

## **TERMS and CONDITIONS of SALE**

All orders accepted by Glazing Vision Inc. are subject to the following Conditions which shall prevail over all conditions specified by the Buyer.

### **1. Definitions**

- a. 'Buyer' means the party placing the Order in good faith, without knowledge that the sale violates the rights of another person in the Goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling Goods of that kind.
- b. 'Delivered Duty Paid to' ("DDP") means that the Seller delivers the Goods to a carrier or to another person nominated by the Seller, at a place mutually agreed upon by the Buyer and Seller, and that the Seller pays the freight and insurance charges to transport the Goods to the specified destination. Although the Seller pays for freight and insurance, the risk of damage or loss to the Goods being transported is transferred from the Seller to the Buyer as soon as the Goods have been delivered to the carrier or to another person nominated by the Seller, at a place mutually agreed upon by the Buyer and Seller.
- c. 'Contract' means these Conditions together with the Confirmation of Order form and any other terms agreed in writing signed by a duly authorized representative of the Seller.
- d. 'Conditions' means these terms and conditions of sale.
- e. 'Confirmation of Order' means the confirmation of order form provided to the Buyer by the Seller.
- f. 'Force Majeure Event' means an event that is outside of the Seller's control, as set out in Clause 22. 'General Assembly Drawings' means the drawings as produced by the Seller and provided to the Buyer before engineering drawings are produced and manufacture starts.
- g. 'Goods' means the goods that are subject to the Contract, details of which are set out in the Confirmation of Order form.
- h. 'Good Faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing. Every contract between Buyer and Seller imposes an obligation of good faith in its performance and enforcement.
- i. 'Manufacture Completion' means once the Goods has passed final quality control checks and is signed off as ready for dispatch.

j. 'Operating and Maintenance Manuals' means the operating and maintenance manuals provided to the Buyer by the Seller with the Goods.

k. 'Order' means the order for the Goods as accepted by the Seller.

l. 'Quote' means the quote for the Goods provided to the Buyer by the Seller. m.

'Reasonable time' means reasonableness depending on the nature, purpose, and circumstances of the action. An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

n. 'Seller' means Glazing Vision Inc., located at 201 Locust Street, Hartford CT06114

o. 'Services' means the installation of the Goods at the address specified by the Buyer, as required by the Buyer.

p. 'Uniform Commercial Code' means a set of laws that provide legal rules and regulations governing commercial or business dealings and transactions as adopted by the Connecticut General Statutes 42A. (the "UCC"). The UCC regulates the transfer or sale of personal property. The UCC does not address dealings in real property.

q. 'Warranty' means a Limited Warranty as described in the Entire Agreement and the document setting out the details of the warranty provided by the Seller in respect of the Goods sold under the Contract.

## **2. Limits of Contract**

The Buyer's Order is accepted on the basis that these Conditions shall apply to the Contract between the Seller and the Buyer for the supply of the Goods detailed in the Confirmation of Order to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice

or course of dealing. Any terms not defined in the Conditions shall have the definitions as defined in the UCC. In addition, per the UCC requirements, any missing provisions shall be supplemented with the UCC provisions where parties to these Conditions are silent or fail to include in these Conditions.

## **3. Entire Agreement**

### **Clause 3.1 applies to business customers only.**

3.1 These Conditions and the documents referred to in it constitute the entire agreement between the Seller and the Buyer and supersede any previous agreement between the Seller and the Buyer. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

3.2 We may revise these Conditions from time to time to reflect any changes in relevant laws, regulatory requirements or in the Goods and Services.

#### **4. Severability**

If all or any part of these Conditions is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any other portion of these Conditions. Any section or a part of a section declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of the section to the fullest extent possible while remaining lawful and valid.

#### **5. Order**

5.1 The Seller will provide the quote to the Buyer for the Goods and / or Services as required by the Buyer, this does not constitute an offer to provide the Goods and / or Services (the "Quote").

5.2 When the Buyer signs and places an order to the Seller as per the details set out in the Quote, this does not mean the Seller has accepted the Buyer's order for Goods and / or Services. The Seller's acceptance of the order will take place as described in clause

5.3. If the Seller is unable to supply the Buyer with the Goods and / or Services, the Seller will inform the Buyer of this and the Buyer will not process the order.

5.3 These Conditions will become binding on the Seller and the Buyer when the Seller issues a Confirmation of Order, which will set out the details of the Goods and / or Services to be provided, at which point a binding contract will come into existence between the Seller and the Buyer (the "Order"). Where the Services to be provided by the Seller under the Contract include Contract Lifting Services, the commencement of the Contract will be subject to availability of the Contract Equipment at the time requested.

5.4 The Seller will provide the Buyer with a Pre-installation Checklist, which must be completed by the Buyer and returned to the Seller promptly but at least two days prior to the earliest installation date set out in the Confirmation of Order (or such other date agreed between the parties).

5.5 If the Buyer fails to provide a fully completed Pre-installation Checklist, in accordance with the timeframe set out in clause 5.4:

5.5.1 the Seller will not commence the Services and the installation date will not be rearranged until the Pre-installation Checklist has been provided to the Seller, and any new installation date will be at the Seller's sole discretion. The Seller shall not be liable to fulfil any of its obligations under the Contract, including but not limited to, providing the Goods and/or Services, until such information has been provided to the Seller and

the Seller shall not be responsible for or liable for any delays in delivering Goods or supplying the Services; and

5.5.2 in addition to the charges payable under clauses 13.5 to 13.7, where the Services includes Contract Lifting Services, the Buyer shall be liable for all liabilities, costs, claims, losses and expenses suffered, sustained or incurred by the Seller, arising from, in connection with or relating to the Seller having to rearrange the Contract Lifting Service.

5.6. If on commencement of the Services, the Seller reasonably believes that the information provided by the Buyer in the Pre-installation Checklist is false, incomplete, incorrect or misleading, the Seller shall at its sole discretion:

5.6.1 wait a maximum of one hour on the installation date to allow the Buyer to rectify any issues arising as a result of such false, incomplete, incorrect or misleading information. If any such issues cannot be rectified by the Buyer on the same day and within such timeframe, the Seller may at its sole discretion act in accordance with 5.6.2 below;

5.6.2 re-arrange the installation date and the Buyer shall be liable for all liabilities, costs, claims, losses and expenses suffered, sustained or incurred by the Seller, arising from, in connection with or relating to the Seller having to rearrange the installation date, which for the avoidance of doubt shall include but is not limited to, the charges payable under clauses 13.5 to 13.7, further installation charges and, if applicable, further delivery charges (for redelivery of Goods).

