



**1. INTRODUCTION**

- 1.1 These general terms and conditions (**General Terms**) apply to all products (**Products**) and services, including galvanizing and painting services (**Services**) (together **Deliverables**) which we, Ultra Building Products Limited (registered company number NI019194, registered office Deepark Industrial Estate, Omagh, BT78 4EX) (**we or us**) provide to you as our client (**You**), as may be more specifically set out in the relevant Order Terms.
- 1.2 Our agreement with you is made up of: (i) these General Terms; and (ii) the [order form/project proposal] issued by us in connection with the Deliverables (**Order Terms**). Together the above documents shall constitute and be known as the **Agreement**, and apply to the contract between the parties to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 Any quotation given by us shall not constitute an offer, and is only valid for a period of 30 calendar days from its date of issue.
- 1.4 Any order placed by you shall only be deemed to be accepted upon our generation of an order acknowledgement which we provide to you, or, if none has been provided, where we otherwise provide the Deliverables, at which point the Agreement shall come into existence (**Commencement Date**).
- 1.5 Following the Commencement Date, no order may be cancelled by you except upon agreement by us in writing, on terms that you shall indemnify and hold us harmless in full against all loss (including loss of profit), costs (including labour and materials), damages, charges and expenses incurred by us as a result of cancellation.
- 1.6 Any recommendation or advice given by us, our employees or agents to you regarding the Deliverables which is not confirmed in writing by us as having contractual effect is followed or acted upon entirely at your own risk, and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed. Any typographical, clerical or other error or omission in any sales literature, estimate, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.

**2. DEFINITIONS & INTERPRETATION**

- 2.1 The following terms shall have the following meanings in these General Terms, and the following rules shall apply:  
**Business Day** means any day other than a Saturday, Sunday or public holiday in Northern Ireland when banks in Belfast are open for business;  
**Charges** means the total charges set out within the Order Terms or otherwise provided for under the Agreement;  
**Confidential Information** means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including without limitation the Deliverables) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party;  
**IP Rights** means any patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations or intellectual property rights whether registrable or not, in any country;  
**Specification** means any specification for the Deliverables, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier, whether in the Order Terms or otherwise;  
**Supplier Materials** has the meaning set out in Clause [6.5]; and  
**Unsuitable Weather Conditions** means conditions that create an unacceptable health and safety or operational risk to our agents, employees or sub-contractors, the client or the public, including conditions of excessive frost or snow.
- 2.2 Words in the singular include the plural and those in the plural include the singular.
- 2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 A reference to a party includes its personal representatives, successors or permitted assigns.
- 2.5 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.
- 2.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done, and an obligation to do something includes an obligation to use best endeavours to procure that thing shall be done.

**3. PROVISION OF DELIVERABLES**

- 3.1 In consideration for payment by you of the Charges, we shall provide the Deliverables set out within the relevant Order Terms, or otherwise agreed between the parties.
- 3.2 We undertake that the Services will be supplied using reasonable skill and care, and performed in a good and workmanlike manner, using appropriate skills and experience, and having regard to the nature of the Deliverables and the requirements of the Specification. We reserve the right to amend Specification or Deliverables from time to time, if reasonably required, including where and statutory or legal requirement relating to the Deliverables has changed or where the change does not substantially impact the fundamental nature or quality of the Deliverables.
- 3.3 We shall use reasonable endeavours to ensure that the benefit of any third party warranties applicable to any Products we supply is passed on to you.
- 3.4 We shall use reasonable endeavours to provide the Deliverables within a reasonable time. However, timing of performance of our obligations under the Agreement shall not be of the essence, and we shall not be liable for contract delays, including those attributable to third parties.
- 3.5 You acknowledge that you have assessed for yourself the suitability of the Deliverables for your requirements. We do not warrant that the Deliverables will be suitable for such requirements, nor that any use of the Deliverables will be uninterrupted or error free. The Deliverables are (generally, but not exactly) as described in our catalogues or other materials from time to time, as modified by any applicable Specification.
- 3.6 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform its duties and obligations under the Agreement and that those persons signing the Order Terms, if any, are duly authorised to bind the party for whom they sign.
- 3.7 We may, upon giving notice to you, appoint a suitably qualified sub-contractor to perform any part of the Services on our behalf. You will continue to be liable to pay our Charges as provided in Clause 8 below, and shall not be liable directly for any of the fees of any such sub-contractor.

