

TVD (NW) Limited
Terms & Conditions of Supply of Goods & Services

1. INTERPRETATION

1.1 Definitions. 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.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services solely and exclusively in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: the deliverables set out in the Order.

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

Force Majeure Event: has the meaning given to it in clause 15.1(a).

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

Intellectual Property Rights: patents, copyright trade marks, rights in get-up, goodwill and the right to sue for passing off, rights in designs, confidential information (including know-how), and all other intellectual property rights, whether registered or unregistered

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase or order form.

Services: the services, including the Deliverables, supplied by the Supplier 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 Supplier to the Customer.

Supplier: TVD (NW) Limited registered in England and Wales with company number 3242424 whose registered office is at James House, Unit 36 Waters Meet Industrial Estate, Britannia Way, Bolton BL2 2HH.

Supplier Materials: has the meaning set out in clause 8.1(d).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to **writing** or **written** includes faxes and 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 Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**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 Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptions, brochures and the contents of the Supplier's website are for illustrative purposes only and do not form part of the Contract or have any contractual force.
- 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 Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue of such other period referred to in the Service Specification, Contract or the quotation provided by the Supplier.
- 2.7 Where an installation is required by the Customer, final confirmation of quotes may be subject to a survey to be completed by the Supplier. Where it is stipulated by the Supplier that a survey is required prior to installation the Customer accepts that quotes can only be confirmed once a survey is complete and that pre-survey quotes may be subject to change. Once a survey is completed, amendments to a quote may be issued or communicated to a Customer by the Supplier. All installations contain a contingency period for works that over-run due arising issues of the job (see section 7.7).

3. GOODS

- 3.1 Reference codes of the Goods in the Order are to reference or product codes in the Supplier's price list unless otherwise stated.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) the Customer shall make any packaging materials provided by the Supplier for the Goods

available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Customer's expense.

- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time and date of delivery are not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier may at its option store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance); or
 - (c) the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

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

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier'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;
- (c) the defect arises as a result of the Supplier following any drawing, design or instruction of the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

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 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(j); and
- (e) give the Supplier such information relating to the Goods as the Supplier 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 Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(j), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business shall be deemed to have ceased on the day prior to the happening of the first of any such event listed in clause 8.2(b) to clause 8.2(j) and at the Supplier's option the Supplier may rescind any contract between the Supplier and the Customer under which any Goods supplied to the Customer have been sold on by the Customer; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) 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.

6.6 Clause 6 shall survive termination of the Contract.

7. SUPPLY OF SERVICES

7.1 The Supplier will provide an installation of goods at a location specified by the Customer at a date and time that is mutually agreed.

7.2 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

7.3 Any dates given by the Supplier shall be estimates only and time shall not be of the essence for the performance of the Services.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 If the Supplier fails to start or complete the installation, its liability shall be limited to any outstanding payments made by the Customer in direct relation to the installation in question, that are above and beyond

the installation that has been completed. Payment for the installation completed is still required.

- 7.6 If the Customer cancels an installation within 15 working days of the scheduled installation start date, then a sliding scale of cancellation charges will be levied in relation to the cancellation charges;

Working Days (prior to scheduled installation date)	Cancellation charge (% of full quoted cost)
10-15	5%
5-10	10%
0-5	20%

- 7.7 If the Customer requests to move an installation to another proposed start date, then this must be agreed with the Supplier more than 10 working days prior to the scheduled installation start date. Installations that are moved within 10 working days of the scheduled start date may be subject to an administration charge.

- 7.8 The Suppliers actual installation time may vary depending on arising issues. Where, due to unforeseen circumstances that is no fault of the Supplier, the installation takes 0.5 days or longer than the quoted installation time, the Customer will be charged an additional cost in 0.5 day increments.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier and its agents with all necessary access, information and materials to enable the Supplier to supply the Services;
- (d) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk.

- 8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer (**Customer Default**):

- (a) the Supplier may suspend performance of the Services until the Customer remedies the Customer Default and shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from such suspension; and
- (b) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier 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 Supplier's published price list as at the date of delivery and is exclusive of all costs and charges of packaging, insurance, transport of the Goods.

- 9.2 The charges for Services shall be on a time and materials basis as set out in the Service Specification.

9.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on [weekly/monthly] in arrears.

9.4 A re-stocking or returns fee may be levied that is additional to any quoted costs should the goods be returned due to order cancellation, inability to receive goods by the Customer, change of installation date that is not the fault of the Supplier or other reasons determined by the Customer that is outside the control of the Supplier.

9.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

9.6 All amounts payable by the Customer under the Contract are exclusive of VAT.

9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above Barclays Bank plc's base rate from time to time accruing on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9.9 The Supplier has the right to demand full payment of all amounts owing under the agreement, even those that are not yet due.

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 Supplier and all Supplier Materials are the exclusive property of the Supplier.

11. CONFIDENTIALITY

The Customer shall treat all information of a confidential nature given to or disclosed by the Supplier to the Customer in strict confidence. This [clause 11](#) shall survive termination of the Contract.

12. LIMITATION OF LIABILITY:

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (a) the Supplier 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
- (b) the Supplier'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 £[*insurance limit*].

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 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:

- (a) 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 5 days after receipt of notice in writing to do so;
- (b) 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, is deemed unable to pay its debts within section 123 of the Insolvency Act 1986 or has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with creditor with a view to rescheduling any of its debts, or proposes or enters into any compromise or arrangement with its creditors other than for a solvent amalgamation;
- (d) any steps are taken which are preparatory to the winding up of the other party, other than for a solvent amalgamation or reconstruction;
- (e) the other party is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party takes possession of, or any distraint, execution, sequestration or other such process is levied, enforced on or sued against, the whole or any part of its assets which is not discharged within 14 days;
- (g) an application or order is made for the appointment, or notice of intention to appoint, an

administrator over the other party;

- (h) a receiver or administrative receiver is appointed;
- (i) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (j) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Without limiting its other rights or remedies, the Supplier 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 on the due date for payment.

13.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(i), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13.4 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier.

14.2 The Supplier 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 Supplier from providing any of the Services and/or Goods for more than 4 weeks, the Supplier 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.

- (a) The Supplier 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.
- (b) The Customer shall not, without the prior written consent of the Supplier, 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.

- (a) 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 or its principal place of business and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail and shall be deemed to have been received: if delivered personally, when left at the other party's address; 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; or, if sent by fax or e-mail, one Business Day after transmission.
- (b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3 Severance.

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 or if such modification is not possible, it shall be deemed deleted.

15.4 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing. No failure or delay by a party in exercising any right or remedy shall constitute a waiver.

15.5 No partnership or agency. Nothing in the Contract is intended to create any partnership, agency or joint venture between the parties.

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

15.7 Variation. 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 Supplier.

15.8 Governing law. This agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

15.9 Jurisdiction Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract (including non-contractual disputes or claims).