5.7 The Seller shall assign an order number to the Order and inform the Buyer of it on the Confirmation of Order. The order number should be quoted by the Buyer in all subsequent correspondence with the Seller in relation to the Order.

## **6. Made-to-measure Goods**

6.1 Where the Contract provides that the Seller is to manufacture and supply the Goods in accordance with the Buyer's specifications, it shall be the sole responsibility of the Buyer to provide the Seller with sufficient, complete and accurate information and drawings as are required to enable the Seller to perform the Contract.

6.2 The Seller cannot accept the return of made-to-measure Goods if the reason for the return is because the Buyer provided incorrect measurements.

6.3 The Seller shall not be liable for any defect in the Goods arising from the Seller following the Buyer's specifications or arising out of any failure of the Buyer to provide such information and/or drawings.

6.4 If the Seller designs the Goods for the Buyer, the Seller will own the copyright, design right and all other intellectual property rights in the Goods and any drafts, drawings or illustrations the Seller makes in connection with the Goods for the Buyer.

**Clause 6.5 applies to business customers only.**

6.5 The Buyer shall indemnify the Seller 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 reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the specification supplied by the Buyer. This Clause 6.5 shall survive termination of the Contract.

**Clause 6.6 applies to consumers only.**

6.6 This Clause 6 will not affect the Buyer's legal rights as a consumer in relation to made-to-measure Goods that are faulty or not as described.

**7. Goods and Specification**

7.1 The Seller's policy is one of continuous improvement, it therefore shall be entitled without notice (save where the Seller is working to the Buyer's specification set out in Clause 5 above, in which case the Seller will consult with the Buyer), to make changes in dimensions, materials and design, which the Seller deems reasonable or desirable without affecting in any adversely material way the nature of the Goods. The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements. The Buyer shall have no cause of action in respect of any such change.

7.2 Notwithstanding any specifications the Buyer agrees with the Seller, the Goods are manufactured to the descriptions, weights and dimensions as set out in the Quote, Confirmation of Order form and the General Assembly Drawings where these are provided. It shall be the sole responsibility of the Buyer to ensure that their structure is capable of withstanding all dead and live loads that may be imposed upon it by the Goods and that any deflections in the supporting structure are within the allowed limited for the Goods being supplied.

7.3 The Seller shall not be under any liability in respect of any descriptions, images, specification weights, illustrations, samples, drawings or dimensions or other matters in relation to the Goods contained in any materials including, but not limited to, any website, forwarding specifications, drawings, price lists, catalogues, brochures trade publications and advertising materials other than in the Contract itself. While the Seller has made every effort to display the colors accurately, the Seller cannot guarantee that the printed pictures accurately reflect the color of the Goods. Any Goods supplied

under the Contract may vary slightly from those images. Such images are for illustrative purposes only and they shall not form part of the Contract or have any contractual force.

7.4 The Seller reserves the right to make all and any changes in the type, specification, size, color or any other changes to the Goods after the Order has been placed. However, the Buyer acknowledges that once the specifications have been received by the Seller and the manufacture of the Goods has started alterations to the Goods may require changes to materials and design at additional cost to the Buyer or the changes may be impossible.

7.5 All sizes for the Goods are quoted in metric measurements. Imperial sizes will be translated to the nearest metric equivalent.

7.6 The Goods will be designed and manufactured on the understanding that dimensions provided by the Buyer represent the overall external curb sizes, including the roof weathering. In the case of a stepped curb the dimension provided remains the overall external curb size, including the roof weathering and not the external step dimension.

## **8. Use**

8.1 Unless otherwise agreed in writing, all Goods supplied by the Seller are supplied on the basis that they are not required for any special purpose other than the usual purpose for which the Goods are supplied, and the Buyer shall be deemed to have full knowledge of the nature and properties of the Goods and any hazards they involve.

8.2 Goods are supplied on the basis that they shall be used in normal conditions appropriate for such Goods and shall be properly maintained, and in all circumstances shall be used and maintained in accordance with provisions of the Operating and Maintenance Manual supplied by the Seller to the Buyer.

8.3 A standard paper copy of the Operating and Maintenance Manual shall be supplied to the Buyer with the Goods. Further paper copies of the Operating and Maintenance Manuals are available from the Seller's head office at an additional charge. An electronic copy may also be available from the Seller's website.

8.4 It is the responsibility of the Buyer to ensure that the product Ordered is appropriate to its application and that its use complies with all up-to-date local and national legislation, building regulations, standards, codes of practice and any other requirement.

## **9. Price**

9.1 The price of the Goods and/or the Services will be set out in the Seller's price list in force at the time the Order is placed.

9.2 Unless otherwise agreed (at the Seller's discretion) when the Order is placed, the price quoted for the Goods excludes delivery and installation, which shall be itemized to the Buyer separately on the quotation and invoice. Delivery will be charged at such rates which the Seller (in its sole discretion) considers as fair and reasonable in respect of that delivery. Additional charges may be incurred at rates current at the time of dispatch of the Goods if any special delivery arrangements are required.

9.3 In the event of a significant delay in performance due to inability to obtain equipment, or price increase for materials or shipping, occurring at any time after customer accepts Company's proposal, the materials and/or shipping pricing, length of time for performance, and proposal requirements, as applicable, shall be equitably adjusted. A change in price of an item of material or shipping shall be deemed significant when the price of the item or shipping increases five (5%) percent between the date of the proposal and the date of Company's procurement of such item or date of shipping. A delay in performance shall be deemed significant in the event that circumstances necessitate that the work to be performed by USA be delayed by more than seven (7) days. Under no circumstances shall Company be responsible for delays in shipments and/or deliveries.

9.4 Any and all special and additional customs associated with the import of Goods or services rendered shall be borne on the Seller including, but not limited to levies or duties, which will be charged at the rate applicable at the tax point date of the Delivery.

9.5 All prices for Goods and Services will be subject to the applicable State sales and/or use taxes which shall be determined based on the location of where such Goods are purchased or Services are rendered.

9.5.1. All Goods purchased in the State of Connecticut and all Services including, but not limited to the installation, repair, and maintenance of Goods in the State of Connecticut shall be subject to the Connecticut Sales tax rate of 6.35%.

