Services Specification (and the consequent amendments to the charges and/or material costs). If Fireco and the Customer cannot agree the Services Specification within 10 Business Days of Fireco's receipt of the Customer Notice, the relevant Order shall be cancelled. If the Customer does not notify a Customer Notice to Fireco within 5 Business Days of its receipt of the Services Specification, the Customer shall be deemed to accept the Services Specification.

6.3 Fireco shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

6.4 Fireco shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.5 Fireco reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Fireco shall notify the Customer in any such event.

6.6 Fireco warrants to the Customer that the Services will be provided using reasonable care and skill.

## **7. Service Assumptions**

7.1 Any estimate given in connection with the Services is based on the following assumptions (and if any of these assumptions prove not to be correct, this is likely to increase the time and costs of the Services pursuant to clause 10.2):

7.1.1 that the doors which are to be removed: (i) are of timber or timber-based construction, (ii) do not contain, and/or are not clad with, asbestos, (iii) are timber framed, and (iv) that no part of the wall is captured within the existing frame;

7.1.2 that the compartment line in which the doors are to be installed: (i) is intact, in good condition and sufficient to support the new fire door, (ii) does not contain asbestos and is not coated or clad with asbestos, (iii) is of the same or greater fire resistance rating as the door being installed, (iv) is, if of cavity construction, provided with a cavity barrier around the door aperture in accordance with The Building Regulations 2010, and (v) that the wall structure across the whole depth of the aperture extends to approximately the same line as the edge of the aperture visible from either side when any architrave is removed;

7.1.3 there is parking available immediately onsite at no cost;

7.1.4 an area immediately onsite will be available for waste skips;

7.1.5 the fixings will interface with traditional construction;

7.1.6 the Services can be provided via a continuous program of installations (and in any case no less than 6 door sets can be installed per day);

7.1.7 where the installation location is above first floor, there is a lift and the door sets will be loaded by others onto the working floors;

7.1.8 any lifting or scaffolding equipment required to move the door sets to the installation location will be provided and erected properly by the Customer in good time before the installation;

7.1.9 the area of the installation will be secured for a continuous safe installation;

7.1.10 that the jamb size in connection with the installation is of a standard size (90mm x 45mm);

7.1.11 there are welfare facilities for the installers, including, but not limited to, toilets;

7.1.12 appropriate and secure on site storage will be provided.

7.2 No allowance or provision has been made in any estimate given in connection with the Services for:

7.2.1 any repair to flooring or adaptations requested by premises users (including, but not limited to, wheelchair access ramps);

- 7.2.2 any waste disposal, skip on site, lining of lifts or container for storage;
- 7.2.3 ventilation or for AOV systems;
- 7.2.4 fire stopping other than the standard installation of the door sets with a max 20mm tolerance around the frame or hardwood packers;
- 7.2.5 anything which is fixed to or obstructs the clean installation of the door sets, screens, top lights or associated products;
- 7.2.6 alterations for differences in floor height, carpets, floor tiles or laminate or wood flooring;
- 7.2.7 isolation of or works to electrics or other services and/or facilities;
- 7.2.8 trimming or cutting around surface mounted cables or re fitting of door bells, cables or switches;
- 7.2.9 services, telecoms, broadband, door entry systems, alarms, warden call or CCTV;
- 7.2.10 structural works or variation of the existing interface which mean that the product cannot be fitted and operate freely within the regulatory tolerances;
- 7.2.11 making good or plastering, finishes or decoration;
- 7.2.12 making good after the intrusive site survey (other than reinstalling, to the extent possible, the existing architrave); and
- 7.2.13 structural defects, infestation of any kind and/or site conditions not appropriate for the delivery of the Services at the Customer's premises;

and accordingly the same shall be outside of the scope of the Services.