**4. DELIVERY AND ACCEPTANCE OF PRODUCTS**

- 4.1 We shall use reasonable endeavours to deliver the Products to the location set out in the Order Terms or such other location as the parties may agree (**Delivery Location**) at the time agreed between the parties. Where the Delivery Location is otherwise than at our premises from time to time, please note that additional charges may apply, which we shall inform you of as soon as reasonably practicable and all prices quoted are on an ex works basis (according to Incoterms 2010) from our premises unless specified otherwise.
- 4.2 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location. We shall not be liable for any delay in delivery of the Products that is caused by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products, or your failure to take delivery of the Products.
- 4.3 We may deliver the Products by instalments. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 4.4 If you fail to accept or take delivery of any Products within 5 Business Days of us notifying you that the Products are ready, then except where such failure or delay is caused by our failure to comply with our obligations under the Agreement then delivery shall be deemed to have taken place at 9.00 am on the fifth Business Day following the day on which we notified you that the Products were ready, and we reserve the right to either store the Products until delivery takes place, and charge you for all related costs and expenses (including insurance), or to cancel the Agreement.
- 4.5 Any claim by you which is based on any defect in the quality or condition of the Deliverables or their failure to correspond with Specification shall (whether or not delivery is refused by you) be notified to us within 3 Business Days from the date of delivery of the Products or completion of the Services or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 4.6 You shall be responsible for arranging for testing and inspection of the Products at our premises before shipment. We shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

**5. TITLE AND RISK**

- 5.1 In the case of Products, risk of damage to or loss of such Products shall pass to you: (a) in the case of Products to be delivered at our premises, at the time when we notify you those Products are available for collection; or (b) in the case of Products to be delivered otherwise than at our premises, at the time of delivery or, if you wrongfully fails to take delivery of the Products, the time when we attempted to deliver them. The risk of damage to or loss of any Customer Products shall remain with you at all times.
- 5.2 Title to any Products shall not pass to you until we have received payment in full (in cash or cleared funds).
- 5.3 Until title to the Products has passed to you, you shall: (i) hold the Products on a fiduciary basis as our bailee and not resell them or make them subject to any pledge or charge by way of security in respect of any indebtedness; (ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Products; (iii) maintain the Products in satisfactory condition; (iv) notify us immediately if you become subject to any of the events listed in Clause 11.2(b); and (v) give us such information relating to the Products as we may require from time to time.

- 5.4 If, before title to the Products passes to you, you become subject to any of the events listed in Clause 11.2(b), or we reasonably believe that any such event is about to happen and notify you accordingly, then, provided the Products have not been resold, without limiting any other right or remedy we may have, we may require you to deliver up the Products and, if you fail to do so promptly, enter any premises where the Products are stored in order to recover them.

**6. YOUR OBLIGATIONS**

- 6.1 We may need access to your information (which shall be accurate and complete in all material respects), tools and resources whilst providing the Deliverables. You shall provide free access to these to the extent reasonably requested by us for the purposes of performing our obligations under the Agreement, and shall generally co-operate with us in all matters relating to the Deliverables.
- 6.2 You also agree to grant us access to any relevant premises to provide any contracted Deliverables on the dates agreed between the parties.
- 6.3 You acknowledge that, in quoting for and providing the Deliverables, we rely on you to, in sufficient time, provide us with any information and instructions required to allow us to provide the Deliverables, and do not seek to establish the reliability of such information. Accordingly, you: (i) undertake to provide complete and accurate information about anything which may be relevant to the Deliverables and to provide such other information as we may reasonably request; and, (ii) warrant that any such information provided is accurate and complete in all material respects, and not misleading.
- 6.4 You also agree to, to the extent necessary, prepare the relevant site for the provision of the Deliverables, including any preparatory works which we inform you are necessary, and to obtain and maintain all necessary licences, permissions and consents (including planning permission and building control approvals) which may be required for the Deliverables before the date on which the Deliverables are to be installed.
- 6.5 You shall also keep and maintain all materials, equipment, documents and other property belonging to us (**Our Materials**) at your premises or your client's premises in safe custody at your risk, maintain Our Materials in good condition until returned to us, and not dispose of or use Our Materials other than in accordance with our instructions or authorisation.
- 6.6 To the extent applicable, you acknowledge that you will retain responsibility at all times for compliance with all relevant laws, protocols and regulations with respect to Products delivered to you, as well as responsibility for all costs of such compliance.
- 6.7 If our performance of any of our obligations in respect of the Deliverables are prevented or delayed by any of your acts or omissions or by your failure to perform or delay in performing any relevant obligation (**Your Default**), or otherwise in the event of Your Default (i) we shall, without limiting our other rights or remedies, have the right to suspend provision of the Deliverables until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations to the extent Your Default prevents or delays our performance of any of our obligations; (ii) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure to perform, or delay in performing, any of our obligations where such failure or delay is attributable to Your Default; and (iii) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.
- 6.8 You shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for payment of any duties on them.

