

The Customer's attention is particularly drawn to the provisions of clause 9.

1. INTERPRETATION

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

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.7.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: has the meaning given to it in clause 11.1.

Goods: the goods (or any part of them) set out in the Order, the Supplier's quotation and the Specification.

Specification: any specification for the Goods and/or Services, including any relevant plans or drawings, as supplied by the Customer and which forms the basis of the Supplier's quotation.

Order: the Customer's written acceptance of the Supplier's quotation.

Services: the services supplied by the Supplier to the Customer as set out in the Order, the Supplier's quotation and the Specification.

Supplier: Means Construct Scenery Limited, a company incorporated and registered in England and Wales with Company number 05904483 whose registered office is Franklin Chartered Accountants 320 Garratt Lane London SW18 4EJ and VAT registration is number 898966323.

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

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier receives cleared funds from the Customer of the agreed on account payment and the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Where the Specification or an initial concept has been agreed with the Customer or where style or layout are left to the Supplier's judgement, subsequent changes to the Specification made by the Customer shall be charged extra and shall be the subject of a separate quotation.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 5 days from its date of issue.

3. GOODS

- 3.1 To the extent that the Goods are to be manufactured in accordance with the Specification, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.1 shall survive termination of the Contract.

3.2 The Supplier reserves the right to amend the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

4.1 The Supplier 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 the Supplier notifies the Customer that the Goods are ready.

4.2 Where relevant the Customer shall allow the Supplier full and free access to the Delivery Location in order to construct the Goods and/or provide the Services.

4.3 Delivery of the Goods shall be completed on the Goods' arrival and assembly at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event; or the Customer's failure to provide the Supplier with adequate access to the Delivery Location; or the Customer's failure to provide any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to accept or take delivery of the Goods within 5 days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier'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 sixth days following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If ten days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5. QUALITY OF GOODS AND SERVICES

5.1 The Supplier warrants that on delivery the Goods and Services shall:

- (a) conform in all material respects with their description; and

- (b) be free from material defects in design, material and workmanship
- (c) be delivered using reasonable care and skill.

6. TITLE AND RISK

- 6.1 Risk in the Goods shall pass on delivery save that where the Goods are constructed at the Delivery Location then risk in the Goods shall pass on the day that the first materials are brought to the Delivery Location and the Customer shall have its own adequate insurance arrangements.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) Store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) Maintain the Goods in satisfactory condition and keep them insured against all risks on the Supplier's behalf from the date of delivery; and
 - (c) Give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1, then, without limiting any other right or remedy the Supplier may have:
- (a) The Customer's right to use the Goods in the ordinary course of its business ceases immediately; and
 - (b) The Supplier may at any time:
 - (i) Require the Customer to deliver up all Goods in its possession; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall:
- (a) ensure that the terms of the Order and the Specification are complete and accurate and in particular to ensure that all measurements or other information in the Specification are correct (the Customer acknowledges that the Supplier is relying on this information to properly deliver the Goods and Services);

- (b) co-operate with the Supplier in all matters relating to the Services and the provision of the Goods;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, third party premises or Delivery Location and other facilities as reasonably required by the Supplier to provide the Services and to provide the Goods;
- (d) properly prepare the Customer's premises, third party premises or and/or Delivery Location for the supply of the Services and the provision of the Goods;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services and/or the provision of the Goods including without limitation obtaining permits and permissions from landlords or local authorities for the parking of crew vehicles and skips.

7.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services or provision of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

8.1 The price for Goods and Services shall be the price set out in the Order.

8.2 The Supplier reserves the right to:

- (a) increase the price of the Goods or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Services to the Supplier that is due to:
 - (i) any request by the Customer to change the delivery date(s), quantities or types of Goods or Services ordered, or the Specification; or

- (ii) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

8.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery.

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

- (a) within 14 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

8.5 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

8.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate set by the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability where the law precludes this.

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Order.

9.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

10. TERMINATION AND CANCELLATION

10.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party makes a voluntary arrangement with its creditors, or becomes bankrupt, or becomes subject to administration or goes into liquidation, or ceases to carry on business (or threatens to cease carrying on business) or if the party reasonably determines any of these instances is about to occur, without prejudice to any other rights or remedies available to either party and notwithstanding any previous agreements or arrangements to the contrary.

10.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.4 The Customer may cancel the Contract by giving the Supplier written notice of cancellation within 5 working days of the Contract having been made and in such event the Customer shall be liable to pay the Supplier a sum equivalent to the cost of all materials used or ordered, sub-contractors fees incurred, and all other costs, liabilities and expenses actually incurred together with a sum equivalent to the Supplier's loss of profit for the Contract.

10.5 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier 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;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. FORCE MAJEURE

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, extreme weather conditions, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12. GENERAL

12.1 Sub-Contract.

The Supplier may at any time subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered

personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

12.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 12.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 12.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 12.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).