## **8. Customer's Obligations**

8.1 The Customer shall:

- 8.1.1 ensure that the terms of the Order and any information it provides to Fireco are complete and accurate;
- 8.1.2 co-operate with Fireco in all matters relating to the Services;
- 8.1.3 provide Fireco, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Fireco to provide the Services and ensure that such premises, accommodation and facilities are suitable in all respects for the Services to be provided;
- 8.1.4 provide Fireco with such information and materials as Fireco may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 8.1.5 prepare the Customer's premises for the supply of the Services;
- 8.1.6 comply with all applicable laws, including health and safety laws;



- 8.1.7 keep all materials, equipment, documents and other property of Fireco (**Fireco Materials**) at the Customer's premises in safe custody at its own risk, maintain Fireco Materials in good condition until returned to Fireco, and not dispose of or use Fireco Materials other than in accordance with Fireco's written instructions or authorisation.
- 8.2 Without prejudice to the Customer's obligations under clause 8.1, the Customer must provide to Fireco without delay any Relevant Report in respect of any premises at which the Services are to be provided. In this clause 8.2, a **Relevant Report** is any environmental, health and/or safety report including, without limitation any report, survey or maintenance deliverable in required pursuant to regulation 4 of the Control of Asbestos Regulations 2012:
- 8.3 If Fireco's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 8.3.1 without limiting or affecting any other right or remedy available to it, Fireco shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Fireco's performance of any of its obligations;
  - 8.3.2 Fireco shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Fireco's failure or delay to perform any of its obligations as set out in this clause 8.3; and
  - 8.3.3 the Customer shall reimburse Fireco on written demand for any costs or losses sustained or incurred by Fireco arising directly or indirectly from the Customer Default.

## 9. Compliance

- 9.1 It is the Customer's sole responsibility to:
  - 9.1.1 obtain and maintain all necessary licences, permissions and consents which may be required for the Services;
  - 9.1.2 ensure that any Goods or Services ordered by it comply with the building regulations and with all relevant legislation and codes in force from time to time;
  - 9.1.3 obtain any planning consents required or occasioned by the Services;
  - 9.1.4 obtain any professional advice (including, but not limited to, architects and fire risk assessors) required or occasioned by the Services; and
  - 9.1.5 carry out any consultations with the users of the premises in which the installation is taking place;

before the date on which the Services are to start and Fireco shall not have any liability to the Customer in relation to any of the above.

- 9.2 Fireco shall have the right to suspend performance of the Services until the Customer remedies its breach of clause 9.1 and to rely on the Customer's breach to relieve it from the performance of any of its obligations in each case to the extent to which the Customer's breach prevents or delays such obligations.
- 9.3 The Customer shall indemnify Fireco in full 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Fireco arising out of or in connection the Customer's breach of clause 9.1.

## **10. Charges and payment**

10.1 The price for Goods:

10.1.1 shall be the price set out in the Order or, if no price is quoted, the price set out in Fireco's published price list as at the date of the order;

10.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer; and

10.1.3 may be based on the quantities of Goods ordered (and if further quantities of such Goods are ordered, such order will be treated as a new Order and priced accordingly).

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

10.2.1 The charges shall be calculated in accordance with Fireco's daily fee rates from time to time in force (which are available on request).

10.2.2 Fireco's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days.

10.2.3 Fireco shall be entitled to charge an overtime rate of 10% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2.2.

10.2.4 Fireco shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Fireco engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Fireco for the performance of the Services, and for the cost of any materials.

10.2.5 Where any intrusive fire door survey or any inspection shows that any assumptions made when giving the quote (whether contained in the quote or not) were not accurate, Fireco shall be entitled to charge the Customer for the time and costs of such additional works as are necessary.

10.3 Fireco reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Fireco that is due to:

10.3.1 any factor beyond the control of Fireco (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

10.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or

10.3.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Fireco adequate or accurate information or instructions in respect of the Goods.

10.4 In respect of Orders for Goods:

10.4.1 which do not include any Fire Doors, Fireco shall invoice the Customer on or after delivery of such Goods;

10.4.2 which include any Fire Doors, the Customer shall pay (unless otherwise agreed between the parties in writing):

(a) a first deposit equal to 50% of the price when it returns its Order to Fireco; and

(b) a second deposit equal to 50% of the price prior to completion of delivery;

and Fireco shall invoice the Customer after completion of delivery.

