

TERMS & CONDITIONS

Our Terms & Conditions for the Supply of Goods and Services

THESE TERMS MAY HAVE CHANGED SINCE YOU LAST REVIEWED THEM. PLEASE REVIEW THEM CAREFULLY AND ENSURE THEY ARE UNDERSTOOD BY ALL RELEVANT PARTIES.

Your attention is particularly drawn to the provisions of clause 17 (Limitation of liability).

1. About us

1.1 **Company details.** Assured Fire Safety Consultancy Limited (company number 12035660) (we and us) is a company registered in England and Wales, and our registered office is at Centaur House Ancells Business Park, Ancells Road, Fleet, England, GU51 2UJ. Our VAT number is 324521531. We operate the website: <https://www.assuredfds.com>.

1.2 **Contacting us.** To contact us, telephone us at 01252 761013 or email us at sales@assuredfds.com. How to give us formal notice of any matter under the Contract is set out in clause 22.2.

2. Interpretation

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

2.1 Definitions:

Abortive Fee: an abortive fee in respect of any cancelled day on which the Services were to be provided, being £570 + VAT per person providing Goods and/or Services and for each additional day we are required to attend the Site or such other amount as we may notify you from time to time.

Applicable Law: all applicable laws, statutes, regulations, legally binding codes, legally binding government guidance, legally binding rules, in each case from time to time in force and “Change in Law” shall mean any change in Applicable Law which comes into effect after the Commencement Date.

Building Regulations: Part 2A of the Building Regulations 2010.

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

Business Hours: the period from 8.00 am to 5.00 pm on any Business Day.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

Commencement Date: has the meaning given in clause 3.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 22.9.

Contract: these Conditions, the Quotation and the Order Acknowledgment.

Construction Works: any Services requiring the installation or fitting of fire doors or any surveying works or other services in relation to the alteration, maintenance, repair, dismantling, or extension of any buildings or structures.

Customer: the person or firm who purchases the Services or Goods and Services from us and shall be used interchangeably with 'you', 'your' or 'yours'.

Deliverables: the deliverables set out in the Quotation produced by the Supplier for the Customer.

Force Majeure Event: has the meaning given to it in clause 21.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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.

Material(s): all of designs, drawings, as-built drawings, plans, surveys, photographs, dimensions, load bearings, access requirements and other documents and information.

Order: the Customer's purchase order for the supply of Services or Goods and Services in response to a Quotation.

Order Acknowledgment: the document provided to the Customer by the Supplier acknowledging the Goods and / or Services to be provided by the Supplier in response to an Order.

Quotation: the document provided to the Customer by the Supplier specifying the pricing and details of the Services or Goods and Services to be provided.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer whether in the Quotation or otherwise.

Site: the site at which we are to provide any Services or unload or deliver any Goods.

Supplier: Assured Fire Safety Consultancy Limited registered in England and Wales with company number 12035660 and shall be used interchangeably with 'we' 'us' 'our' or 'ours'.

Supplier Materials: has the meaning given in clause 4.1.9.

Variation: means either (a) any matter expressly identified in these Conditions as a variation or (b) any request to vary, add to or reduce either: (i) the Goods themselves, including the dates on which they are to be delivered or the sequence of deliveries or number of deliveries or a variation to the

Site; (ii) in respect of the Services, the scope of the Services or the manner or sequence in which they are performed including in all cases the reduction or omission of any Goods and / or Services.

2.2 Interpretation:

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

2.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

2.2.3 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.

2.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2.2.5 A reference to **writing** or **written** excludes fax but not email.

3. **Basis of contract**

3.1 We will send you the Quotation within a reasonable time after your enquiry. This does not constitute an offer from us. The Order constitutes an offer by you for the supply of the Services or purchase of Goods and Services in accordance with these Conditions.

3.2 The Order shall only be deemed to be accepted when we issue an Order Acknowledgment or we start to fulfil the relevant Order, at which point, and on which date the Contract shall come into existence (**Commencement Date**). We are under no obligation to provide any form of Goods or Services until an Order is accepted by us, at which point a binding contract shall come into existence on these Conditions.

3.3 Once we have accepted your Order in accordance with clause 3.2, you can't cancel the Order, other than in accordance with these Conditions.

3.4 If we are unable to supply you with the Goods and/or Services for any reason, we will inform you of this by email and we will not process the Order. If you have already paid for the Goods and / or Services, we will refund you the amount paid in respect of Goods and/or Services we have not provided in accordance with clause 12.

