

## Metalcraft Direct Ltd Terms and Conditions for Supply of Goods and Services

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 13 (LIMITATION OF LIABILITY).**

### 1. Interpretation

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

#### 1.1 Definitions:

"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 given in clause 2.2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 17.8.
"Contract"	the contract between Metalcraft and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
"Control"	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
"Customer"	the person or firm who purchases the Goods and/or Services from Metalcraft; the expression "Customer" as used in these Conditions may be the end Client for whom the Goods and/or services are supplied, or may be the main contractor for the works of which the Goods and/or services form part.
"Deliverables"	the deliverables set out in the Order produced by Metalcraft for the Customer.
"Delivery Location"	has the meaning given in clause 4.2.
"Force Majeure Event"	any circumstance not within a party's reasonable control, including: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or

preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
- (h) interruption or failure of utility service.

**"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 Metalcraft.

**"Intellectual Property Rights"**

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

subsist now or in the future in any part of the world.

"Metalcraft"	<b>Metalcraft Direct Ltd</b> , incorporated in England under company number 14636554 and having its registered office at Suite 537, The Atrium, 1 Harefield Road, Uxbridge, United Kingdom, UB8 1EX
"Metalcraft Materials"	has the meaning given in clause 8.1(k).
"Order"	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of Metalcraft's tender or quotation, or overleaf, as the case may be.
"Services"	the services, including the Deliverables, supplied by Metalcraft to the Customer as set out in the Service Specification, and which may in particular include the installation of the Goods for the Customer at the Delivery Location.
"Service Specification"	the description or specification for the Services provided in writing by Metalcraft to the Customer.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

## 2. Basis of contract

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

- 2.2 The Order shall only be deemed to be accepted when Metalcraft issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Metalcraft and any descriptions of the Goods or illustrations or descriptions of the Services contained in Metalcraft'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 nor have any contractual force.
- 2.4 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 law, trade custom, practice or course of dealing.
- 2.5 Any quotation or tender given by Metalcraft shall not constitute an offer, and is only valid for a period of **[45]** Business Days from its date of issue, unless otherwise agreed by Metalcraft in writing.
- 2.6 The quoted price for the Goods and/or Services allows for the preparation of working drawings only. Copies of these drawings can be supplied on request to the Client/Architect/Main Contractor/Structural Engineer/any other bodies for their inspection and written approval. Unless Metalcraft is otherwise notified, Metalcraft shall assume all details on its working drawings are approved.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services, except where application to one or the other only is specified.

### **3. Goods**

- 3.1 The Goods are described in Metalcraft's catalogue as modified by any applicable Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Metalcraft 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Metalcraft arising out of or in connection with any claim made against Metalcraft for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Metalcraft's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Metalcraft reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Metalcraft shall notify the Customer in any such event.

- 3.4 Metalwork is supplied with welds left as laid and high spots cleaned off and finished as specified in the Order or as otherwise agreed with the Customer. The standard finish of one coat of red oxide paint is intended to protect the materials during transit in the UK only and Metalcraft recommends painting in a suitable oil-based paint immediately after installation is complete.
- 3.5 Where the Goods are or include galvanised metalwork, the quote for these Goods is on the basis that they are hot dipped galvanised to BS EN ISO 1461:1999 in accordance with commercial standards as determined by the galvanisers and are supplied to the Customer as received from the galvanisers. Where the method of manufacture or size of fabrication make it necessary to weld or connect after galvanising, such joints will be painted with cold galvanising paint.

