

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

The following definitions and rules of interpretation in this clause 1 apply in these Conditions.

Approved Installer means, in relation to any Goods, an installer who has been trained by the manufacturer of those Goods or an authorised agent of that manufacturer;

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Buyer means the person, firm or company who is placing the Order;

Company means Aquarian Cladding Systems Limited (company number: 06058031);

Conditions means these conditions of sale as amended from time to time in accordance with clause 16.4;

Confidential Information has the meaning given to it in clause 16.3;

Contract means any contract between the Company and the Buyer for the sale and purchase of Goods, incorporating these Conditions and including any terms and conditions set out in the Company's quotation, the Order and the Company's acknowledgement or acceptance of Order relating to the relevant Goods;

Force Majeure Event has the meaning given to it in clause 15;

Delivery Point has the meaning given to it in clause 4.1;

Due Date has the meaning given to it in clause 8.6;

Goods means any goods (or any part of them) set out in the Order;

Intellectual Property Rights means patents, moral rights, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Order means the Buyer's order for Goods, as set out in the Buyer's purchase order form, or the Buyer's written acceptance of the Company's quotation, as the case may be;

Specification means the specification for the Goods (including any relevant plans or drawings) that is agreed in writing by the Buyer and the Company.

A **reference to a law** is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. Words in the singular include the plural, and in the plural include the singular. A reference to one gender includes a reference to the other gender. Clause headings do not affect the interpretation of these Conditions.

Where the words "include(s)", "including" or "in particular" are used in these Conditions, they are deemed to have the words "without limitation" following them, and, where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.

2. APPLICATION OF TERMS

2.1 These Conditions apply to the Contract to the exclusion of any other terms and conditions which the Buyer seeks to impose or incorporate under any purchase order, confirmation of order, specification or other document, or which are implied by trade, custom, practice or course of dealing.

2.2 Each Order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

2.3 No Order placed by the Buyer shall be deemed to be accepted by the Company unless and until a written acceptance of an Order (Acknowledgement of Order) is issued by the Company or (if earlier) the Goods are delivered to the Buyer by or on behalf of the Company, at which point the Contract shall come into existence.

2.4 The Buyer is responsible for ensuring that the terms of the Order and any Specification provided by the Buyer are complete and accurate.

2.5 Any quotation given by the Company shall not constitute an offer and is only valid for a period of 30 days from its date of issue, provided that the Company has not previously withdrawn it.

3. GOODS

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 The information relating to Goods supplied by the Company (including information contained in advertising sales and technical literature) is approximate only. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them, and no prices or other particulars contained therein shall be binding on the Company. They shall not form part of the Contract or have any contractual force and this is not a sale by sample.

3.3 The Company reserves the right to amend the Specification (or for its suppliers to amend the Specification) at the Buyer's expense if required by any applicable statutory or regulatory requirement, and the Company shall notify the Buyer in any such event.

3.4 It is entirely the Buyer's responsibility to make the final product choice and satisfy itself as to the suitability of the Goods for the Buyer's intended application and to carry out testing where required. Goods which the Buyer intends to use on a construction project must be approved in writing by the Buyer's building designer, system designer or design control professional to ensure compliance with all relevant regulations. The information contained in any data sheets relating to Goods which may be provided to the Buyer has been provided to the Company by the relevant manufacturer(s) in good faith, but the Company gives no warranty as to the accuracy of such information.

3.5 If the Company provides an estimate of the quantities required to carry out a task, such estimate shall only be guidance, and the Buyer shall remain solely responsible for determining the quantities it requires.

3.6 If the Company makes any drawings available to the Buyer, no warranty or representation is given by the Company as to their appropriateness or accuracy, and the Buyer must obtain and rely on advice relating to such drawings from the Buyer's designer, engineer or other design control professional.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the location set out in the Order or such other location as may later be confirmed by the Buyer in writing to the Company (the Delivery Point), provided that if the delivery location was not set out in the Order the Company may reasonably increase any quoted transportation charge to reflect the additional costs which will be incurred by the Company on account of the Delivery Point not being where the Company assumed it would be when confirming the quotation or accepting the Order.

4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Point.

4.3 Any dates specified by or on behalf of the Company for delivery of the Goods are intended to be an estimate, and the time of delivery is not of the essence (and shall not be made of the essence by notice). If no dates are so specified, delivery shall be within a reasonable time. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Company 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. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions for the Goods or any other instruction that is relevant to the supply of the Goods. If delivery of the Goods is delayed or prevented by a Force Majeure Event, then at the Company's option, the unperformed part of the

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Contract may be cancelled, or the time for delivery shall be extended for a reasonable period.