3.5 Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Services contained in our catalogues or brochures, or website are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.

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

3.7 The Quotation given by us is only valid for a period of 6 months from its date of issue.

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

- 3.9 You waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of yours.
- 3.10 We shall not in any event be obliged to provide you, any of your persons, or any third party with a collateral warranty or third party rights relating to or in connection with the Goods, Services, or the Contract.
- 3.11 If there is an inconsistency between any of the documents forming the Contract, then the priority of documents shall be as follows: 1) Order Acknowledgment 2) Quotation, and 3) these Conditions.

4. **Customer's obligations**

You shall:

- 4.1.1 co-operate with us and any of our suppliers in all matters relating to the Goods, Services and if applicable, ensure that any other suppliers co-operate with us and our suppliers where reasonably necessary;
- 4.1.2 provide us and our suppliers, employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us to provide the Goods and / or Services;
- 4.1.3 ensure that all your contractors or sub-contractors, or employees, don't delay, prevent or impede our provision and our supplier's provision of the Goods and / or Services;
- 4.1.4 provide us and our suppliers with such information and materials (including the Materials), as we may reasonably require in order to supply the Goods and/or Services and ensure that such information is true, accurate, complete and not misleading;
- 4.1.5 prepare your premises for the supply of the Goods and / or Services in accordance with any requirements notified by us and our suppliers from time to time;
- 4.1.6 obtain and maintain all necessary licences, permissions (including (without limitation) any required planning permissions) and consents which may be required for the Goods and/or Services before the date on which the Goods are to be delivered and / or the Services are to start;
- 4.1.7 comply with all Applicable Law, including health and safety laws;
- 4.1.8 inform us and our suppliers of all health and safety and security requirements that apply at any Site or sites which our personnel must comply with;
- 4.1.9 keep all our materials, equipment, documents and other property (**Supplier Materials**) at your premises in safe custody at your own risk, maintain the Supplier Materials in good condition until returned to us, and not dispose of or use the Supplier Materials other than in accordance with our written instructions or authorisation;
- 4.1.10 insure all of our equipment, Supplier Materials or property left on the Site (for their full reinstatement value);
- 4.1.11 be fully liable and responsible for any damage, loss, theft to our equipment, our supplier's equipment, Supplier Materials or property, save to the extent that any such damage, loss or theft is directly attributable to any negligence of ours or any person acting on our behalf;

- 4.1.12 ensure the Site is safe and fit for us and our suppliers to provide the Services and indemnify us and our suppliers in full and on demand in respect of all losses, costs, claims, demands, liabilities and interest (including all legal and professional costs calculated on a full indemnity basis) arising out of or in connection with any death or personal injury to our personnel whilst on the Site other than as a result of our, or the personnel's, negligence; and
- 4.1.13 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 4.2 You hereby warrant, represent and undertake that the Materials and information provided by you or on your behalf under any requirements of the Contract are true, accurate, complete and not misleading.
- 4.3 If our performance of any of our obligations under the Contract is prevented or delayed by any of your act, omission or failure by you to perform any relevant obligation (**Customer Default**):
- 4.3.1 without limiting or affecting any other right or remedy available to us, we shall have the right to suspend delivery of the Goods and/or performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays our performance of any of its obligations;
- 4.3.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from the our failure or delay to perform any of our obligations as set out in this clause 4.3; and
- 4.3.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.
5. **Goods**
- 5.1 The Goods are described in the Goods Specification.
- 5.2 We reserve the right to amend the Goods Specification if required by any Applicable Law, and we will notify you in writing in any such event within two (2) weeks from the Commencement Date.
6. **Supply of Services**
- 6.1 We shall supply the Services to you materially in accordance with the Service Specification.
- 6.2 We shall use 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.
- 6.3 We warrant to you that the Services will be provided using reasonable care and skill.
- 6.4 We shall have the right to make any changes to the Services, without approval by you, which are necessary to comply with any Applicable Law, Change in Law or safety requirement, or which do not materially affect the nature or quality of the Services, and where reasonably possible we shall notify you in advance. This will be treated as an approved Variation, and we reserve the right to invoice you for any additional costs we incur as a result of having to change the Services to be compliant with a Change in Law.

