

PROSAW

Karmetal KMT280WOS.PLC Vice Feed Automatic Bandsaw



Features:

- Heavy duty construction
- Robust, simple to use controls
- Powerful 2.2kW drive motor
- Inverter controlled blade speed 22~100m/min
- PLC Control Unit
- Hydraulic Band Tension
- Adjustable hydraulic regulation of bow descent rate
- Material specification compensation valve
- Full stroke hydraulic vice
- 400mm material stroke
- Hydraulic Top Clamp
- Swarf Conveyor
- Powered Swarf Brush
- Vice Pressure Reduction
- Blade Size 3660x27x0.9mm
- 1.5mtr Conveyor, Adjustable Vertical Rollers

Capacities	90°
Round	280mm
Square	250mm
Rectangle	250X300mm
Blade Size	3660mm x 27mm
Dimensions (L W H)	1600mm x 1900mm x 1300mm



PROSAW NEW MACHINERY ADDITIONAL SALES CONDITIONS

This document is supplemental to our standard terms and conditions. The definitions in our standard terms and conditions apply to this document unless otherwise indicated. Goods will only be supplied upon our standard terms and conditions also attached.

PAYMENT TERMS

- STOCK MACHINES: PAYMENT IN FULL PRIOR TO DELIVERY
- NON STOCK MACHINES: NON REFUNDABLE 30% DEPOSIT WITH ORDER, BALANCE PRIOR TO DELIVERY

ALL PAYMENTS TO BE MADE IN CASH OR CLEARED FUNDS PRIOR TO DELIVERY.

Alternatively, competitive finance facilities are available on request.

VAT: All prices are net of VAT.

VALIDITY: We reserve the right to amend any part of this quotation, including price.

CARRIAGE: Unless otherwise stated, the price of the Goods set out in our quotation does not include packaging, insurance, transport, off-loading or uncrating of the Goods or siting of the Goods within the Customer's premises.

COMMISSIONING & OPERATOR INSTRUCTION

Unless otherwise stated in writing, our quotation does not include the costs of commissioning the Goods or any other services.

When incorrectly used, a sawing machine can be potentially dangerous. To ensure safe and efficient operation, it is essential that the commissioning and operator instruction for this equipment can be carried out by experienced and competent personnel.

If Prosaw are contracted to carry out commissioning and operator instruction, we would like to highlight the following points which remain the Customer's responsibility.

- The Customer is responsible for off-loading, uncrating and siting the Goods in a clear level area, unless previously agreed in writing by Prosaw.
- The Customer must provide and have connected to the machine, prior to our engineer's arrival, all necessary power supplies, i.e. electrics, air, etc. For insurance purposes, our engineers are instructed not to carry out these connections.
- Should further visits by our engineer be necessary due to (a) or (b) above not being completed prior to their arrival, the costs of all visits will be charged at our standard daily fee rates.
- The floor should be level to within +/- 1/4" over any 10 feet, and +/- 1/2" over the whole spread.
- During installation the customer is required to supply a competent maintenance technician to assist in the installation and thereby be trained in the operation of the saw and associated plant.

HEALTH AND SAFETY

The Goods, in their standard specification comply with current health and safety legislation unless additional guarding has been quoted for by the Company. There may be further modification necessary to comply with the Customers own safety policies or their particular operation and such modifications shall be the responsibility of the Customer. It is recommended the machine be sited in a controlled area with barrier rails to prevent unauthorised access including loading/unloading. Additional measures may be necessary by the customer if the use of the saw at their premises results in noise levels that exceed current action thresholds.

PHILIP CRICK

A handwritten signature in blue ink that reads "P. R. Crick".

MANAGING DIRECTOR
PROSAW LIMITED



PROSAW STANDARD TERMS AND CONDITIONS

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The Customer's attention is particularly drawn to the provisions of clause 11.

1. Definitions and Interpretation

1.1 In these Conditions, the following definitions apply:

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

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

"Company" ProSAW Limited registered in England and Wales with company number 01115014.

"Company Materials" has the meaning set out in clause 8.1.7.