4.5 If the Buyer requests that the date for delivery be delayed, the Company may, in its absolute discretion, accept the Buyer's request in writing. If the Company accepts the Buyer's request, the Company shall in any event be entitled to issue an invoice for the Goods on the original date for delivery as if delivery had occurred for the amount which would have been billed had delivery taken place on the original date for delivery.

4.6 If for any reason the Buyer fails to accept or take delivery of the Goods when they are tendered for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then except where such failure or delay is caused by a Force Majeure Event:

- (a) risk (but not title) in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may require the Customer to pay for the Goods;
- (d) the Company may (without prejudice to clause 4.7 or its other rights and remedies) store the Goods (or procure their storage) until delivery takes place and charge the Buyer for all related costs and expenses (including storage and insurance).

4.7 If ten (10) Business Days after the Company notified the Buyer that the Goods were ready for delivery, the Buyer has not accepted or taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

4.8 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods. The Delivery Point shall consist of a hard surface able to bear the weight of a delivery vehicle readily accessible by a hard-surfaced road. In the event of this not being the case, the Company may elect either to deliver the Goods and make an additional charge at its standard rates to compensate it for the additional cost and inconvenience or to return the Goods to its premises and require the Buyer to make alternative arrangements for collection of the Goods at the Buyer's cost.

4.9 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity set out in the Contract, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

4.10 The Company may deliver the Goods by separate instalments. Each instalment shall be a separate Contract and shall be invoiced and paid for in accordance with the provisions of the Contract. No cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY, SHORT DELIVERY AND DAMAGE IN TRANSIT

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the place of business of the Company (or, where relevant, the Company's supplier) shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 All claims for transit damage or short delivery (measured by weight or number) must be submitted initially orally and then confirmed in writing to both the carrier and the Company no later than 12:00 hrs (noon) on the Business Day following the date of delivery of the Goods. In the case of non-delivery of the whole consignment, claims must be submitted in writing to both the carrier and the Company within 2 Business Days of receipt by the Buyer (or the Buyer's agent) of notification of despatch of the Goods. In the absence of claims being received in accordance with this clause, the Goods shall be deemed to have been properly delivered.

5.3 The liability of the Company for transit damage, short delivery or non-delivery of the Goods in respect of claims duly submitted in

accordance with clause 5.2 shall be limited to the Company, at its option, repairing or replacing the relevant Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods, provided always that the Company shall not be liable for any damage or loss in transit where the Company and the Buyer have agreed (as set out in the quotation, Order or Acknowledgement of Order or otherwise) that the Buyer shall arrange collection of the Goods from the premises of the Company's own supplier.

6. RISK AND TITLE

6.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

6.2 Title to the Goods shall not pass to the Buyer until the earlier of:

- (a) the Company receives payment in full (in cash or cleared funds) of all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Buyer on any account, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods held by the Buyer in such a way that they remain readily identifiable as the Company's property;
- (c) not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company from the date of delivery (and the Buyer shall upon request produce the policy of insurance to the Company); and
- (e) give the Company such information relating to the Goods as the Company may require from time to time.

6.4 Subject to clause 6.5, the Buyer may resell the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs; and
- (c) the sale shall be a sale by the Buyer as principal and not as the Company's agent.

6.5 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 11.1 (Termination), without limiting any other right or remedy the Company may have:

- (a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Company may at any time:
 - (i) require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that title to any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them.

6.8 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to resell or use has terminated, the Buyer shall be deemed to have sold Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

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6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Order (which must be accepted by the Company in the Company's Acknowledgement of Order) or, if no price is so set out, the price set out in the Company's quotation.

7.2 The price for the Goods shall be in pounds sterling (or such other currency as may be set out in the Order and Acknowledgement of Order) exclusive of any value added tax, and such price shall be inclusive of costs and charges in relation to packaging and carriage, all of which amounts shall be individually itemised in the quotation and invoiced to the Buyer. The Buyer shall pay when it is due to pay for the Goods. Where any taxable supply for VAT purposes is made under the Contract by the Company to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

7.3 The Company reserves the right to increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:

- (a) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), the Delivery Point, quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Company adequate or accurate information or instructions in respect of the Goods.