- 6.5 We shall not be the principal designer or principal contractor under the CDM Regulations or the Building Regulations. You shall at your own cost and expense make all appointments required by and comply with the CDM Regulations and the Building Regulations.
- 6.6 You shall, at your own cost and expense, provide us with adequate and suitable access to electricity, water, internet, toilet facilities and any other services / facilities which we require for the provision of the Services.
- 6.7 You shall procure that a duly authorised representative of yours shall be present at the delivery and installation of the Goods. Acceptance by such representative of installation shall constitute conclusive evidence that you have examined the Goods and have found such Goods to be in good condition, complete and fit in every way for the purpose for which it is intended. We shall not be liable whatsoever for a failure by you to procure an authorised representative or for the absence of an authorised representative at the installation.
- 6.8 We shall have no liability for any failure or delays in the provision of the Services and shall be granted an automatic extension in respect of the Services to the extent that any such failure or delay is caused or contributed to by:
- 6.8.1 a Force Majeure Event; or
 - 6.8.2 your failure to provide us with adequate instructions; or
 - 6.8.3 any Variations; or
 - 6.8.4 any failure or delay by you to give any access required by us at the Site for the purpose of delivering the Services; or
 - 6.8.5 any impediment, prevention or default whether by act or omission by you or any person acting on your behalf; or
 - 6.8.6 if applicable, deferment of giving access to the Site or any part of the Site; or
 - 6.8.7 a Change in Law; or
 - 6.8.8 any suspension by us of the provision of the or Services pursuant to any right in these Conditions; or
 - 6.8.9 any other instructions that are relevant to the supply of the Services.

7. Measurements and Site preparation

- 7.1 Once we have issued an Order Acknowledgement and before delivery and installation, if we require, we will arrange the day(s) on which we will need to visit the Site and for how long. During our visit, we will assess the Site, Site access and discuss with you any restrictions we identify for the Site which may require additional preparation before we can deliver and install the products.
- 7.2 You are fully responsible, at your own cost, for ensuring that the Site is prepared in accordance with our requirements. We will inform you of the preparation required before we provide the Goods and Services. If the Site is not compliant and we have to return to the Site another day(s), we charge an Abortive Fee.
- 7.3 If you have appointed third parties (such as architects or structural engineers), who require a detailed specific requirement for any part of the Services which involves or relates to our Services, we should

be notified of all requirements immediately and any such requirements shall be treated as a Variation. If we are unable to meet any of these requirements, we reserve the right to end the Contract and we will not be liable to you for any liabilities, losses, costs, expenses and/or claims incurred by you or any delay to the Services which is caused because we cannot meet the relevant requirements and we will refund any amounts previously paid by you.

- 7.4 We will take measurements for the relevant Order, but if the measurements change where we are not at fault or we are not made aware of any such changes, this constitutes a Variation and you will be responsible for making sure your measurements are accurate and you will not be able to cancel the Order as a result of this, unless one of your other rights to cancel exist.
- 7.5 Where applicable, you or any third party (such as a main contractor) who you appoint will, at your own or their own cost, be responsible for arranging and maintaining for the duration of the Services, any parking permits, consents, permissions, authorisations, suspensions, Site access and licences required for us to properly perform the Services and to be on Site.
- 7.6 If you need to change any date on which we are scheduled to attend your property in respect of the Services, you must let us know no less than two (2) weeks from the date on which we are scheduled to provide the Services. We can charge you an Abortive Fee if you cancel or delay the scheduled dates on which we are due to attend the Site if you do not notify us within the timescale specified in this clause or where the Site is not ready for us to provide the Services on the relevant dates.
- 7.7 We may also charge you if you do not provide us with information we have asked you about, such as, how we can access your property for delivery of the Goods or to carry out the Services or if Goods cannot be delivered due to delays on Site caused by you or third parties such as main contractors. For example, we might need to re-deliver on another vehicle or with extra manpower, reschedule Services and we can therefore charge you an Abortive fee as stated in clause 7.2 above.