**9.5.2. All Goods and Services rendered including but not limited to installments, repairs, and maintenance which are performed outside of the State of Connecticut shall be subject to the appropriate use tax of that State where such Goods are purchased or Services are rendered, and the responsibility to pay the appropriate State agency such use tax shall be borne on the Buyer.**

9.6 It is always possible that, despite the Seller's best efforts, some of the Goods for sale may be incorrectly priced. The Seller will normally check prices as part of the dispatch procedures so that, where the Goods' correct price is less than the stated price, the Seller will charge the lower amount when dispatching the Goods to the Buyer. If the Goods' correct price is higher than the price stated the Seller will contact the Buyer. If the pricing error is obvious and unmistakable and could have reasonably been recognized by the Buyer as a mispricing, the Seller does not have to provide the Goods



at the incorrect (lower) price. Seller shall use their best efforts to provide the final price upon Confirmation of Order.

9.7 All prices are quoted on the understanding that the whole of the Goods quoted for will be Ordered and supplied, unless otherwise indicated in the quotation supplied by the Seller.

9.8 Additional charges may be made, and if so will be notified to the Buyer at the time of accepting the Order, if the urgency of an Order can only be met by additional labor, materials or carriage costs. Upon receipt of such notification the Buyer shall have the right to cancel the Order, so long as notice of such cancellation is received by the Seller within a reasonable time of the Buyer receiving the notification, but in no case more than 7 calendar days. If the Order is so cancelled by the Buyer, the Buyer shall nevertheless be responsible for paying the Seller for any work already undertaken.

## **10. Payment**

10.1. All payments shall be made at the invoice price and shall be made on the payment terms as set out in the Quote and the Confirmation of Order form. Unless otherwise specified all payments must be made in full prior to the dispatch of the Goods.

10.2. All payments shall be made in US Dollars as invoiced and shall not be considered 'paid' until the funds have cleared.

10.3. All payments set out in these Conditions, unless otherwise specified, shall be made at the invoice price without deduction in accordance with Clause 10.1

### **Clause 10.4 applies to business customers only.**

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

10.5 If the Buyer does not make any payment due to the Seller by the due date for payment, the Seller may charge interest to the Buyer on the overdue amount at the rate of 3% a year above the base lending rate of Bank of America from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer must pay the Seller interest together with any overdue amount.

10.6 Any complaint relating to an invoice or item contained in an invoice must be notified by the Buyer to the Seller in writing within 7 business days (excluding U.S. Holidays) of the date of the invoice.

## **11. Risk**

11.1 The risk, responsibility, and liability in the Goods shall pass to the Buyer upon arrival at the Buyer's address, DDP at the nearest port, or any other United States' Port that the Buyer and Seller have otherwise agreed to, whichever occurs first, regardless if



the Buyer accepts or revokes the Goods for any reason including, but not limited to, material defects or nonconforming uses.

11.2 Where it is agreed between the Buyer and the Seller that the Buyer shall arrange for the Goods to be collected from the Seller's premises, the risk in the Goods shall pass to the Buyer upon the Buyer collecting such Goods. Unless otherwise agreed, the Seller shall load the Buyer's collection vehicle but this shall be at the Buyer's sole risk and the Seller shall have no responsibility for any damage done to the Buyer's collection vehicle. It is the Buyer's responsibility to use an appropriate vehicle for transportation of the Goods.

11.3 Where these Conditions permit the Buyer to return the Goods to the Seller the Buyer shall be responsible and liable to return the Goods to the Seller in the same reasonable condition as they were delivered to the Buyer.

## **12. Delivery of the Goods**

12.1 The Seller will contact the Buyer to inform them when their Goods will be ready for dispatch ("Dispatch Date") and to arrange a delivery or collection date, which will be within 5 weeks of the Manufacture Completion. The Seller will arrange for delivery of the Goods to be made to the Buyer's address on the delivery date in accordance with the written delivery instructions agreed between the Seller and the Buyer or will have them ready for collection on any agreed collection date. The written delivery instructions shall include the United States Port where the Goods are to be sent, and where a United States Port has not been selected or is deemed inconclusive, the closest port to the project site shall be used as the default United States Port where the Goods shall be sent.

12.2 Delivery of an Order shall be completed and be the responsibility of the Buyer from the time when the Seller delivers the Goods to the address given by the Buyer or the Buyer or a carrier organized by the Buyer collects the Goods from the designated United States Port, or where a United States Port has not been chosen then the closest port to site as deemed by Glazing Vision will be selected.

12.3 When the Goods are collected by a carrier the Seller shall obtain a negotiable bill of lading stating that the Goods have been loaded on board.

12.4 There will be no implied "No Arrival, No Sale" term in the sale of Goods between Seller and Buyer.

12.5 Timescales for delivery and delivery charges will vary depending on the availability of the Goods and the Buyer's address. Extra time must be allowed for international deliveries as shipping can take up to approximately 4 weeks, or longer as advised by the Seller at the time of Manufacture Completion.

12.6 It will be the Buyer's sole responsibility to make all necessary arrangements, and pay all necessary costs, for the Goods to be removed from the delivery vehicle, including, but not limited to, where appropriate hiring any lifting equipment and closing the highway. Once removed from the delivery vehicle the Goods will be the sole responsibility of the Buyer.

12.7 It shall be the Buyer's sole responsibility to inspect the Goods at the time of delivery.

12.8 The expenses of inspection shall be borne by the Buyer and may not be recovered from the Seller if the Goods do not conform, have a material defect, or any other reason which shall cause the Buyer to request that the Seller repair or fix any defect or reject the Goods in any unit or in whole.

12.9 Occasionally the Seller's delivery to the Buyer may be affected by a Force Majeure Event. See Clause 23 for the Seller's responsibilities when this happens.

12.10 If no one is available at the Buyer's address to take delivery, the Seller will leave a note that the Goods have been returned to the Seller's premises/appropriate warehouse chosen at the Seller's discretion, in which case, please contact the Seller to rearrange re-delivery. Please note charges will be incurred for any failed delivery attempts and warehousing.

12.11 The Seller reserves the right to make a charge to the Buyer for the storage cost of all or any part of the Goods if the Buyer requests that the delivery or collection of the Goods be delayed by longer than 7 calendar days from the Dispatch Date.