8. PAYMENT

8.1 Subject to clause 8.4, payment of the price for the Goods is due at the time an Order is placed unless the Company agrees in writing to set up a credit account, in which case payment is due on the last Business Day of the month following the month in which the Goods are delivered or deemed to be delivered. Where payment is due at the time an Order is placed, the Company shall issue an invoice to the Buyer upon accepting the Order. Where a credit account is in place, the Company shall issue an invoice to the Buyer on or at any time after delivery to the Delivery Point has been completed.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received payment in cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision of these Conditions.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction, whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 Without limiting any other right or remedy of the Company, if the Buyer fails to pay the Company any sum due to the Company pursuant to the Contract by the due date for payment (Due Date), the Company shall have the right to charge interest on the overdue amount at such rate as the Company is entitled to charge under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgement, and compounding quarterly.

9. QUALITY

9.1 The following provisions apply in respect of manufacturer's warranties and BBA certificates:

- (a) For some Goods supplied by the Company there is a potential manufacturer's warranty in favour of the building owner (i.e. the prospective owner of the building or proposed building in respect

of which the Goods are being acquired by the Buyer). Such manufacturer's warranties are given on and subject to a set of detailed terms and conditions issued by the relevant manufacturer and set out in a warranty certificate and are conditional upon the manufacturer accepting a warranty registration application which must be submitted by the building owner or the fixing contractor in a form prescribed by the manufacturer. The Company may refer to the fact that such manufacturer's warranties may be available for certain Goods in written and verbal communications with the Buyer (including quotations and the Company's installation policy, a copy of which is available on the Company's website and/or upon request) and may, upon request, provide the Buyer with copies of the form of warranty certificate that the Company understands would be issued by the manufacturer of the Goods in question if a warranty registration application is accepted by that manufacturer; but the Company makes no warranty or representation as to the eventual form of any warranty certificate (containing the scope, terms and conditions of the warranty) or that such a manufacturer's warranty will eventually be given by the relevant manufacturer. It shall be the Buyer's (or, as the case may be, the building owner's) responsibility to submit the necessary warranty registration form and to satisfy and meet any conditions set out in the warranty certificate.

(b) In the case of some other Goods, the only warranty or guarantee given by the manufacturer may be a warranty or guarantee in favour of the Company (and the Company only). Such warranties and guarantees may not be assignable or may be assignable with the manufacturer's prior written consent. Where such warranties or guarantees are assignable with the manufacturer's prior written consent, the Company shall, at the Buyer's request, use reasonable endeavours to obtain the consent of the manufacturer in question to assign the benefit of the warranties or guarantees (as the case may be) to the Buyer (or as it may direct). However, the granting of such consent to assign shall be at the manufacturer's discretion, and no warranty or representation is given by the Company as to the assignability of such manufacturer's warranties or guarantees.

(c) It should also be noted by the Buyer that, where a British Board of Agrément Certificate has been issued in respect of particular Goods, such certificates contain detailed conditions which must be met, including, in most cases, a condition that the Goods must be installed by an Approved Installer.

9.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and, in the case only of the warranty in sub-clause (a) below, for a period of 12 months from the date of delivery (warranty period), the Goods shall:

- (a) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (b) subject to clause 3 (Goods), conform in all material respects with the Specification.

9.3 The Company shall not be liable for a breach of the warranties in clause 9.2 unless:

- (a) the matter or issue giving rise to an alleged breach of the warranty in clause 9.2(b) (Specification) is notified in writing to the Company within 3 Business Days from the date of delivery or, where the failure was not apparent on reasonable inspection, within a reasonable time after discovery of the failure, and in any event such failure must be notified within 14 days after delivery;
- (b) the matter or issue giving rise to an alleged breach of the warranty in clause 9.2(a) (satisfactory quality) appears within the warranty period and is thereupon promptly notified in writing to the Company (provided that if the defect is as a result of damage in transit, then clause 5.2 applies); and
- (c) the Company is given a reasonable opportunity, after receiving such notice, to examine the Goods and the Buyer (if asked to do so by the Company) returns the Goods to the Company's place of business (or to such other UK address as the Company may notify to the Buyer) at the Buyer's cost (but credited by the Company if the claim is accepted) for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in clause 9.2 if:

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- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow any manufacturer's instructions or recommendations (or any recommendations provided by the Company) as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company; or
- (d) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description/the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.5 Subject to clause 9.3 and clause 9.4, if any of the Goods do not conform with any of the warranties in clause 9.2, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate, provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company. In the case of replacement Goods, the Buyer acknowledges that a difference in colour to the Goods originally supplied may occur.