8. Variations

- 8.1 You may request Variations to the Goods and/or Services by issuing written instructions to us and we may suggest a Variation (a "Variation Instruction").
- 8.2 Pursuant to clause 5.2, we shall not be required to follow the procedure in this clause in connection with any change or proposed change to the Goods or Services as a result of or in connection with any Change in Law.
- 8.3 Within seven (7) Business Days of receipt of a Variation Instruction we may at our sole discretion either (i) (without incurring any liability whatsoever to you) refuse to provide a cost Quotation to you and the Variation Instruction shall then be considered to be rejected and shall have no effect or (ii) submit to you a cost Quotation for the Variation and an indication of any additional time we requires to complete the relevant works.
- 8.4 Within three (3) Business Days of receipt of our Quotation, you will accept or reject our Quotation. If you have not accepted or rejected our Quotation within the timescale specified in this clause 8.4, you will be deemed to have accepted our Quotation.
- 8.5 If you accept (or are deemed to accept) our Quotation, the Charges for the Goods and/or the Services and the scope thereof will be deemed updated accordingly.
- 8.6 If you request to reduce the number of Goods or the scope of Services from a particular Order, you acknowledge and agree that any such monies payable or paid to us for any such Order(s) shall not be reduced or returned to reflect any such omission, save in accordance with clause 10.

8.7 If:

8.7.1 you request to vary the date(s) on which we deliver the Goods or provide any Services;
or

8.7.2 you are unable or unwilling to accept Delivery of the Goods on the day we (or a person appointed by us) attempt to make Delivery or in any way prevent or impede us from making the delivery (including by not granting the required access to the relevant property, site or building to carry out our work),

then in each case and without prejudice to any other rights or remedies available to us, you acknowledge and agree that we may charge you an Abortive Fee including as described in clause 7.6.

8.8 We reserve the right (without incurring any liability whatsoever to you) to refuse any request by you to vary the date(s) on which we deliver the Goods or provides any Services.

9. Delivery of Goods

9.1 We shall use reasonable endeavours to ensure that each 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 (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

9.2 We shall deliver or procure the delivery of the Goods to the Site at any time after we notify you that the Goods are ready.

9.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Site.

9.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event which for the purposes of this clause includes any Force Majeure Event that impacts any third party supplier or your failure to provide us or any third party supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

9.5 If we fail to deliver or procure the delivery of the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

9.6 You acknowledge that the Goods may be delivered to you directly by our third-party supplier.

9.7 We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused or contributed to by:

9.7.1 a Force Majeure Event; or

9.7.2 your failure to provide us with adequate delivery instructions; or

9.7.3 any Variations; or

9.7.4 any failure or delay by you to give any access required by us at the Site for the purpose of delivering the Goods; or

- 9.7.5 any impediment, prevention or default whether by act or omission by you or any person acting on your behalf; or
- 9.7.6 if applicable, deferment of giving access to the Site or any part of the Site; or
- 9.7.7 a Change in Law; or
- 9.7.8 any suspension by us of the provision of the Goods pursuant to any right in these Conditions; or
- 9.7.9 any other instructions that are relevant to the supply of the Goods.
- 9.8 Subject to our rights to charge an Abortive Fee under clauses 7.6 and 7.2, if you fail to take delivery of the Goods within three (3) Business Days of us notifying you that the Goods are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by our failure to comply with our obligations under the Contract in respect of the Goods:
- 9.8.1 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 we notify you that the Goods were ready; and
- 9.8.2 we shall store the Goods until actual delivery takes place and charge you for all related costs and expenses (including insurance). We will notify you of the cost in writing in any such event.
- 9.9 If ten (10) Business Days after the day on which we notified you that the Goods were ready for delivery you have not taken actual delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge you for any shortfall below the price of the Goods.
- 9.10 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
10. **Quality of Goods**
- 10.1 We warrant that on delivery, the Goods shall:
- 10.1.1 conform in all material respects with the Goods Specification;
- 10.1.2 be free from material defects in design, material and workmanship; and
- 10.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 10.2 Subject to clause 10.4, if:
- 10.2.1 you give notice in writing to us within fourteen (14) days of delivery of the Goods that some or all of the Goods do not comply with the warranty set out in clause 10.1 or any other requirements of these Conditions;
- 10.2.2 we are given a reasonable opportunity of examining such Goods; and
- 10.2.3 you (if asked to do so by us) return such Goods to our trade address at your cost,
- we shall, at our option and as your sole and exclusive remedy, repair or replace the defective Goods or refund the price of the defective Goods in full with the cost of returning the Goods to us.