12.12 If, due to the Buyer the Goods cannot be collected or delivered within 7 calendar days of the Dispatch Date or, for whatever reason the Buyer is unable to accept delivery of the Goods or, if the Buyer is collecting the Goods, the Buyer does not collect the Goods the Seller may, if its storage facilities so permit and at its sole discretion, store the Goods until the time of actual delivery and the Buyer shall pay to the Seller the cost of such storage, as well as any additional handling and transport costs. The Conditions shall not affect any other rights the Seller may have to otherwise deal with any Goods which the Buyer fails to take delivery of or fails to collect.

**Clause 12.13 applies to business customers only.**

12.13 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement Goods of similar description and quality in the cheapest market available, less the price of the Goods. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Buyer's failure to provide the Seller

with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

**Clauses 12.14, 12.15 and 12.16 apply to consumers only**

12.14 Subject to Clause 12.10, if the Seller misses the delivery deadline as agreed with the Buyer in accordance with Clause 12.1 for any Goods then the Buyer may cancel their Order straight away if any of the following apply:

12.14.1 the Seller has refused to deliver the Goods;

12.14.2 delivery within the delivery deadline was essential (taking into account all the relevant circumstances); or

12.14.3 the Buyer advised the Seller prior to accepting the Order that delivery within the delivery deadline was essential.

12.15 If the Buyer does not wish to cancel their Order straight away, or does not have the right to do so under Clause 12.14, the Buyer can give the Seller a new deadline for delivery, which must be reasonable, and the Buyer can cancel their Order if the Seller does not meet the new deadline.

12.16 If the Buyer does choose to cancel their Order for late delivery under Clauses 12.14 or Clause 12.15, the Buyer can do so for just some of the Goods or all of them, unless splitting them up would significantly reduce their value. If the Goods have been delivered to the Buyer, the Buyer will have to return them to the Seller or allow the Seller to collect them, and the Seller will pay the costs of this. After the Buyer cancels their Order the Seller will refund any sums the Buyer has paid to the Seller for the cancelled Goods and their delivery, subject to Clause 5.

**13. Services**

13.1 Subject to clauses 4.4, 4.5 and 4.6:

13.1.1 the Seller will supply the Services to the Buyer in accordance with the specification and the installation dates set out in the Confirmation of Order or as agreed between the parties; and

13.1.2 the Seller will make every effort to complete the Services on time. However, there may be delays due to Force Majeure Event. See clause 23 for the Seller's responsibilities when a Force Majeure Event occurs.

13.2 The Seller will need certain information from the Buyer that is necessary in order to provide the Services (for the avoidance of doubt, this is including but not limited to, the Pre-installation Checklist). The Seller will contact the Buyer about this. If the Buyer does not, after being asked to provide the information, or instead provides incomplete or incorrect information, the Seller may make an additional charge of a reasonable sum to

cover any extra work that is required, or the Seller may suspend the Services by giving the Buyer written notice. The Seller will not be liable for any delay or non-performance where the Buyer has not provided this information to the Seller after being asked. If the Seller suspends the Services under this clause 13.2, the Buyer does not have to pay for the Services while they are suspended, but this does not affect the Buyer's obligation to pay any invoices that have already been sent.

13.3 If the Buyer does not pay the Seller for the Services when they are supposed to as set out in the Confirmation of Order form, the Seller may suspend the Services with immediate effect until the Buyer has paid the Seller the outstanding amounts (except where the Buyer disputes an invoice under clause 9.6). The Seller will contact the Buyer to advise them of this. This does not affect the Seller's right to charge interest under clause 10.5.

13.4 Where the Contract between the Seller and the Buyer includes provision of the Services, the quotation will assume that any equipment which may be required to be hired to assist with the installation can be hired on the day of installation. An additional charge will be incurred by the Buyer if a return visit and re-hire of equipment is required at a later date to complete the installation (for the avoidance of doubt, this includes but is not limited to where a return visit is required under clause 4.5 or clause 4.6). Where a product requires on site silicone works it may also include return visits where the prevailing weather conditions such as persistent rain and/or low temperatures are unsuitable for the effective application of the sealant. It is also assumed that where a product requires commissioning this can be carried out on the day of installation. An additional charge will be incurred by the Buyer if a return visit is required at a later date to complete the commissioning of the product.

13.5 Subject to clause 13, where the Contract between the Seller and the Buyer includes the installation of the Goods by the Seller at the Buyer's or a third party's premises it will be the Buyer's sole responsibility to make all necessary arrangements, and pay all necessary costs, for the Goods to be removed from the delivery vehicle, including, but not limited to, where appropriate hiring any lifting equipment and closing the highway and for the Goods to be moved and/or lifted to the upstand ready for installation. Glazing Vision strongly recommends the use of mechanical lifting equipment to offload and move the rooflight. In certain roof configurations and where 'wall abutment detail' is specified it may be necessary for the Buyer to arrange to support the roof light whilst the Seller's installers make the necessary fixings. The cost of this support is the responsibility of the Buyer.

13.6 The Seller reserves the right to make a reasonable charge in respect of each person per visit, plus reasonable travel expenses per person per visit, to the Buyer for any failed, aborted or cancelled visit in circumstances where the Buyer or the third party is,

in the Seller's reasonable opinion, deemed to be responsible for the Seller's representative(s) having to withdraw from the site without having completed the installation (for the avoidance of doubt, this includes but is not limited to, where the Buyer provides false, incomplete, incorrect or misleading information in the Pre-installation Checklist, as referred to in clause 5.6).

13.7 The Buyer must give the Seller written notice at least two working days' prior to the earliest installation date set out in the Confirmation of Order if the Buyer requires cancellation of an installation. If the Buyer fails to give such notice, the Seller reserves the right, at its sole discretion, to charge the Buyer an administration fee of \$450 and the Buyer shall be fully responsible for reimbursing the Seller for all costs, claims, losses and expenses which the Seller has incurred, or will incur, under these Conditions in relation to such installation up until the date of cancellation, including for the avoidance of doubt relating to Contract Lifting Services.

13.8 In addition, if the time taken for delivery or installation exceeds the period specified in the Confirmation of Order, or such later written correspondence between the Buyer and Seller, and such excess is, in the Seller's reasonable opinion, deemed to be the responsibility of the Buyer, the Seller reserves the right to make a reasonable charge in respect of such excess time.

13.9 Where the sale includes installation by the Seller's staff it is the responsibility of the Buyer to ensure adequate Health, Safety and Wellbeing arrangements are in place for these staff whilst on the Buyer's premises. For example Glazing Vision staff are trained to work at heights and carry harnesses but the provision of a safety line and/or edge protection is the responsibility of the Buyer. Glazing Vision staff will complete a local risk assessment and reserve the right to discontinue the work if undue risk is identified. Weather conditions, high winds, heavy rain or icy conditions are contributing factors to undue risk when working at height.