**7. TERMS AND CONDITIONS FOR GALVANISING SERVICES**

- 7.1 We warrant that we will endeavour to ensure that all products on which we provide galvanizing Services will be galvanized to British Standard BSEN ISO 1461/2009 (or any amendment thereto), but we cannot guarantee that all products will comply with such standards, unless BS testing has been undertaken (including where a CE Mark has been obtained). Your sole remedy for our failure to galvanize any products to such standards shall be for us to re-galvanize the relevant products to such standards.
- 7.2 Whilst every reasonable care is taken during processing, we do not accept responsibility for Customer Products which are unsuitable for hot dip galvanizing. All Customer Products must be manufactured from ferrous raw materials and should be new or stock rust only.
- 7.3 When Customer Products are received in an assembled condition, it will be assumed that such assemblies are to be galvanized intact.
- 7.4 Any surface which does not require galvanizing must be clearly indicated by you in the Order Terms, after first ascertaining that masking and protection is possible. An extra charge will be made for masking, but no guarantee can be made that such masking will completely eliminate the pick-up of zinc.
- 7.5 All Customer Products should be free from paint, preservations, oil, grease, varnish, heavy rust and scale. The cost of removing such deposits will be charged as an additional cost at our standard rates. For temporary identification, marks in water soluble paints are acceptable.
- 7.6 Welding slag should be removed from all welds by you prior to galvanizing as it is not removed by pickling.
- 7.7 If any sealed compartments are immersed in a galvanizing bath, there is a danger of a violent explosion, due to air or vaporization of trapped liquids. Tanks, closed vessels, sealed cylinders, internal sleeves, blocked pipes, double plating and fabricated hollow sections must therefore be drilled to allow for venting and drainage, and you are responsible for informing us of the existence of any such sealed compartments in Customer Products you provide for galvanizing Services. The drilling of holes may delay processing and will be charged as an additional cost at our standard rates.
- 7.8 We are not responsible for any damage caused to Customer Products arising out of your failure to notify us of the existence of sealed compartments. You shall indemnify and hold us harmless for and against all losses, damages, costs and expenses awarded against or incurred by us as a result of your failure to notify us that any Customer Products contained sealed compartments.
- 7.9 Customer Products which have frames fabricated from channels and gussets on fabricated columns should have cropped corners to allow the free flow of metal during the galvanizing process. Components may require suspension holes if there is no convenient point for attaching a hook. You should allow adequate clearance on mating surfaces such as hinges or threaded parts if free movement after galvanizing is required.
- 7.10 Whilst every care is taken in galvanizing Customer Products, no responsibility can be accepted for distortion and damage resulting from the effect of heating during galvanizing or for the cracking of basis materials caused by thermal expansion and contraction during processing. Distortion arises from the introduction or relief of stresses in the steel and these stresses may be present as a result of manufacture or fabrication.
- 7.11 Whilst every care is taken to safeguard Customer Products, storage capacity is limited and no responsibility will be taken for damage or loss resulting from your failure to promptly collect Customer Products. A demurrage charge may have to be made under certain circumstances. Further, we do not accept liability for repairs on site or for consequential damage.
- 7.12 Products for onward shipment must be inspected prior to packing for shipping. Complaints cannot be considered after the Products have been shipped. Where specific inspection is called for, that inspection must be made at our premises and the results considered as final. We accept no responsibility for the formation of white rust on galvanized materials.
- 7.13 Bundling, marking and labelling work can be undertaken on request, and will be charged as an additional cost at our standard rates.
- 7.14 Customer Products which contain consignments of small items such as brackets, clips, threaded parts, screws, bolts and the like (to be subject to any Services) can only be accepted in batches with an estimate only as to the exact numbers involved. We does not undertake detailed checking or counting of specific quantities either before or after processing as the basis of charges made will normally be related to the finished weight of the galvanized consignment. We cannot be held responsible for components which due to their design or small size either stick together or are lost during processing.
- 7.15 Weight is added to Customer Products during the galvanizing process. Estimates, quotations and invoices for providing galvanizing services are based on the weight of the Customer Products after being galvanized. The finished weight shall be determined by our weighing scales or weighbridge, and the weight as determined by such weighing mechanism shall be definitive evidence of you Products final weight.
- 7.16 Unless otherwise agreed, prices quoted for galvanizing Customer Products do not include steel containing high silicon content, or containing excessive zinc pick-up due to improper venting of hollow tubes or cavities. If during the galvanizing process it is apparent that the steel being processed does contain high silicon content, or is trapping excessive zinc, we reserve the right to increase the price quoted in the Order Terms to compensate for the resultant increase in zinc pick-up.