- 10.3 You must inspect Goods on delivery and notify us immediately of any defects, or other issues which would be apparent on reasonable inspection. We are not liable for defects or other issues in the Goods that you don't notify us about and which would have been apparent on the undertake of such inspection.
- 10.4 We shall not be liable for the Goods' failure to comply with the warranty set out in clause 10.1 or any other requirements of these Conditions if:
- 10.4.1 the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 10.4.2 the defect arises as a result of us following any drawing, design or specification supplied by you;
 - 10.4.3 you alter or repair such Goods without first notifying us in accordance with clause 10.2.1;
 - 10.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 10.4.5 the defects arises after delivery other than when caused by us; or
 - 10.4.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 10.5 Except as provided in this clause 10, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 10.1.
- 10.6 These Conditions shall apply to any repaired or replacement Goods supplied by us.
- 10.7 Manufacturer's warranty.** The Goods may come with the benefit of a manufacturer's warranty which we provide on a pass through basis and is subject to the terms of the relevant warranty. Please contact us at sales@assuredfds.com if you believe you have a claim under the warranty, and we will advise on next steps.
- 11. Title and risk**
- 11.1 The risk in the Goods shall pass to you on completion of delivery.
- 11.2 Title to the Goods shall not pass to you until the later of:
- 11.2.1 us receiving payment in full (in cash or cleared funds) for all Goods to be provided in respect of any Order or;
 - 11.2.2 completion of delivery.
- 11.3 Until title to the Goods has passed to you, you shall:
- 11.3.1 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 11.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the our behalf from the date of delivery;

- 11.3.3 notify us immediately if you become subject to any of the events listed in clause 18.1.2 to clause 18.1.4; and
- 11.3.4 give the us such information as we may reasonably require from time to time relating to:
- 11.3.4.1 the Goods; and
- 11.3.4.2 your ongoing financial position.
- 11.4 Subject to clause 11.5, you may use the Goods in the ordinary course of its business (but not otherwise) before we receive payment for the Goods.
- 11.5 At any time before title to the Goods passes to you, we may require you to deliver up all Goods in your possession. If you fail to do so promptly, we may enter any premises of yours or of any third party where the Goods are stored in order to recover them.
- 12. Charges and payment**
- 12.1 The price for Goods:
- 12.1.1 shall be the price set out in the Quotation; and
- 12.1.2 shall be inclusive of all costs and charges of packaging, and transport of the Goods, which shall be invoiced you.
- 12.2 The charges for Services shall be calculated on a fixed basis:
- 12.2.1 the charges shall be calculated in accordance with our fixed fee, as set out in the Quotation. This fixed fee depends on the nature, and length of Services including the distance of the Site from our office;
- 12.2.2 we charge you additional fees as set out in these Conditions; and
- 12.2.3 if you require us to work out of Business Hours, we will provide you with our out of hours rate.
- 12.3 We reserve the right to:
- 12.3.1 increase the price of the Goods and Services, by giving notice to you two (2) weeks before delivery, to reflect any increase in the cost of the Goods and Services that is due to:
- 12.3.1.1 any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 12.3.1.2 any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 12.3.1.3 any delay caused by any of your instructions in respect of the Goods and/or Services or your failure to give us adequate or accurate information or instructions in respect of the Goods and/or Services.

12.4 How to pay:

12.5 Subject to clause 12.9, in respect of Services, we shall invoice you for your payment plus any costs for additional works which we have agreed with you to carry out, after completion of the Services.

12.6 In respect of Goods, we shall invoice you for your payment upon completion of delivery.

12.7 We may specify alternative dates on which we may raise invoices in the Quotation, Order Acknowledgment or otherwise from time to time.

12.8 You shall pay each invoice submitted by us:

12.8.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by us confirmed in writing to you; and

12.8.2 in full and in cleared funds to our bank account set out below and time for payment shall be of the essence of the Contract:

Payment method: BACS or Cheque

Bank Name: Santander

Account number: 40040574

Sort code: 09-01-29

12.9 Where the Services we are undertaking is for Construction Works, the payment provisions of clauses this clause 12.9 shall apply as set out below:

12.9.1 we shall submit an invoice to you after completion of the Services which shall specify the sum we consider will be due on the payment due date in respect of the Services and the basis on which that sum is calculated.

12.9.2 payment shall be due on the date you receive our invoice and in the case of instalment fee payment, the date you receive each invoice. In this context, the due date is the date on which the amount of the invoice is assessed and not the date on which payment is to be made. The date payment must be made is the final date for payments referred to in clause 12.9.4 below.

12.9.3 no later than 5 days after payment becomes due, you shall notify us of the sum that you consider to be due at the payment due date in respect of the payment and the basis on which that sum is calculated.