"Conditions" these terms and conditions as amended from time to time in accordance with clause 15.6.

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

"Customer" the person or firm who purchases the Goods and/or Services from the Company.

"Deliverables" all documents, products and materials developed by the Company, or its agents, contractors and employees as part of, or in relation to the Services in any form, including computer programs, data, reports, drawings and specifications (including drafts).

"Delivery Location" has the meaning set out in clause 4.2.

"Force Majeure Event" has the meaning given to it in clause 14.1.

"Goods" the goods (or any part of them) set out in the Order.

"Goods Specification" any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Company.

"Intellectual Property Rights" patents, 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, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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" the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Company's quotation, or overleaf, as the case may be.

"Services" the services, including the Deliverables, supplied by the Company to the Customer as set out in the Service Specification below.

"Service Specification" the description or specification for the Services provided in writing by the Company to the Customer.

1.2 In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to writing or written includes faxes but not e-mails.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (the "Commencement Date").

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

2.4 Any samples, data sheets, drawings, specifications, particulars of weights, dimensions, performances, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force unless specifically agreed in writing.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Company shall not constitute an offer and is not binding on the Company until a written acceptance of the Customer's Order has been made by the Company pursuant to clause 2.2 and may be withdrawn or amended by the Company at any time.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

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

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

3.3 If, after the date of the Contract, the Company cannot obtain Goods to the original specification of the Goods, the Company may:

3.3.1 terminate the Contract without liability to the Customer; or

3.3.2 supply Goods of an alternative specification to the Customer provided such specification is not materially different from the original specification.

4. Delivery of Goods

4.1 The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (the "Delivery Location") at any time after the Company notifies the Customer that the Goods are ready for delivery.

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location and Signature of any delivery note by any agent employee or representative of the customer shall be conclusive proof of delivery, in particular:

4.2.1 where the Delivery Location is at the Company's premises, completion of delivery shall be deemed to have occurred once the Goods are placed at the Customer's disposal and in any event before commencement of loading of the Goods for transport; and

4.2.2 in all other cases, completion of delivery shall be deemed to occur, at the latest, prior to commencement of unloading of the Goods.

4.3 Where the Delivery Location is at the Company's premises, the Customer shall be responsible for the loading of the Goods for transport. In all other cases, the Customer shall be responsible for unloading the Goods from the transport and movement of the Goods from delivery.

4.4 Where given, delivery times and dates are estimates only and cannot be guaranteed, the time of delivery is not of the essence. The Company will not be liable to the Customer for any loss or damage sustained by the Customer as a result of any delay by the Company to comply with delivery dates.

4.5 The Company shall only be liable for any non-delivery of Goods, or part thereof, (even if caused by the Company's negligence) if the Customer gives written notice to the Company within 7 days of the date when the Goods would, in the ordinary course of events, have been delivered that they have not been and the liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time of the Customer's notice pursuant to this clause or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

4.6 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 Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Customer fails to accept or take delivery of the Goods within 5 Business days of the Company notifying the Customer that the Goods are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6th Business day following the day on which the Company notified the Customer that the Goods were ready for delivery; and

4.7.2 the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance if the Company decides to insure the Goods).

4.8 If 20 Business Days after the Company notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them (as the case may be), the Customer shall have committed a material breach of contract incapable of remedy and, without prejudice to any other right or remedy of the Company, the Company may resell or otherwise dispose of part or all of the Goods.

4.9 The Customer shall not be entitled to reject the Goods if the Company delivers more or less than the quantity of Goods ordered. Subject to clause 4.5, if the Customer or the Company gives notice to the other that the wrong quantity of goods were delivered within 7 days of the delivery of the Goods actually delivered a pro rata adjustment shall be made to the Order invoice or (in the case of over delivery) the Customer may return the excess Goods delivered (at its sole cost).