9.6 If the Company complies with clause 9.5, it shall have no further liability for a breach of any of the warranties in clause 9.2 in respect of such Goods.

9.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be warranted on these terms for the unexpired portion of the original warranty period.

9.8 Any recommendation or suggestion relating to any use, storage or handling of the Goods made by the Company either in sales and technical literature or in response to a specific enquiry or otherwise is given in good faith, but it is strictly for the Buyer to satisfy itself of the suitability of the Goods for its own particular purposes, and the Buyer accepts it does not rely on any such recommendation, suggestion or representation.

9.9 Due to the nature of the raw materials and the manufacturing process, variation in colour and shade may be an inherent characteristic of certain Goods and a reasonable variation in colour will be deemed acceptable. The Company shall not therefore be liable for a breach of the warranties in clause 9.2 in the event of colour variation for these reasons.

9.10 Any complaint that the Buyer has as regards the aesthetic finish or visual standard of Goods shall not be classified as a defect (and so the Company has no liability in respect of the same to the Buyer), unless such aesthetic finish or visual standard was expressly set out as a requirement in the Specification to the Contract.

9.11 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 (as amended) and any other terms implied by law or any other statute are, to the fullest extent permitted by law, excluded from the Contract.

10. DISCLAIMER RELATING TO SERVICES AND ADVICE

10.1 The Buyer acknowledges that the Company is not providing and does not purport to provide any professional design, installation, structural or other services or advice in connection with the sale of the Goods or any construction project for which the Goods are being purchased by the Buyer. Subject always to clause 13.1 and without limiting clause 3.4, nothing in these Conditions and nothing said or done by the Company or any of its employees, officers, representatives or agents in connection with the sale of the Goods or otherwise constitutes or will be deemed to constitute the provision of any such services or advice or will imply that the Company is holding itself out as giving, or accepting responsibility for, such services or advice.

10.2 Notwithstanding clause 10.1, the Company will provide assistance in connection with the supply of the Goods using reasonable skill and care. If the Company is determined to have given professional advice or performed any services in connection with the sale of the Goods, it shall exercise the reasonable skill and care to be expected of

professional consultants experienced in carrying out services similar to those to be performed under the Contract in relation to the supply of goods of a similar nature, size, scope and complexity to the Goods.

10.3 For the avoidance of doubt, the limitations of liability set out in clauses 13.2, 13.3, 13.5 and 13.7 (subject always to clause 13.1) shall apply to any assistance given or advice or services determined to be given by the Company under or in connection with the Contract.

11. TERMINATION

11.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer 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 within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Buyer 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 the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (c) (where the Buyer is a company) 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 Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer; or 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 Buyer; or the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- (d) a person becomes entitled to appoint a receiver over the Buyer's assets, or a receiver is appointed over the Buyer's assets;
- (e) the Buyer, being an individual, is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Buyer 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 days;
- (g) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(a) to clause 11.1(h) (inclusive);
- (h) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (i) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (j) the Buyer, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.2 Without limiting its other rights or remedies, the Company shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Buyer and the Company if:

- (a) the Buyer fails to pay any amount due under this Contract within 14 days after the Due Date; or
- (b) the Buyer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach; or

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(c) the Buyer becomes subject to any of the events listed in clauses 11.1(a) to 11.1(j), or the Company reasonably believes that the Buyer is about to become subject to any of them.

11.3 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest;
- (b) 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
- (c) clauses of these Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in any drawings, designs or other data and in all materials, tools, patterns or other items prepared or made available by the Company (or its suppliers or licensors) for the Contract shall, unless otherwise expressly agreed by the Company in writing, be and remain the property of its suppliers or licensors (as appropriate), and the Buyer shall not copy or reproduce the same in whole or in part in any form or allow others to do so.

12.2 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the Intellectual Property Rights of any other person, or any claim is made in respect of passing off or unauthorised use of Confidential Information in relation to the Goods and/or their use or resale, the Buyer shall forthwith notify the Company in writing, and the Company (or, at the Company's direction, its relevant supplier or licensor) shall be given full control of any proceedings or negotiations in connection with any such claim. The Buyer shall give the Company (or its supplier or licensor as appropriate) all reasonable assistance for the purposes of any such proceedings or negotiations, and except pursuant to a final award, the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld). The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Company may have in relation to such infringement.