**8. CHARGES**

- 8.1 The Charges set out within the Order Terms apply only to the provision of the Deliverables set out within Order Terms. If no price is quoted, the price for any building Products shall be as set out in our published price list as at the date of provision of the Deliverables, and the price for Services shall be calculated on a time and materials basis at our then prevailing standard rates for such Services set out on our website from time to time (charged on the basis of final weight for any galvanising Services) plus expenses (**Our Rates**).
- 8.2 All Charges for Products quoted within the relevant Order Terms shall be inclusive of all costs and charges of packaging, insurance, transport of the Products.
- 8.3 Where there is any request by you or the client to change the delivery date(s), quantities or types of Products ordered, the specification for Products, additional Charges may apply, which we will advise you of in writing.
- 8.4 Where we incur any additional cost in respect of the supply of the Deliverables beyond the prices quoted in the Order Terms due any factor beyond our control (including FX fluctuations, increases in import duties/taxes, increases in labour, materials and other manufacturing costs, any request by you to change the delivery date(s), quantities or types of Deliverables ordered, or the Specification, any delay caused by your instructions in respect of the Deliverables or your failure to give us adequate or accurate information or instructions in respect of the Deliverables, or the presence of a high silicon content or excessive zinc content in the products provided by you (**Customer Products**) during the galvanizing process) we shall absorb