13.10 If a permanent power supply is available on the completion of installation the Seller will commission the rooflight the same day, however if power isn't available the Seller will have to schedule a chargeable return visit. For products intended for access the Seller will leave the rooflight secured in an agreed open or closed position, the Seller will not be responsible for any damage resulting from access use during the time between installation and commissioning.

13.11 Where it is agreed between the Buyer and the Seller that the Seller will provide a Performance Bond / Advance Payment Guarantee Bond under the terms and conditions of the Contract, then where the completion / commissioning of the Goods is delayed by more than 30 days after completion of the installation works, and this delay is caused by the Buyer, then the Contract will be deemed to have been completed satisfactorily with regard to the matter of the Performance Bond / Advance Payment Guarantee Bond

and therefore the Performance Bond / Advance Payment Guarantee Bond will then be cancelled and the Buyer will have no further claims in this regard.

**Clauses 13.12, 13.13 and 13.14 apply to consumers only.**

13.12 The Seller may have to suspend the Services if they have to deal with technical problems, or to make improvements agreed between the Seller and the Buyer in writing to the Services. The Seller will contact the Buyer in advance where this occurs, unless the problem is urgent or an emergency. The Buyer does not have to pay for the Services while they are suspended under this Clause 13.11 but this does not affect the Buyer's obligation to pay any invoices that have already been sent.

13.13 In the unlikely event that there is any defect with the Services:

13.13.1 the Buyer must contact the Seller as soon as reasonably possible;

13.13.2 the Buyer will give the Seller a reasonable opportunity to repair or fix any defect; and

13.13.3 the Seller will use every effort to repair or fix the defect as soon as reasonably practicable and, in any event, within 28 calendar days, save that the Seller's ability to repair or fix any defect may be dictated by the lead time of any replacement specialist glass, and therefore in these circumstances the Seller may not be able to meet this timeframe but will endeavor to repair or fix any defect as soon as reasonably practicable on receipt of such replacement glass. The Buyer will not have to pay for the Seller to repair or fix a defect with the Services under this Clause 13.11

13.14 As a consumer, the Buyer has legal rights in relation to Services not carried out with reasonable skill and care, or if the materials the Seller uses are faulty or not as described.

**Clauses 13.15, 13.16 and 13.17 apply to business customers only.**

13.15 The Seller shall use all reasonable endeavors to meet any performance dates for the Services specified in the Confirmation of Order or as agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

13.16 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

13.17 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

**14. Obligations of the Buyer**



14.1 The Buyer shall:

14.1.1 ensure that the curbs are constructed within the permissible tolerances for overall length, width, height and level as defined by the Seller within the Seller's literature, which is available on request from the Seller's head office;

14.1.2 provide the external weathered dimensions of the curb or other applicable dimensions to the Seller. In the case that a site audit by the Seller's staff is agreed between the Buyer and Seller, dimensions taken by the Seller's staff will only be accepted once approved as 'correct for manufacture to commence' by the Buyer;

14.1.3 ensure that the terms of the Order and (if submitted by the Buyer) the specification for the Goods is complete and accurate;

14.1.4 co-operate with the Seller in all matters relating to the Services;

14.1.5 provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;

14.1.6 provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

14.1.7 prepare the Buyer's premises and site of the installation for the supply of the Services in accordance with the Seller's requirements as notified to the Buyer by the Seller prior to delivery;

14.1.8 obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start; and

14.1.9 keep and maintain all materials, equipment, documents and other property of the Seller (the **"Seller Materials"**) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorization.

**Clause 14.2 applies to business customers only.**

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

14.2.1 the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to



the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;

14.2.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this Clause 14.2; and

14.2.3 the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

## **15. Time and Date of Delivery**

15.1 The Seller will use reasonable endeavors to keep to any agreed delivery date, which is quoted on the basis of existing commitments. All such times are to be treated as estimates only and the Seller shall not be liable for any delay in delivery or, where the same is caused by lack of instructions from the Buyer, any failure to deliver.

15.2 The Seller shall not be liable for any costs, incidental costs or damages caused directly or indirectly by a delay in delivery due to issues arising from shipping. Seller shall use their best endeavors to cure same.

## **16. Damage and/or Loss in Transit**

16.1. Upon delivery the Buyer shall be responsible for examining the Goods before signing for them. Subject to Clauses 16.2 and 17.3, the Buyer shall not be entitled to reject or return the Goods or to make any claim in respect of the Goods if the Buyer has previously signed for them as accepted.

### **Clause 16.2 applies to business customers only.**

16.2. The Seller shall not be liable for any loss or damage of the Goods during transit unless the Goods are signed for as damaged and all claims for damages to (or loss of) the Goods, or any part thereof, in transit are submitted in writing to the carrier and the Seller within the next working day from the date of delivery. All claims for non-delivery of any part of any Order must be submitted in writing to the carrier and to the Seller within 24 hours of the date of delivery. In the absence of notification of such claims within such periods, the Goods shall be deemed to have been delivered in accordance with the Order.

## **17. Defective Goods Clause**

### **17.1 applies to consumers only**

17.1 The Buyer has legal rights in relation to Goods that are faulty or not as described. The Seller is under a legal duty to supply Goods that are in conformity with this contract.

17.2 The Seller warrants that upon delivery, and for a period of 24 months from the date of delivery, the Goods conform with their description, are free from material defects in design, material and workmanship, are of satisfactory quality and fit for the purpose described in the Confirmation of Order, and are merchantable. The Buyer should inspect the Goods as soon as possible after delivery and take care to protect them from deterioration while awaiting use.

17.3 The Seller will make good by repair or by the supply of a replacement component any defects which under proper use of the Goods appear to be a result of the Seller's manufacture of the Goods provided that the Buyer notifies the Seller of any material defect within 12 months after the date of delivery, retains the Goods for inspection and provided that the defect does not arise from any of the following:

17.3.1 fair wear and tear;

17.3.2 willful damage, abnormal storage or working conditions, accident, negligence by the Buyer or by any third party;

17.3.3 if the Buyer fails to operate or use the Goods in accordance with the user instructions;

17.3.4 any alteration or repair by the Buyer or by a third party who is not one of the Seller's authorized repairers; and 17.3.5 any specification provided by the Buyer.