4.10 Unless otherwise stated in writing, the Company shall be entitled to make partial deliveries or deliveries by instalments and each instalment shall be construed as constituting a separate contract to which these conditions apply and payment will be due in respect of each instalment as if a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Guarantee

5.1 The Company warrants that on delivery, and for a period of 6 months from the date of delivery (the "warranty period"), the Goods shall be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery, and in any event within 14 days of discovery, that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Company is given a reasonable opportunity of examining such Goods;

5.2.3 the Customer (if asked to do so by the Company) (i) returns such Goods, or (ii) returns any part or parts of the Goods in which the defect has appeared to the Company's place of business; and

5.2.4 the relevant Goods are found not to comply with the warranty set out in clause 5.1;

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Defective Goods or parts of Goods replaced in accordance with this clause shall be placed at the Company's disposal.

5.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after discovering the alleged defect;

5.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.3.3 the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer or using any material supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the Company's consent in writing or carries out, or a third party carries out on behalf of the Customer, alterations or repairs consented to by the Company improperly;

5.3.5 the defect arises as a result of normal deterioration, wilful damage, negligence, improper use or conditions of operation which would not be expected or are abnormal; or

5.3.6 in the case of defects in materials, any other conscientious manufacturer would not have eliminated the defective material during manufacture.

5.4 The Customer shall bear the costs of transport of the Goods, or part or parts of Goods, (as the case may be) returned pursuant to clause 5.2.3, if the Goods are found not to comply with the Warranty in set out in clause 5.1; otherwise the Customer shall bear such cost. In any event, the defective Goods of part or parts of the defective Goods (as the case may be) shall be at the Customer's risk at all times.

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- 5.5 The Customer shall bear the cost of dismantling and re-assembling the defective part or parts of the Goods if asked to return only the part or parts of the Goods in which the defect has appeared pursuant to clause 5.2.3.
- 5.6 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 5.2.
- 5.8 The warranty period has been set on the basis that the Goods will be used no more than eight hours a day five days a week. Accordingly, the warranty period shall be reduced pro rata if the Goods are used more intensively than eight hours a day five days a week (for example: if the Goods are used 16 hours a day 5 days a week, the warranty period shall be reduced to 3 months).
- 5.9 The warranty set out in clause 5.1 shall not apply to Goods designated as 'used' sold by the Company.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until:
- 6.2.1 all monies owed by the Customer under the Contract or any other contract between the Customer and the Company have been paid in full (in cash or cleared funds), or
- 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods on its premises separately from its own goods or those from any other persons and in a manner which makes them readily identifiable as goods of the Company;
- 6.3.2 not permanently affix the Goods or any part thereof to his premises except where necessary for carrying out of acceptance tests;
- 6.3.3 not remove, deface or obscure any identifying mark on or relating to the Goods;
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
- 6.3.5 notify the Company immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.13; and
- 6.3.6 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 Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Company's agent;
- 6.4.2 title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs; and
- 6.4.3 the Customer shall pay to the Company such amount of the proceeds of such sale as is required to clear the outstanding balance of the purchase price, or any part thereof.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.13 or is in breach of its obligations under this Contract, then, without limiting any other right or remedy the Company may have:
- 6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 the Company may at any time:
- 6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Supply of Services**
- 7.1 The Company shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services agreed in writing between the parties from time to time, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 7.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. Customer's obligations**
- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification and/or Service Specification is complete and accurate;
- 8.1.2 co-operate with the Company in all matters relating to the Services;
- 8.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services or deliver the Goods;
- 8.1.4 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 8.1.5 prepare the Customer's premises for the supply of the Services as reasonably requested by the Company;
- 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- 8.1.7 keep and maintain all materials, equipment, documents and other property of the Company (the "Company Materials") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 8.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (including failure to pay, when due, any sum owing from the Customer to the Company) (the "Customer Default"):
- 8.2.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- 8.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 9. Charges and payment**
- 9.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Company's published price list as at the date of delivery. Unless otherwise stated, all prices quoted are exclusive of VAT and the costs of packaging, insurance and transport of the Goods, which sums shall be paid by the Customer when it pays for the Goods.
- 9.2 The charges for Services shall be on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with the Company's standard daily fee rates, from time to time in force;
- 9.2.2 the Company's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- 9.2.3 the Company shall be entitled to charge an overtime rate of 150% Monday to Saturday and 200% on Sundays and all bank holidays of the standard daily fee rate on a pro rata basis for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and
- 9.2.4 the Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including, but not limited to, travelling expenses (including mileage at the Company's standard mileage rates from time to time in force), hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.
- 9.3 The Company reserves the right to:
- 9.3.1 increase its standard daily fee rates for the charges for the Services and its standard mileage rates, provided that such charges cannot be increased more than once in any 6 month period. The Company will give the Customer written notice of any such increase 1 month before the proposed date of the increase;
- 9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:
- 9.3.2.1 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);
- 9.3.2.2 any request by the Customer (which is accepted by the Company) to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 9.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 9.4 Unless otherwise agreed in writing, in respect of Goods, the Company shall invoice the Customer at any time prior to delivery. In respect of Services, the Company shall invoice the Customer on the completion of the Services or monthly in arrears (whichever is the soonest).
- 9.5 Unless otherwise agreed in writing, the Customer shall pay each invoice submitted by the Company:
- 9.5.1 unless otherwise agreed in writing, in the case of Goods, prior to or on delivery of the Goods;
- 9.5.2 in the case of Services, within 30 days of the date of the invoice; and
- 9.5.3 in either case, in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.
- 9.6 No delay from whatever cause in starting up or using the Goods and no alleged defects in the Goods or Services shall entitle the Customer to delay payment.
- 9.7 The Customer 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 Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 9.10 If payment is not made by the Customer in accordance with this clause 9, the Customers rights under the warranty provided by the Company to the Customer, whether pursuant to clause 5.1 or otherwise, shall lapse.
- 9.11 All payments due under this Contract shall be paid in British Pounds Sterling (ISO code: GBP), or the lawful currency of the United Kingdom from time to time.
- 9.12 Without prejudice to the provisions of clause 9.3.2.1, depreciation in the rate of exchange of sterling against any relevant currency shall be accounted for by the Company if, between the Commencement Date and the date of delivery of the Goods, this variation is greater than plus 1%.
- 10. Intellectual property rights**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 10.3 All Company Materials are the exclusive property of the Company.
- 11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 11.1 Nothing in these Conditions shall limit or exclude the Company's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation, breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession), breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession), defective products under the Consumer Protection Act 1987 or any other matter which it is illegal for a party to exclude or restrict its liability for.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