12.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a Specification submitted by the Buyer, the Buyer shall (without prejudice to the other rights and remedies of the Company) indemnify the Company in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with:

- (a) any claim for infringement of any Intellectual Property Rights or for passing off and/or unauthorised use of confidential Information which results from the Company's use of the Buyer's Specification; and
- (b) any other liability of any kind to any third party, including for defective Goods, personal injury or death to the extent that it arises from the Buyer's Specification.

13. LIMITATION OF LIABILITY: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall exclude or limit the liability of the Company for:

- (a) death or personal injury caused by the Company's negligence; or
- (b) defective products under section 2(3), Consumer Protection Act 1987; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter for which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (e) fraud or fraudulent misrepresentation.

13.2 Subject to clause 13.1:

any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

15. FORCE MAJEURE

(a) the Company shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution, or otherwise, for any loss of profit, loss of business, depletion of goodwill, or indirect or consequential loss arising under or in connection with the Contract (including losses caused by a deliberate breach of the Contract by the Company, its employees, agents, or subcontractors); and

(b) the Company's total liability to the Buyer in respect of all other losses arising under or in respect of the Contract, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution, or otherwise, including losses caused by a deliberate breach of the Contract by the Company, its employees, agents, or subcontractors, shall not exceed 110% of the price of the Goods.

13.3 Subject to clause 13.1, the Company shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution, or otherwise, for any costs or expenses (such as dismantling costs) directly associated with physically replacing in a building or structure Goods in respect of which a breach of any of the warranties in clause 9.2 has occurred or any other claim is made.

13.4 The Buyer acknowledges and agrees that if the Company has given the Buyer the name and/or contact details of any installer of the Goods (including any installer approved by the manufacturer of the Goods and whether or not the Company may have been involved in any way in giving training to such installer):

- (a) no such installer is acting as the agent or subcontractor of the Company; and
- (b) subject always to clause 13.1, the Company shall under no circumstances be responsible or liable for the services provided by any such installer to the Buyer or for any act or omission of any such installer.

13.5 Other than pursuant to the express warranties given in clause 9.2 and any warranties implied by sections 13 to 15 of the Sale of Goods Act 1979 which are not effectively excluded from the Contract under clause 9.11, the Company shall have no responsibility or liability for the manufacture, design, installation or use of the Goods, or any part thereof.

13.6 Save as otherwise implied by law (but without limiting the application of clause 9.11 to the terms implied by sections 13 to 15 of the Sale of Goods Act 1979), nothing in these Conditions or in any Contract shall impose an obligation on the Company or be construed as a warranty or representation that the Goods or any part thereof are fit for purpose.

13.7 Without prejudice and subject always to the other provisions of these Conditions (including clause 13.1 and the other limitations and any exclusions of liability in this clause 13), the Company's liability in respect of any claim by the Buyer shall not exceed such sum as shall be agreed between the Company and the Buyer or adjudged by the court to be the proportion of the loss to the Buyer directly caused by the Company's failure to perform its duties and responsibilities under the Contract. This proportion is to be calculated on the basis that all other suppliers, manufacturers, consultants, advisers, contractors and subcontractors (Relevant Parties) shall be deemed to have provided contractual undertakings on terms materially no less onerous to the Buyer in respect of their obligations, works and/or services and shall be deemed to have paid to the Buyer the proportion of the loss (after apportionment between the Relevant Parties and the Company) which it would have been just and equitable for them to pay having regard to the extent of their responsibilities.

14. ASSIGNMENT

14.1 The Company may assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure

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Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials due to the default of suppliers or subcontractors. If the Force Majeure Event in question continues for a continuous period in excess of 90 days, either party shall be entitled to give notice in writing to the other party to terminate the Contract.

16. DATA PROTECTION

16.1 In this clause 16:

- (a) Data Controller, Data Processor, Data Subject, Process/Processing and Special Categories of Personal Data will have the same meanings as given to them in the Data Protection Laws.
- (b) Data Protection Laws means applicable legislation protecting the personal data of natural persons, including in particular the Data Protection Act 1998, the GDPR and any equivalent or superseding legislation, together with binding guidance and codes of practice issued from time to time by relevant supervisory authorities;
- (c) GDPR means General Data Protection Regulation ((EU) 2016/679);

16.2 The Company and the Buyer will duly observe all their respective obligations under the Data Protection Laws which arise in connection with the provision of the Goods and/or the Contract.

