

# SMITH'S (GLOUCESTER) LIMITED

## TERMS AND CONDITIONS

### PART A ~ GENERAL TERMS AND CONDITIONS ALL DIVISIONS

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#### 1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions and the terms and conditions which apply to the supply of the Services set out in Part B below (**Conditions**).

**Contract** these Conditions (as may be amended from time to time) and the Order which has been accepted or confirmed by the Supplier under condition 2.2 below.

**Customer** the person, firm or company who purchases Services from the Supplier.

**Document** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Intellectual Property Rights** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order**

- (i) the Customer's purchase order; or
- (ii) the Customer's acceptance of a quotation for services given by the Supplier; or
- (iii) the Customer's telephone or email order which is converted into a sales order by the Supplier.

**Services** the services to be provided by the Supplier under the Contract, together with any other services which the Supplier provides or agrees to provide to the Customer.

**Supplier** Smith's (Gloucester) Limited (registered number 4004654) and whose registered office is at Beaumont House, 172 Southgate Street, Gloucester GL1 2EZ.

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- VAT** value added tax chargeable under English law for the time being and any similar additional tax.
- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to **writing** or **written** includes faxes and e-mail.
- 1.7 Where the words **include(s)**, **including** or **in particular** are used in these terms and 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.
- 1.8 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to Conditions are to the Conditions of the Contract.
- 2. APPLICATION OF CONDITIONS**
- 2.1 These Conditions shall:
- (a) apply to and be incorporated into the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Order, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued and executed by the Supplier;  
or
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- (b) (if earlier) by the Supplier starting to provide the Services, when a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.
- 2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date (unless otherwise stated in that quotation), provided that the Supplier has not previously withdrawn it.
- 2.4 The Customer hereby confirms that:
  - (a) in the case of an individual, he or she is at least 18 years old, or
  - (b) the director or person who completed a purchase order or accepted any quotation for Services by the Supplier has the necessary authority to act on the Customer's behalf and bind the Customer to the Contract and all details given or provided to the Supplier were accurate and up to date.
- 2.5 Acceptance of the Services by the Customer or the delivery of the Services in accordance with the Customer's instructions signifies acceptance of the Conditions.
- 3. COMMENCEMENT AND DURATION**
- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of acceptance by the Supplier of the Customer's offer in accordance with condition 2.2.
- 3.2 The Services supplied under the Contract shall continue to be supplied for the period specified in the Order and, after that, shall continue to be supplied unless the Contract is terminated in accordance with condition 11 or otherwise in accordance with the Contract.
- 3.3 At any time after the date of the Contract, the Customer may request a change to the Services. In respect of any changes or variations, the Supplier reserves the right to charge associated costs at its discretion.
- 3.4 The Supplier may vary these Conditions at any time by posting the changes or any new version of the same on the Supplier's website ([www.smiths-gloucester.co.uk](http://www.smiths-gloucester.co.uk)) and, where reasonably practicable, giving the Customer prior notice. The Customer hereby agrees that, if the Customer decides to use the Services after any variations to these Conditions have been posted

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on the Supplier's website, the Customer will be bound by the Contract as varied.

#### **4. SUPPLIER'S OBLIGATIONS**

- 4.1 The Supplier shall use reasonable endeavours to provide the Services by any dates agreed with the Customer and make the Services available for the period specified in clause 3 above, subject to the Conditions of this Contract.
- 4.2 Any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under condition 5, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

#### **5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
  - (b) provide for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises;
  - (c) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and
  - (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services in all cases before the date on which the Services are to start.
- 5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or

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death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

- 5.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier in the provision of the Services.
- 5.5 Any consent given by the Supplier in accordance with condition 5.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

#### 6. CHARGES AND PAYMENT

- 6.1 Save as may otherwise be set out in these conditions, all sums payable to the Supplier are payable on demand except that payment terms for authorised credit account customers are 30 days from date of invoice (unless otherwise agreed in writing with the Supplier).
- 6.2 Invoice queries must be notified to the Supplier within 30 days of the invoice date. Invoices that are not queried within 30 days will be considered accepted by the Customer and payable as submitted.
- 6.3 Credit limits will be applied to Customer accounts. Where those credit limits are exceeded the Supplier will suspend all services until a payment has been received to bring the account balance within the assigned credit limit. The Supplier will notify the Customer of the applied credit limit on opening the credit account and from time to time as that limit is revised. Credit limits may be reduced or withdrawn at the absolute discretion of the Supplier if in its opinion the account is not maintained in good order or if information is received from a credit reference agency suggesting a reduction in the credit limit (or withdrawal of that limit) should be made.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

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(b) suspend all Services until payment has been made in full.

6.5 Time for payment shall be of the essence of the Contract.

6.6 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

6.7 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

#### **7. INTELLECTUAL PROPERTY RIGHTS**

The Customer shall not use or permit anyone else to use, the Supplier's name, logo or trademark without the Supplier's prior written consent. The Customer also agrees not to infringe any copyright or registered or unregistered trademark belonging to any third party in respect of the use of the Services. The Customer shall indemnify the Supplier against any action, claim, loss, damage, proceedings, expense (including legal costs) suggested or incurred by the Supplier arising from any action which is directly or indirectly related to infringement of any third party's intellectual property rights.

#### **8. CONFIDENTIALITY**

8.1 The parties will each keep confidential any proprietary information and/or any information obtained from the other in connection with the Contract (including for the avoidance of doubt details of the Customer's employees) which is reasonably identified by either party as commercially confidential or which is obviously confidential in nature and neither will, without the consent in writing of the other, divulge the same to any third party except such of its employees, contractors and agents as may need to know the same for the purposes of the implementation of the Contract and who agree to be bound by the provisions of this clause.

8.2 The obligations aforesaid shall not apply to any material or information which is:

(a) in the public domain (other than as a result of a breach of the Contract); or

(b) already known to the receiving party; or

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- (c) lawfully received from a third party and/or ordered to be disclosed by any court or other tribunal or regulatory authority of competent jurisdiction.

#### **9. LIMITATION OF LIABILITY**

9.1 This condition 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.

9.4 Subject to condition 9.2 and condition 9.3:

- (a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or

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- (viii) loss of corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

#### 10. DATA PROTECTION

- 10.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.
- 10.2 The Supplier monitors, records and retains CCTV images at all its premises. Such monitoring is for the protection and safety of the Supplier's staff and property and the protection and safety of visitors.
- 10.3 The Supplier's Data Protection Act 1998 registration number is Z9379089.

#### 11. TERMINATION

- 11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- (a) the other party commits a material breach of any of the Conditions of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
  - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
  - (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an

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administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.2 The Supplier may also terminate the Contract immediately upon a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001).

11.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of the Supplier's equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of it. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

## 12. FORCE MAJEURE

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond

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its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

#### **13. WAIVER**

- 13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

#### **14. SEVERANCE**

- 14.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 14.3 The parties agree, in the circumstances referred to in condition 14.1 and if condition 14.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of the Contract shall be suspended while an attempt at such substitution is made.

#### **15. STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

#### **16. ASSIGNMENT**

- 16.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
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16.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### **17. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### **18. RIGHTS OF THIRD PARTIES**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

#### **19. NOTICES**

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 19 is not within business hours (meaning 9.00am to 5.30pm Monday to Friday on a day that is a business day), at 9.00am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

#### **20. GOVERNING LAW AND JURISDICTION**

20.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

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