12.9.4 the final date for payment shall be 30 days after the date on which the payment becomes due.

12.9.5 unless you have served a notice under clause 12.9.6, you shall pay us the sum referred to in your notice under clause 12.9.3 (and where you fail to serve a notice under clause 12.9.6, or invoice pursuant to clause 12.9.3, shall constitute a default payment notice) or, if you have not served such notice, the sum referred to in the invoice referred to in clause 12.9.1 (the **Notified Sum**) on or before the final date for payment of each invoice.

- 12.9.6 not less than 14 days before the final date for payment, you may give us notice that you intend to pay less than the Notified Sum (a **Pay Less Notice**). Any Pay Less notice shall specify:
- 12.9.6.1 the sum that you consider to be due on the date the notice is served; and
- 12.9.6.2 the basis on which that sum is calculated.
- 12.9.7 where a Pay Less Notice is given in accordance with clause 12.9.6, the obligation to pay the Notified Sum in Clause 12.9.5 applies only in respect of the sum specified in that Pay Less Notice.
- 12.10 All amounts payable by you 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 us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 12.11 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 18, you 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 12.11 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%.
- 12.12 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).
- 12.13 **Loss and Expense**
- 12.14 Without prejudice to any rights or remedies available to us, if in the execution of the Contract we incur, or we are likely to incur, any loss and / or expense as a result of or in connection (directly or indirectly) with (i) any act, omission, fault or breach by you, any of your employees, agents, directors, officers or sub-contractors (ii) a Force Majeure Event, or (iii) any of the matters listed in clause 9.7 or 6.8, (iv) any other matter beyond our control including if applicable any delay caused or contributed to as a result of or in connection with the carrying out of any works by any third party at the Site), then in each case (i) – (iv) we shall be entitled to reimbursement of that loss and/or expense by you under these Conditions, as notified by us from time to time. Such loss and/ or expense shall be calculated on a time and materials basis and will include but shall not be limited to any preliminaries, overheads, expenses and other costs of having any other persons on the Site.
- 12.15 Any loss or expense payable pursuant to clause 12.14, shall, at our sole discretion, either (i) be payable immediately, on demand and as a debt or (ii) included in the next payment application.
- 12.16 **Suspension for non-payment**
- 12.17 Without limiting our other rights or remedies under these Conditions or at law, if you fail to pay to us any amount due under these Conditions by the relevant date on which payment is required to be made, we may give no less than seven (7) days' notice to you of our intention to suspend performance of the provision of the Goods and / or supply of Services and the grounds on which we intend to suspend performance and / or supply.

- 12.18 If you fail to remedy the non-payment (for the amount which we intend to suspend performance and / or supply for) within the seven (7) day period referred to in clause 12.17, we may suspend performance and / or supply without further notice to you.
- 12.19 We shall not be required to resume performance and / or supply until you make payment in full of the relevant amounts; and
- 12.20 You shall indemnify us and shall pay to us on demand a sum equal to, all liabilities, expenses, damages, costs (including but not limited to costs of demobilisation and remobilisation (calculated on a full indemnity basis)) and losses (including but not limited to any direct losses, direct loss of profit and/or direct loss of reputation) suffered and / or incurred by us as a result of or in connection with any suspension by us for non-payment by you.
- 13. Insurance**
- 13.1 You shall obtain and maintain, at your own cost and expense:
- 13.1.1 a works insurance policy covering the Services in the joint names of the Supplier and the Customer and on terms reasonably acceptable to us ("**Works Insurance Policy**"); and
- 13.1.2 a public liability insurance policy with a limit of indemnity of not less than £5,000,000 (five million pounds) per claim,
- together the "**Insurance Policies**".
- 13.2 You must maintain such insurance until completion of the Services. You shall ensure that:
- 13.2.1 the Works Insurance Policy is for not less than the full reinstatement value of the Goods and Services and provide for a waiver of subrogation in our favour;
- 13.2.2 the Insurance Policies are maintained until the completion of the Services, or (if earlier) the date of termination of the Contract;
- 13.2.3 the Insurance Policies are on customary and usual terms and conditions prevailing for the time being in the UK insurance market;
- 13.2.4 the Insurance Policies cover usual risks covered by the type of policy; and
- 13.2.5 as and when reasonably requested to do so by us, produce for inspection documentary evidence that such insurance has been effected and / or is being maintained.
- 13.3 You must not by any act or omission do anything which will or may cause the insurer in respect of the Works Insurance Policy to terminate or cease to provide coverage or refuse to pay out in respect of any claim or potential claim.
- 13.4 Insurance claim**
- 13.4.1 You shall immediately notify if you make or intend to make a claim under the Works Insurance Policy.
- 13.4.2 You must then do all things necessary (at your sole cost and expense) to recover any such losses and costs as far as is possible under such insurance policy and shall

authorise the insurer to pay the insurance proceeds to us to the extent required to reimburse us for any works to be undertaken under clause 13.4.4.