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- those costs up to a maximum of 110% of the total cost value of the Deliverables in question quoted in the relevant Order Terms. Thereafter, additional Charges may apply, which we will advise you of in writing. Any additional Charges required under this agreement shall be calculated, in respect of Services, at Our Rates, and in respect of Products, at the price paid by us for those Products.
- 8.5** We shall invoice you for the Charges specified in the Order Terms or otherwise provided for under the Agreement, in respect of the Deliverables, on or at any time after completion of delivery/supply of the Products or Services, or where we work on a credit basis with you (or you have multiple orders) on a weekly or monthly basis (notwithstanding that the Products have not been dispatched or collected). You must pay all undisputed Charges set out within each invoice in full and cleared funds (in pounds sterling) within 30 calendar days of the date of the invoice. Time for payment shall be of the essence of the Agreement.
- 8.6** Where you dispute any invoice, you shall notify us within 5 Business Days in writing. We shall provide all such evidence as may be reasonably necessary to verify the disputed invoice, and the parties shall negotiate in good faith to attempt to resolve the dispute promptly. We reserve the right not to supply any further Deliverables to you while such a dispute is ongoing. Where only part of an invoice is disputed, you shall pay the undisputed amount on the due date for payment as set out within Clause 8.4 (or otherwise provided for in the relevant Order Terms). If the parties have not resolved the dispute within 30 days of your notice of dispute, we reserve the right to terminate the Agreement, whereupon all Charges payable under the Agreement shall become immediately due and payable.
- 8.7** All sums payable under the Agreement are exclusive of VAT and any other sales or similar taxes, custom duties, withholding taxes or similar charges, for which you shall be responsible.
- 8.8** You shall have no right to any refund of the Charges paid or payable under the Agreement including on the termination of the Agreement.
- 8.9** Interest shall be chargeable on any Charges overdue at the rate of 8% above the base rate of HSBC Bank plc as applying from time to time to run from the due date for payment until receipt by us of the full amount due whether or not after judgement and without prejudice to any of our other rights or remedies.
- 8.10** We shall, without prejudice to any other remedy available to us, have in respect of all debts due from you under any Agreement, a general lien on all Customer Products in our possession for whatever purposes, whether or not such debts relate to Services provided in connection with those Customer Products, and whether worked upon or not, and shall be entitled to retain possession of Customer Products until all charges due any Agreement between you and us have been paid.
- 8.11** Without prejudice to any other remedy available to us, if any sum due from you to us under any Agreement between us has not been paid within 3 weeks from its becoming due, we may, upon giving to you 7 days' notice in writing of our intention to do so (unless all such sums have in the meantime been paid), sell (in any manner we see fit) any or all of the Customer Products in our possession, whether or not such debts relate to Services provided in connection with those Customer Products and whether or not such Customer Products have been worked on. The net proceeds of such sale shall after payment of the costs of such sale be applied in or towards payment or satisfaction of the debts, or liabilities owing by you to us, insofar as they are presently payable and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the Customer Products prior to sale) be paid to you.
- 8.12** All Charges due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to you by us against any amount payable by us to you.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1** Any IP Rights which the relevant party to this Agreement can demonstrate are already held by it at the date of the Agreement or which at any time after the date of this Agreement have been acquired or developed by it independently of the provision of the Deliverables, and of the use of any Confidential Information of the other party, and all modifications thereto and derivative versions thereof created at any time (**Background IP**) shall remain the sole property of that party.
- 9.2** You hereby grant to us a royalty-free, non-exclusive, non-transferable licence to use your Background IP, if any, as required to allow us to perform our obligations under the Agreement.
- 9.3** You acknowledge that, in respect of any third party IP Rights in the Deliverables, your use of any such IP Rights is conditional on our obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.
- 9.4** Any IP Rights, other than Background IP, created or developed by us in the course of provision of the Deliverables (**Foreground IP**) shall be our sole property.
- 9.5** If we manufacture any products, or if any Services are to be applied to Customer Products, in accordance with your Specification or otherwise using your Background IP, you shall indemnify and hold us harmless against all loss, damages, costs and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from our use of your Specification or Background IP.
- 10. LIMITATION OF LIABILITY – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 10.1** Nothing in the Agreement shall exclude or limit our liability for: (i) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; (ii) fraud or fraudulent misrepresentation; or (iii) for any other liability which cannot be excluded or limited under applicable law.
- 10.2** Subject to Clauses 10.1 and 10.3, our total liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed a total aggregate amount equal to 100% of the Charges paid to us pursuant to the Agreement, in respect of the Deliverables the subject of the claim (in that specific batch or delivery only), in the period of 12 months considered retrospectively from the date the cause of action arose.
- 10.3** Subject to Clause 10.1, we shall not in any circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, loss of contracts, loss of business or business opportunities, loss of production, loss of turnover or revenue, loss of availability, loss of anticipated savings, wasted expenditure, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by you, or for any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature (even if we had been advised of the possibility of you incurring the same) or any punitive or exemplary damages.
- 10.4** Subject to Clause 10.1, the express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by law, custom or otherwise, all of which are excluded to the fullest extent permitted by law.
- 10.5** We shall have no liability to you to the extent that such liability would not have arisen but for Your Default.
- 10.6** We may, during the supply of the Deliverables, make statements about or recommendations of third party products or services. We give no warranty in relation to such products or services, and you shall rely solely on the warranties and remedies provided by any such third party with whom you may contract.
- 10.7** Where Customer Products are delivered to us for galvanizing or for any other Services, we accept no liability for any subsequent loss or damage suffered by you or by any third party as a result of a defect in the manufacture of the Customer Products on which we have performed the Services.