16.3 Where a party provides the other with Personal Data of any individuals (including employees, former employees or any other third party), it shall ensure that it has authority to do so. Details of the processing of Personal Data pursuant to the Contract are set out in the schedule to these Conditions (Data processing details).

16.4 Insofar as the Company or the Buyer (the Relevant Processor) processes Personal Data for the other (the Relevant Controller) as a Data Processor, the Relevant Processor will:

- (a) process the Personal Data solely on the documented instructions of the Relevant Controller, including the Contract, for the purposes of providing or receiving the Goods (as the context requires);
- (b) process only the types of Personal Data relating to the categories of Data Subjects and in the manner required to supply or receive the Goods (as the context requires) in the manner agreed by the parties;
- (c) take all measures required by Article 32 of the GDPR to ensure the security of the Personal Data;
- (d) take reasonable steps to ensure the reliability of any staff who may have access to the Personal Data and their treatment of the Personal Data as confidential;
- (e) where the Relevant Processor is:
 - (i) the Company; be generally authorised to appoint third parties to Process the Personal Data (Sub-Processor), subject to notifying the Buyer about the Company's Sub-Processors and otherwise meeting the conditions set out in Article 28 (2) and (4) of the GDPR; and
 - (ii) the Buyer; not permit any third party to Process the Personal Data (Sub-Processor) without the prior written consent of the Company, such consent to be conditional upon fulfilling the conditions under Article 28 (2) and (4) of the GDPR;
- (f) promptly, and in any case within five (5) Business Days, notify the Relevant Controller of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a supervisory authority) relating to either party's obligations under the Data Protection Laws in respect of the Personal Data;
- (g) without undue delay, notify the Relevant Controller of any Personal Data Breach, such notice to include all information reasonably required by the Relevant Controller to comply with the obligations imposed on the Relevant Controller under the Data Protection Laws;

(h) in respect of any processing of Personal Data outside of the European Economic Area, take such steps as are necessary to ensure the processing is in accordance with Data Protection Laws;

(i) permit the Relevant Controller, on reasonable prior notice, to inspect and audit the facilities used by the Relevant Controller to Process the Personal Data, and any and all records maintained by the Relevant Controller relating to that Processing;

(j) provide any assistance reasonably requested by the Relevant Controller in relation to: (1) any communication received under clause 16.2(f), as well as any equivalent communication received by the Relevant Controller directly; and (2) any Personal Data Breach, including by taking any appropriate technical and organisational measures directed by the Relevant Controller; and cease Processing the Personal Data promptly upon the termination or expiry of the Contract and at the Relevant Controller's option either return or securely delete the Personal Data.

17. NOTICES

17.1 All notices and communications between the parties about the Contract shall be in writing and delivered by hand or sent by prepaid first-class post or sent by email:

- (a) (in case of communications to the Company) to its registered office and marked for the attention of the Managing Director or to jazz@aquariancladding.co.uk (as appropriate) or to such changed address or email address as shall be notified to the Buyer by the Company in accordance with this clause; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address or email address of the Buyer set out in any document which forms part of the Contract or to such other address as shall be notified to the Company by the Buyer in accordance with this clause.

17.2 Communications shall be deemed to have been received:

- (a) if sent by prepaid first-class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by email on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.

18. GENERAL

18.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

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

16.3 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain (together, Confidential Information). The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause, 18.3, shall survive termination of the Contract.

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

18.5 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.

18.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

18.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

SCHEDULE

DATA PROCESSING DETAILS

Description

Subject matter and duration of the processing

Nature and purposes of the processing

Type of Personal Data

Categories of Data Subject

Details

As described in the Contract

As described in the Contract

Employee data: name, title, gender, job title, date of birth, personal contact details (address, telephone number, email address), work contact details (telephone number, email address), employee number, voice recordings (including of telephone calls), photograph, personal data contained in meeting, telephone or attendance notes, bank details, national ID number, tax code, right to work or passport data, next of kin / emergency contact name and contact details, background checks

Client and business partner data: name, title, gender, work address, work email, work telephone numbers, job title, interests/marketing list assignments, record of permissions or marketing objections, website data (including IP address, geo-location markers and browser-generated information)

Buyer group employees, former employees and workers. Clients, business partners and suppliers of the Buyer group
 Company group employees, former employees and workers.
 Clients, business partners and suppliers of the Company group