10.5 In respect of Services:

10.5.1 where the Service Specification provides for Fireco's installation of Fire Doors, the Customer shall pay (unless otherwise agreed between the parties in writing):

(a) a first deposit equal to 50% of the price when it returns its Order to Fireco; and

(b) a second deposit equal to 50% of the price prior to completion of the Services;

and Fireco shall invoice the Customer after completion of the Services;

10.5.2 where the Service Specification does not provide for the installation of any Fire Doors, Fireco shall invoice the Customer on completion of the Services; and

10.5.3 in either case, Fireco reserves the right to raise interim invoices for time, material and other costs incurred to the date of such interim invoice prior to completion of the Services.

10.6 The Customer shall pay each invoice submitted by Fireco:

10.6.1 within 30 days of the end of the month in which such invoice was raised;

10.6.2 in full and in cleared funds to a bank account nominated in writing by Fireco; and

10.6.3 time for payment shall be of the essence of the Contract.

10.7 Where Fireco holds a Deposit, it may at its sole discretion apply the balance, or any part of the balance, of the Deposit to discharge in whole or in part any invoice. Fireco must apply the whole of the balance of the Deposit to discharge the whole or part of its final invoice in respect of an Order.

10.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Fireco to the Customer, the Customer shall, on receipt of a valid VAT invoice from Fireco, pay to Fireco such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.9 If the Customer fails to make a payment due to Fireco under the Contract by the due date, then, without limiting Fireco's remedies under clause 14, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10.11 Where the Goods are supplied for export to a location outside of the United Kingdom, the supply terms (incoterms 2020) shall be Delivered At Place (DAP). The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on or in connection with them.

## **11. Intellectual Property Rights**

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Fireco.

11.2 Fireco grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.

11.4 The Customer grants Fireco a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Fireco for the term of the Contract for the purpose of providing the Services to the Customer.

## **12. Confidentiality**

12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

12.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors or subcontracts or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

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

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

## **13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 13.2.1 death or personal injury caused by negligence;
  - 13.2.2 fraud or fraudulent misrepresentation;
  - 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - 13.2.4 defective products under the Consumer Protection Act 1987.
- 13.3 Subject to clause 13.2, Fireco's total liability to the Customer shall not exceed 100% of the price actually paid in respect of any Goods and/or Services comprised in the Order out of which, or in connection with, Fireco's liability has arisen (or the highest value Order if there is more than one).
- 13.4 Subject to clause 13.2, the following types of loss are wholly excluded:
- 13.4.1 loss of profits;
  - 13.4.2 loss of sales or business;
  - 13.4.3 loss of agreements or contracts;
  - 13.4.4 loss of anticipated savings;
  - 13.4.5 loss of use or corruption of software, data or information;
  - 13.4.6 loss of or damage to goodwill; and
  - 13.4.7 indirect or consequential loss.
- 13.5 Fireco has given commitments as to compliance of the Goods and Services with relevant specifications in clause 4 and clause 6. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 This clause 13 shall survive termination of the Contract.

#### **14. Termination**

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  - 14.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 14.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 14.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 14.2 Without affecting any other right or remedy available to it, Fireco may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
  - 14.2.2 there is a change of Control of the Customer.
- 14.3 Without affecting any other right or remedy available to it, Fireco may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Fireco if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or Fireco reasonably believes that the Customer is about to become subject to any of them.

## **15. Consequences of termination**

- 15.1 On termination of the Contract:
- 15.1.1 the Customer shall immediately pay to Fireco all of Fireco's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Fireco shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
  - 15.1.2 the Customer shall return all of Fireco Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Fireco may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **16. Force Majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 1 month's written notice to the affected party.

## **17. General**

### **17.1 Assignment and other dealings**

- 17.1.1 Fireco may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 17.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Fireco.

## 17.2 **Notices**

- 17.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 17.2.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address; or
  - (b) 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.
- 17.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.2.4 A notice given under the Contract is not valid if sent by email.

## 17.3 **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 17.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

## 17.4 **Waiver**

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.

## 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, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## 17.6 **Entire agreement**

- 17.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties,

representations and understandings between them, whether written or oral, relating to its subject matter.

17.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

17.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

**17.7 Third party rights**

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

**17.8 Variation**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**17.9 Governing law**

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**17.10 Jurisdiction**

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

**The seller's policies and notices are available on request at the address below**

Business address and registered office: 5 Grange Road, Southwick, BRIGHTON, BN42 4DQ.

Thank you for buying from Fireco Limited.



Last updated: March 2022