13.4.3 We may retain from the insurance proceeds any amounts properly incurred by us and notified by us to the insurers.

13.4.4 Subject to us receiving the insurance proceeds in accordance with clause 13.4.2, we will use reasonable endeavours to either (i) reinstate any relevant works or (ii) procure that any relevant works are reinstated. If there is a shortfall between the insurance proceeds received by us and the sums required by us to reinstate any relevant damage, you shall pay the difference to us on demand and as a debt.

14. Construction Industry Scheme ("CIS")

14.1 You warrant that you are not a 'contractor' at the date of the Contract for the purposes of the CIS and will not become one during the provision of Goods and / or Services by us. If you do become a 'contractor' for purposes of the CIS during the provision of Goods and/or Services by us, you shall immediately notify us.

15. Intellectual property rights

15.1 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 you) shall be owned us.

15.2 Subject to payment by you of any fees and charges due to us, we grant to you or we will use our reasonable endeavours to procure the direct grant to you of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to receive and use the Services and Deliverables (excluding Materials provided by the you) for your own internal business purposes and not, for the avoidance of doubt, any commercial exploitation. The licence granted in this clause does not include any right to vary, amend or modify any of the relevant Materials. We may immediately, on notice, suspend any licences granted in this clause in the event that you do not make any payment due to us by the relevant final date for payment until such breach has been rectified.

15.3 You shall not sub-license, assign or otherwise transfer the rights granted by clause 15.2.

15.4 You shall grant us a fully paid-up, worldwide, non-exclusive, assignable, transferable, sub-licensable, irrevocable, royalty-free licence during the term of the Contract to receive and use the Materials provided by you to enable us to provide the Services under the Contract.

15.5 We shall not have any liability to you for any use by you or any other person of the Deliverables or any other Materials provided by us in connection with the Services for any purpose other than that for which they were prepared.

16. Data protection

16.1 The following definitions apply in this clause 16:

16.1.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

16.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications

Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

- 16.2 Each party acknowledges that for the purposes of the Data Protection Legislation, each of them shall act as a data controller of any Personal Data provided to it by the other under or in connection with the Contract.
- 16.3 Each party shall comply with all obligations, responsibilities and duties imposed on it by the Data Protection Legislation in respect of any Personal Data which it passes to the other in connection with the terms of the Contract.
- 16.4 In respect of any Personal Data provided to a party by the other, the disclosing party:
- 16.4.1 warrants, represents and undertakes that it is entitled to lawfully transfer the relevant Personal Data to the receiving party so that the receiving party may lawfully use and process the relevant Personal Data for the purpose of performing its obligations and enjoying its rights under the Contract;
 - 16.4.2 shall comply with all duties, obligations and restrictions imposed on it by the Data Protection Legislation in respect of the transfer of such Personal Data to the receiving party; and
 - 16.4.3 not by any act or omission in respect of such Personal Data cause the receiving party to be in breach of or not fully compliant with the Data Protection Legislation.
- 16.5 You shall immediately on demand indemnify us for all costs, losses, liabilities, claims, expenses, interest and demands, actions (including all legal and professional costs calculated on a full indemnity basis) arising out of or connected to any breach by you or failure to fully comply with this clause 16.
17. **Limitation of liability**
- 17.1 References to liability in this clause 17 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), breach of a statutory duty, under statute, misrepresentation, restitution or otherwise.
- 17.2 Nothing in the Contract limits any liability for:
- 17.2.1 death or personal injury caused by negligence;
 - 17.2.2 fraud or fraudulent misrepresentation;
 - 17.2.3 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); or
 - 17.2.4 any liability that legally cannot be limited.
- 17.3 Subject to clause 17.2, our total liability to you for:
- 17.3.1 loss of or damage to your property or Materials that is caused by our default shall not exceed £200,000; and