## 11. TERM AND TERMINATION

- 11.1** The Agreement shall come into effect upon the Commencement Date, and, subject to other terms of the Agreement, shall continue in force until we cease providing Deliverables to you and all outstanding Charges owing to us by you have been paid in full, or the termination of the Agreement in accordance with its provisions, whichever is sooner.
- 11.2** Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating the Agreement with immediate effect if: (a) the other party commits any material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified of the breach; (b) a petition is filed, an order is made, or a resolution is passed for the winding up or bankruptcy of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or if such an administrator is appointed or if documents are filed with the Court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder, or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt; or (c) a party ceases, or threatens to cease, to trade.
- 11.3** We may also terminate the Agreement at any time on giving you 1 month's notice in writing, or immediately giving notice in writing where you are in default of this Agreement (as regards payment of any outstanding sum), you are in default of any other agreement entered into between us, or we reasonably suspect that you may in an adverse financial position.

## 12. EFFECTS OF TERMINATION

- 12.1** Termination of the Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 12.2** Upon termination, you shall, at our request, promptly return to us or otherwise dispose of as we may instruct any Confidential Information which you may have in your possession or under your control and pay to us all outstanding Charges, including interest, due under the terms of the Agreement, and, in respect of Deliverables supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt. You shall also return all of Our Materials and any Deliverables which have not been fully paid for.
- 12.3** The terms of Clauses 1, 2, 6.6, 8.8, 8.9, 9, 10, 11, 12 and 13 shall survive expiry, variation or termination of the Agreement.

## 13. GENERAL

- 13.1 Confidentiality:** Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as strictly necessary for the performance of its rights and obligations under the Agreement. The provisions of this Clause 13.1 shall not apply to any information which: (a) is or comes into the public domain without breach of the Agreement; or (b) was in the possession of the receiving party prior to receipt from the disclosing party without an obligation of confidence; (c) was obtained from a third party free to divulge such information; or (d) is required by law to be disclosed to any person who is authorised by law to receive the same (after consultation, if practicable, with the disclosing party). Each party shall notify the other party if it becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 13.2 No Assignment or Sub-Licensing:** You may not assign, sub-license, sub-contract, mortgage or otherwise transfer, dispose or otherwise deal with the Agreement or any of your rights or obligations under it without our prior written consent, such consent not to be unreasonably withheld or delayed. We shall notify you of any assignment or sub-contracting of our rights and obligations hereunder.
- 13.3 Force Majeure:** Neither party shall be liable to the other party for any delay or failure to perform its obligations under the Agreement to the extent and for so long as such delay or failure results from circumstances beyond its reasonable control, or the occurrence of Unsuitable Weather Conditions, including difficulties in obtaining raw materials, labour, fuel, parts or machinery, provided that it notifies the other party within 5 Business Days of becoming aware of such event. If any such event continues for a period exceeding 3 months, either party shall have a right to terminate the Agreement on 30 days' written notice to the other party.
- 13.4 Waiver:** The failure of either party to enforce or to exercise any term of the Agreement does not constitute a waiver of such term and shall in no way affect that party's right to later enforce or to exercise it.
- 13.5 Severability:** If any provision or part-provision of the Agreement 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 Agreement.
- 13.6 Entire Agreement:** The Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing. Any samples, drawings, descriptive matter, advertising or other written or unwritten representations issued by us or our employees and any illustrations or descriptions of the Deliverables contained on our website or in our advertising material are issued or published for the sole purpose of giving an approximate idea of the Deliverables described in them. They shall not form part of the Agreement or have any contractual force, unless they form part of the Order Terms or specifically express otherwise.
- 13.7 Third Party Rights:** No person who is not party to this Agreement shall have any rights under or in connection with it, either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.8 Partnership or Agency:** Nothing in the Agreement 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.
- 13.9 Independent Contractors:** The relationship of the parties is that of independent contractors dealing at arms' length.
- 13.10 Governing Law:** The construction, validity and performance of the Agreement shall be governed by the laws of Northern Ireland and the parties irrevocably submit to the exclusive jurisdiction of the courts of Northern Ireland.
- 13.11 Remedies:** Except as herein expressly provided otherwise, the rights and remedies provided in the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 13.12 Publicity:** The provisions of Clause 13.1 notwithstanding, we reserve the right to publicise the fact of this Agreement, your identity, and details concerning the nature of the Deliverables provided to you for, inter alia, marketing and promotional purposes.