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11.2.2 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate price of the Goods or Services.

11.3 All terms implied by statute or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

12.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

12.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

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

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

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

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

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

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

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

12.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.2 to clause 12.1.9 (inclusive);

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

12.1.12 (in favour of the Company only) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

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

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

12.3 Without limiting its other rights or remedies, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if:

12.3.1 the Customer fails to pay any amount due to the Company under this Contract or any other agreement between the Company and the Customer on the due date for payment;

12.3.2 the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.9 or the Company reasonably believes that the Customer is about to become subject to any of them; or

12.3.3 there are outstanding disputes concerning any supply of goods or provision of services by the Company to the Customer.

12.4 On termination of the Contract for any reason:

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

12.4.2 the Customer shall return all of the Company Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

12.4.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

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

13. Deposits

13.1 The Company may require the Customer to pay a deposit to the Company. All deposits must be paid on the Commencement Date or within 5 Business Days of the Company requesting a deposit be paid (whichever is the sooner).

13.2 Without limiting the Company's other rights or remedies, all deposits paid are non-refundable. This clause 13.2 is intended to be separate and severable from the remainder of these Conditions.

14. Force majeure

14.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company 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 subcontractors.

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

14.3 If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than four weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. General

15.1 Assignment and other dealings.

15.1.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

15.1.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 Notices.

15.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or fax.

15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

15.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

15.3 Severance.

15.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.3.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No forbearance or indulgence granted by the Company to the Customer whether in respect of this Contract or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be regarded as, or constitute, a waiver of any of the terms of these Conditions or of the Contract.

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

15.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Director or Company Secretary of the Company on Company headed notepaper and no other action on behalf of the Company shall be construed as acceptance of any other conditions.

15.7 Proper law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.