- 17.3.2 All other loss or damage shall not exceed 100% of the charges paid or payable under the Contract.
- 17.4 The cap on our liability under 17.3 shall be reduced by all amounts paid or payable by us, including:
- 17.4.1 amounts awarded or agreed to be paid under clause 12; or
- 17.4.2 amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 17.5 This clause 17.5 sets out specific heads of loss for which we shall not under any circumstances be liable to you:
- 17.5.1 Subject to clause 17.2, the following types of loss are wholly excluded:
- 17.5.1.1 loss of profits;
- 17.5.1.2 loss of sales or business;
- 17.5.1.3 loss of agreements or contracts;
- 17.5.1.4 loss of anticipated savings;
- 17.5.1.5 loss of use or corruption of software, data or information;
- 17.5.1.6 loss of or damage to goodwill; and
- 17.5.1.7 indirect or consequential loss.
- 17.6 We have given commitments as to compliance of the Goods and Services with relevant specifications in clause 10 and 6. In view of these commitments, unless stated otherwise in these Conditions, all the terms implied under statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 17.7 This clause 17 shall survive termination of the Contract.
18. **Termination and Suspension**
- 18.1 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:
- 18.1.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
- 18.1.2 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;

- 18.1.3 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
- 18.1.4 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.
- 18.2 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract on the due date for payment (see clause 12).
19. **Consequences of termination**
- 19.1 On termination of the Contract:
- 19.1.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- 19.1.2 you shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 19.2 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.
- 19.3 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.
20. **Confidentiality**
- 20.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, assets, 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 20.2.
- 20.2 Each party may disclose the other party's confidential information:
- 20.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 20; and
- 20.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 20.3 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.
21. **Force majeure**

- 21.1 We shall not be liable for any delay or failure in the performance of our obligations for so long as and to the extent that such delay or failure results from an event outside our control, including but not limited to supply chain delays, the Site not being ready, relevant consents or permissions not being obtained by you, delays caused by third-party contractors, drying times, strike, lock-outs or other industrial disputes, acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, civil war, riots or any other unforeseen cause (**Force Majeure Event**). We will contact you as soon as possible to let you know and do what we can to reduce the delay. As long as we do this, we won't compensate you for the delay.
- 21.2 Our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the event outside our control. Where the event outside our control affects our delivery of Goods to you, we will arrange a new delivery with you after the date of the event outside our control is over.
- 21.3 If the period of delay or non-performance continues for thirty (30) days, the party not affected may terminate the Contract by giving not less than thirty (30) days' written notice to the affected party.

22. General

22.1 Assignment and other dealings

- 22.1.1 We 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.
- 22.1.2 You 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 our prior written consent.

22.2 Notices

- 22.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 22.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 22.2.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):
- Supplier: sales@assuredfds.com
- Customer: such address as notified to us from time to time
- 22.2.2 Any notice shall be deemed to have been received:
- 22.2.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 22.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 22.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

- 22.2.3 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.
- 22.3 Multi-tiered dispute resolution and Adjudication.**
- 22.3.1 Any dispute between the parties under or in accordance with these Conditions or its performance, validity or enforceability, shall be referred, as soon as reasonably practicable, to an appropriate director of each party in the first instance who shall attempt (acting reasonably and in good faith) to resolve the dispute.
- 22.3.2 If such directors are unable to resolve the dispute within fourteen (14) days of it being referred to them, the dispute will be referred to the managing directors of each party who shall attempt (acting reasonably and in good faith) to resolve the dispute.
- 22.3.3 If the managing directors are unable to resolve the dispute within thirty (30) days of it being referred to them, either party may refer the matter to adjudication in accordance with the adjudication procedure set out in the Housing Grants, Construction and Regeneration Act 1996.
- 22.3.4 Save in respect of manifest error or fraud, the decision of the adjudicator shall be binding on the parties unless and until the dispute is finally determined by legal proceedings, arbitration (if applicable), or by agreement between the parties.
- 22.4 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, 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.
- 22.5 Waiver.**
- 22.5.1 Unless expressly stated in these Conditions, a waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 22.5.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.6 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.
- 22.7 Entire agreement.**
- 22.7.1 The Contract constitutes the entire agreement between the parties.
- 22.7.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim

for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

22.8 Third party rights.

22.8.1 Unless it expressly states in these Conditions, 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.

22.8.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

22.9 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).

22.10 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.

22.11 Jurisdiction. Subject to clause 22.3, 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.