17.4 In addition, the Seller provides an extended warranty in relation to the Goods, subject to the terms and conditions of the Warranty Document (the **"Warranty Document"**) which has been provided by the Seller to the Buyer. Claims will be permitted provided:

17.4.1 proper use has been made of the Goods in accordance with the user instructions;

17.4.2 the Buyer notifies the Seller within the period of Warranty cover;

17.4.3 the Goods are retained for inspection;

17.4.4 no repair or attempted repair has been made to the Goods;

17.4.5 if the Buyer is no longer the owner of the Goods the Seller has been notified of the new owner in accordance with the terms of the Warranty Document.

17.5 The provisions of Clause 17.3 cover the free of charge repair or replacement of any component deemed defective which are as a result of the Seller's manufacture of the Goods. The Seller will meet all travel costs of its technicians relating to travel within mainland United States. However, all reasonable travel costs incurred by the Seller's technicians relating to travel to and from any destination where the Goods are located outside of mainland United States (including all reasonable accommodation and

sustenance expenses properly and necessarily incurred by the Seller's technician) will be borne in full by the Buyer.

17.6 The quality of any glass supplied by the Seller shall be inspected and deemed to be acceptable in accordance with the 'Quality of Vision – Double Glazing' document published by the Glass and Glazing Federation (GGF) of the U.K. and the Seller's own quality standard. Copies of either document are available by request from the Seller's head office.

17.7 The Seller warrants that the title conveyed shall be good, and its transfer rightful, and the Goods shall be delivered free from any security interest or other lien or encumbrance of which the Buyer at the time of Contracting has no knowledge.

17.8 The Seller warrants that the Goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a Buyer who furnishes specifications to the Seller must hold the Seller harmless against any such claim which arises out of compliance with the specifications.

17.8 There are no warranties, expressed or implied, which extend beyond the description on the face hereof or in the Warranty Document.

17.9 Some states do not allow limitations on how long an implied warranty lasts, so the Warranty Document and above limitations may not apply to you.

17.10 Some states do not allow the exclusion or limitation of incidental or consequential damages, so the Warranty Document and above limitations or exclusions may not apply to you.

## **18. Title**

The legal title of the Goods shall not pass to the Buyer until payment in full has been made to the Seller of all sums due under the Contract.

## **19. Cancellation**

### **Clause 19.1 applies to business customers only.**

19.1 The Buyer shall have the right to cancel the Order at any time by providing the Seller with written notice. Upon cancellation, the Seller reserves the right to make a cancellation charge of \$500.00, and the Buyer shall be responsible for reimbursing the Seller for all costs and incidental damages which the Seller may incur under these Conditions in relation to the Order.

### **Clauses 19.2 to 19.5 apply to consumers only.**

19.2 Before the Seller begins to provide the Services or the Goods are delivered, the Buyer has the following rights to cancel an Order for Goods (other than made-to-

measure Goods as set out in Clause 19.3) and / or Services, including where the Buyer chooses to cancel because the Seller is affected by a Force Majeure Event or the Seller changes these Terms under Clause 3.2 to the Buyer's material disadvantage:

19.2.1 the Buyer may cancel any Order for Goods and / or Services at any time within 14 calendar days of placing an Order by contacting the Seller. The Seller will confirm the cancellation to the Buyer in writing;

19.2.2 if the Buyer cancels an Order under Clause 19.2.1 and the Buyer has made

any payment in advance for Services that have not been provided, or Goods that have not been

delivered, the Seller will refund these amounts and any delivery charges to the Buyer;

19.2.3 however, if the Buyer cancels an Order for Services under Clause 19.2.1 and the Seller has already started work on the Buyer's Order by that time, the Buyer will pay the Seller any costs reasonably incurred in starting to fulfil the Order, and this charge will be deducted from any refund that is due to the Buyer or, if no refund is due, invoiced to the Buyer. The Seller will advise the Buyer of such costs when the Buyer contacts the Seller. However, where the Buyer has cancelled an Order because of the Seller's failure to comply with these Terms (except where the Seller has been affected by a Force Majeure Event), the Buyer does not have to make any payment to the Seller;

19.2.4 if the Buyer cancels an Order for Goods under Clause 19.2.1 and the Seller has already dispatched the Goods, the Seller will not be able to cancel the Order until it is delivered or collected. In this case, if the Buyer returns the Goods to the Seller, the Seller will have to charge the Buyer the cost of collection or the Buyer will have to pay the cost of returning the Goods back to the Seller. This will not affect the Buyer's refund for the Goods themselves, but the Seller will not refund any charges for delivery and any charge for collection will be deducted from the refund that is due to the Buyer.

19.3 Unfortunately, as any made-to-measure Goods are made to the Buyer's requirements, the Buyer will not be able to cancel the Order once made (but this will not affect the Buyer's legal rights as a consumer in relation to made-to-measure Goods that are faulty or not as described) for such Goods.

19.4 Once the Seller has begun to provide the Services to the Buyer, the Buyer may cancel the contract for the Services at any time by providing the Seller with at least 30 calendar days' notice in writing. Any advance payment the Buyer has made for Services that have not been provided will be refunded.

19.5 Once the Seller has begun to provide the Services to the Buyer, the Buyer may cancel the contract for Services with immediate effect by giving the Seller written notice if:

19.5.1 the Seller breaks the Contract in any material way and the Seller does not correct or fix the situation within 14 calendar days of the Buyer asking the Seller to do so in writing;

19.5.2 the Seller goes into liquidation or a receiver or an administrator is appointed over their assets;

19.5.3 the Seller changes these Conditions under Clause 3.2 to the Buyer's material disadvantage; or

19.5.4 the Seller is affected by a Force Majeure Event.

19.6 The Seller may have to cancel an Order before the start date for the Services or before the Goods are delivered, due to a Force Majeure Event or the unavailability of stock or (in the case of Services) key personnel or key materials without which the Seller cannot provide the Services. If this happens:

19.6.1 the Seller will promptly contact the Buyer to let them know;

19.6.2 if the Buyer has made any payment in advance for Services that have not been provided, or Goods that have not been delivered, the Seller will refund these amounts to the Buyer;

19.6.3 where the Seller has already started work on the Buyer's Order for Services or made-to-measure Goods, the Seller will not charge the Buyer anything and the Buyer will not have to make any payment to the Seller.

19.7 Once the Seller has begun to provide the Services to the Buyer, the Seller may cancel the contract for the Services at any time by providing the Buyer with at least 30 calendar days' notice in writing. If the Buyer has made any payment in advance for Services that have not been provided, the Seller will refund these amounts to the Buyer.

19.8 The Seller may cancel the contract for Services at any time with immediate effect by giving the Buyer written notice if:

19.8.1 the Buyer does not pay the Seller when they are supposed to as set out in Clause 10.1. This does not affect the Seller's right to charge the Buyer interest under Clause 10.5; or

19.8.2 the Buyer breaks the contract in any other material way and the Buyer does not correct or fix the situation within 14 calendar days of the Seller asking the Buyer to do so in writing.

19.9 Where the Seller fails to make delivery or repudiates or the Buyer rightfully rejects or justifiably revokes acceptance the Buyer may “cover” by making in Good Faith and without unreasonable delay any reasonable purchase of or contract to purchase Goods in substitution for those due from the Seller in Order to mitigate the damages.

19.10. The Buyer shall have no right to punitive damages.

19.11 The Buyer shall not be entitled to any other remedies available at law other than those listed in Clause 19 in the event the Seller fails to make delivery or repudiates or the Buyer rightfully rejects or justifiably revokes acceptance.

## **20. Limitation of Liability**

20.1. No provision of these Conditions shall operate or be construed to operate so as to exclude or restrict the Seller’s liability under the provisions of any U.S. legislation in force from time to time which are not capable of being excluded or restricted.

### **Clauses 20.2 and 20.3 apply to consumers only.**

20.2. The Seller accepts no liability for any costs, expenses, loss or damage, including any loss (including consequential loss) or damage whether direct or indirect however incurred by the Buyer save as provided in these Conditions, and provided that nothing in these Conditions shall restrict or exclude liability for the following:

20.2.1 death or personal injury caused by the Seller’s negligence or gross negligence;

20.2.2 the statutory rights of any person dealing as a consumer;

20.2.3 fraud or fraudulent misrepresentation; and

20.2.4 willful misconduct.

20.3 The Seller only supplies the Goods and / or Services to consumers for domestic and private use. The Buyer agrees not to use the Goods and / or Services for any commercial, business or re-sale purpose, and the Seller has no liability to the Buyer for any loss of profit, loss of business, business interruption, or loss of business opportunity.

### **Clauses 20.4, 20.5 and 20.6 apply to business customers only.**

20.4 Nothing in these Conditions shall limit or exclude the Seller’s liability for:

20.4.1 death or personal injury caused by its negligence and/or gross negligence, or the negligence and/or gross negligence of its employees, agents or subcontractors;

20.4.2 fraud or fraudulent misrepresentation; and

20.4.3 willful misconduct.

20.5 Subject to Clause 20.4 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence and gross negligence), breach of statutory duty, or otherwise, for any:

20.5.1 loss of profit,

20.5.2 loss of revenue,

20.5.3 loss of business; or

20.5.4 loss of anticipated savings

In each case whether direct or indirect or for any indirect, special or consequential loss or damage arising under or in connection with the Contract.

20.6 Save as otherwise required by U.S. legislation and subject to Clause 20.8, the Seller's total liability for any loss, damages, costs or expenses in connection with the Contract, whether in contract, tort (including negligence and gross negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to £1 million, being the amount of product liability insurance carried by the Seller. Pursuant to N.J.S.A. 12A:2-719, there shall be no limitation of consequential damages for injury to the person in the case of consumer Goods but this shall not effect the limitation of damages where the loss is commercial.

20.7 Save as otherwise required by U.S. legislation, the Seller's total liability for any loss, damages, costs or expenses in connection with the Contract, whether in contract, tort (including negligence and gross negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to \$1 million, being the amount of professional indemnity insurance carried by the Seller. Pursuant to N.J.S.A. 12A:2-719, there shall be no limitation of consequential damages for injury to the person in the case of consumer Goods, but this shall not affect the limitation of damages where the loss is commercial.

20.8. Any claim for costs due to non-performance or errors by the Seller must be notified in writing and have been received by the Seller's head office within 7 calendar days of the delivery of the Goods.

20.9 This Clause 20 shall survive termination of the Contract.

## **21. Buyers Indemnities**

**Clause 21 applies to business customers only.**

21.1. In addition to any other remedy available to the Seller, the Buyer shall indemnify, defend and hold harmless the Seller from and against any and all losses, liabilities, expenses or damages suffered by the Seller as a result of any failure by the Buyer to perform any of these Conditions.



21.2. In addition to any other remedy available to the Seller, where a complaint is not the result of the sole negligence of the Seller, the Buyer shall indemnify, defend and hold harmless the Seller from and against each and every liability, claim, demand, loss, cost and damage from a third party to which the Seller is or would be otherwise subject to arising out of the supply of the Goods by the Seller to the Buyer.

21.3. The indemnities hereby given shall extend to any costs and expenses incurred by the Seller and shall continue in force notwithstanding the termination of the Contract.

## 22. Suspension or Termination or Breach

22.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 1 months' written notice.

22.2 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:

22.2.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts:

22.2.1. if a creditor (by assignment or otherwise) to whom the party is indebted in a sum exceeding \$970.00, or the equivalent in U.S. dollars at the time of notice, then due has served on the party, by leaving it at the party's registered office, a written demand (in the prescribed form) requiring the party to pay the sum so due and the party has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or

22.2.2. if execution or other process issued on a judgment, decree, or order of any court in favor of a creditor of the party is returned unsatisfied in whole or in part, or

22.2.3. if the delay allowed for the performance of a legal obligation of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or

22.2.4. if a certificate of unenforceability has been granted in respect of a judgment against the party, or

22.2.5. if it is proved to the satisfaction of the court that the party is unable to pay its debts as they fall due.

22.2.6. A party is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the party's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

22.2.7. If the party is an individual than is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning:

22.2.7.1 the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either— (a)the petitioning creditor to whom the debt is owed has served on the debtor a demand in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules, or (b)execution or other process issued in respect of the debt on a judgment or Order of any court in favor of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part.

22.2.7.2 The debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and (a)the petitioning creditor to whom it is owed has served on the debtor a demand in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due, (b) at least 3 weeks have elapsed since the demand was served, and (c)the demand has been neither complied with nor set aside in accordance with the rules.

22.2.8 If a partnership than, any partner to whom any of Clause 22.2 may apply;

22.2.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

22.2.3 a petition is filed, a notice is given, a resolution is passed, or an Order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

22.2.4 the other party (being an individual) is the subject of a bankruptcy petition or Order;

22.2.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 calendar days;

22.2.6 an application is made to court, or an Order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

22.2.7 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

21.2.8 if the Buyer suffers execution or distress to be levied upon any of the Buyer's property;

21.2.9 the Buyer be the subject of an adverse credit status report by the Seller's bank or a reputable credit status organization;

21.2.10 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

21.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 21.2.2 to Clause 21.2.11 (inclusive);

21.2.12 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

21.2.13 the other party's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

21.2.14 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

22.3 Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in Clause 22.2.1 to Clause 22.2.14, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

**Clause 22.4 applies to business customers only.**

22.4 On termination of the Contract for any reason:

22.4.1 the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

22.4.2 the Buyer shall return all of the Seller Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller may take any legal action against the Buyer to recover same. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

22.4.3 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

22.4.4 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### **23. Force Majeure Events**

23.1 The Seller will not be liable or responsible for any failure to perform, or delay in performance of, any of the Seller's obligations under the Contract that is caused by a Force Majeure Event.

23.2 A Force Majeure Event means any act or event beyond the Seller's reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.

23.3 If a Force Majeure Event takes place that affects the performance of the Seller's obligations under these Terms:

23.3.1 the Seller will contact the Buyer as soon as reasonably possible to notify them of the existence of the Force Majeure Event; and

23.3.2 the Seller's obligations under the Contract will be suspended and the time for performance of the Seller's obligations will be extended for the duration of the Force Majeure Event. Where the Force Majeure Event affects the Seller's delivery of Goods to the Buyer, the Seller will arrange a new delivery date with the Buyer after the Force Majeure Event is over. Where the Force Majeure Event affects the Seller's performance of Services to the Buyer, the Seller will restart the Services as soon as reasonably possible after the Force Majeure Event is over.

23.4 The Buyer may cancel the contract if a Force Majeure Event takes place and the Buyer no longer wishes the Seller to provide the Goods and / or Services as per the cancellation rights set out in Clause 19. The Seller will only cancel the contract if the Force Majeure Event continues for longer than 4 weeks in accordance with the Seller's cancellation rights in Clause 19.

### **24. Data Protection**

24.1 Buyer grants the Seller the right to store Buyer's data information at the Seller's United Kingdom facility. Seller agrees to maintain Buyer's information and comply with all data protections laws and regulations of the United Kingdom.

24.2 Any information and data provided by Buyer to the Seller and used by the Seller directly or indirectly in the performance of this Agreement shall remain at all times the property of the Buyer. It shall be identified, clearly marked and recorded as such by the Seller on all media and in all documentation.

24.3 The Seller shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Buyer's data and information.

24.4 In the event of termination of this Agreement the Seller shall when directed to do so by Buyer, and instruct all its agents and sub-contractors to, erase all information and data provided by Buyer and all copies of any part of the information and data provided by Buyer from the Seller's systems and magnetic data.

24.5 The Seller agrees to comply and have adequate measures in place to ensure that its staff comply at all times with the provisions and obligations contained in (as amended from time to time):

24.5.1 The Data Protection Act 1998

24.5.2 The Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998

24.5.3 The Consumer Protection Distance Selling Regulations 2000

24.6 All personal data acquired by Seller from Buyer shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the consent of Buyer.

24.7 Nothing in this Agreement shall oblige Buyer to disclose any information to the Seller if it is of the view that to do so would be a breach of the Data Protection Act 1998

24.8 The Seller shall indemnify Buyer for any breach of the legislation in clause 4.4 above which renders Buyer liable for any costs, fines, claims or expenses howsoever arising.

24.9 In fulfilment of its obligations under Clause 4.4 the Seller will have in place and will maintain at all times the Information Standards which will deal comprehensively with:

24.9.1 The protection of the confidentiality, integrity and security of all and any information supplied to the Seller by Buyer;

24.9.2 The audit and accounting procedures in place to deal with the requirements of this clause;

24.9.3 The reliability and training of staff to ensure awareness of (and compliance with) their obligations under clause 4 24.9.4 Any other measures and procedures to ensure that the Seller's obligations under the clause 4 are met.

24.10 The Seller agrees to:

24.10.1 Provide Buyer with such information and access to its premises (upon giving reasonable notice) as Buyer may reasonably require to satisfy itself that the Seller is complying with the obligations referred to in this clause.

24.10.2 Make such application for a change in its notification and take such other steps as may be reasonably practicable to afford Buyer access to information which is reasonably required by Buyer in connection with or for any purpose connected with its rights and obligations under this Agreement.

24.11 The Seller shall take all reasonable steps to ensure that all its agents, partners and sub-contractors comply with the all the provisions set out above whenever they are processing Buyer's information or data as part of this Agreement.

## **25. General**

25.1. No failure by the Seller to exercise or delay in exercising any right, power or remedy under these Conditions will operate as a waiver of that right, power or remedy. Any waiver of a breach of any terms of these Conditions does not constitute a waiver of any other breach and shall not affect the other terms of these Conditions.

25.2. The Seller shall not be under any liability for any failure to perform any of the Seller's obligations under these Conditions if the Seller is prevented from or delayed in so doing due to any circumstances beyond the Seller's reasonable control, provided that if the event in question continues for a continuous period in excess of 4 months, either party shall be entitled to give notice in writing to the other to terminate the Contract.

25.3. No variation to these Conditions shall be valid unless in writing and signed by authorized representatives of both parties.

25.4. The Buyer may not assign any rights and obligations under these Conditions without the prior written consent of the Seller.

25.5 All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the State of Connecticut. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by a retired Connecticut

Superior Court Judge. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. All rules and forms for the American Arbitration Association can be found at [www.adr.org](http://www.adr.org).

25.6. These Conditions shall be governed by and construed in accordance with the laws of the State of Connecticut. Buyer and Seller hereby consent and submit to the personal jurisdiction of the State and Federal courts located in Connecticut for the purpose of litigating any claim that may not be subject to arbitration under Section 25.5 of the Conditions.

25.7. The Seller's quotation is without engagement on its part and is subject to written confirmation by the Seller of its acceptance of the Buyer's Order. Quotations are subject to withdrawal at any time before the Seller's written confirmation of acceptance is given to the Buyer and shall be deemed to be withdrawn unless so accepted within 3 months from their date.