#### 4. Delivery of Goods

- 4.1 Metalcraft 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 Metalcraft 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) it states clearly on the delivery note any requirement for the Customer to return any packaging material to Metalcraft. The Customer shall make any such packaging materials available for collection at such times as Metalcraft shall reasonably request. Returns of packaging materials shall be at Metalcraft's expense.
- 4.2 Metalcraft 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 Metalcraft notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and upon the Goods being signed for as received by the Customer's representative.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence unless expressly so agreed by Metalcraft in writing. Metalcraft 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 Metalcraft with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If Metalcraft 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. Metalcraft 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 Metalcraft with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of Metalcraft notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Metalcraft's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Metalcraft notified the Customer that the Goods were ready; and
  - (b) Metalcraft shall store the Goods until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which Metalcraft notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Metalcraft may (without prejudice to all or any of its other rights) 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.
- 4.8 Unless otherwise stated in the Order, Metalcraft 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 Metalcraft warrants that on delivery, and for a period of 6 months from the date of delivery (and installation, where applicable) (**warranty period**), the Goods shall:
- (a) conform in all material respects with their description and the Goods Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (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 Metalcraft and/or specified in the Order.

- 5.2 Subject to clause 5.3, Metalcraft shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- (a) the Customer gives notice in writing during the warranty period 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) Metalcraft is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by Metalcraft and if practical to do so) returns such Goods to Metalcraft's place of business at Metalcraft's cost.
- 5.3 Metalcraft 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 Metalcraft'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 Metalcraft following any drawing, design or Goods Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of Metalcraft;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (f) the Goods differ from the Goods Specification 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, Metalcraft 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 Metalcraft.

## **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 earlier of:

- (a) Metalcraft receives payment in full (in cleared funds) for the Goods and any other goods that Metalcraft has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - (b) 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:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Metalcraft'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 Metalcraft's behalf from the date of delivery;
  - (d) notify Metalcraft immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d); and
  - (e) give Metalcraft such information as Metalcraft may reasonably require from time to time relating to:
    - (a) the Goods; and
    - (b) the ongoing financial position of the Customer.
- 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 Metalcraft receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as Metalcraft's agent; and
  - (b) title to the Goods shall pass from Metalcraft to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, Metalcraft may:
- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
  - (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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 Metalcraft shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 Metalcraft shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or in any written document sent by Metalcraft to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services unless expressly so stated or accepted by Metalcraft reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Metalcraft shall notify the Customer in any such event.
- 7.3
- 7.4 Metalcraft warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. Customer's obligations**

- 8.1 The Customer shall at the Customer's own cost and expense:
- (a) ensure that the terms of the Order and any information that the Customer provides in the Service Specification and the Goods Specification (including any drawings) are complete and accurate;
  - (b) obtain all necessary permissions (including planning permissions), but Metalcraft will provide its working drawings for this purpose, if required;
  - (c) provide for Metalcraft all necessary calculations, or instruct Metalcraft to arrange for an independent structural engineer to do so at cost plus 20%;
  - (d) co-operate with Metalcraft in all matters relating to the Goods and Services, and in particular shall ensure that the following are provided on site free of charge before and, where applicable, during the installation of the Goods:
    - (a) Power - 110 V and/or 240 V mains electricity supply;
    - (b) Preparation of mortices/pockets to accept metalwork and making good after installation of metalwork;
    - (c) Preparation of suitable concrete bases to accept metalwork;
    - (d) Scaffolding - any works above ground floor level require suitable scaffolding to this level;

- (e) Hoisting and craneage - all hoisting and craneage of materials and equipment to working level to be carried out by the Customer; and
  - (f) Health & Safety and Welfare - all health and safety and welfare facilities conforming to the latest British Standards, relevant Codes of Practice and complying with all legal requirements;
- (e) provide all reasonably necessary protection of Metalcraft's works prior to Metalcraft's arrival on site;
  - (f) provide Metalcraft, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Metalcraft to provide the Services;
  - (g) provide Metalcraft with such information and materials as Metalcraft may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (h) prepare the Customer's premises or other facilities for the supply of the Services (which may include the installation of the Goods);
  - (i) 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;
  - (j) comply with all applicable laws, including health and safety laws;
  - (k) keep all materials, equipment, documents and other property of Metalcraft (**Metalcraft Materials**) at the Customer's premises in safe custody at its own risk, maintain Metalcraft Materials in good condition until returned to Metalcraft, and not dispose of or use Metalcraft Materials other than in accordance with Metalcraft's written instructions or authorisation; and
  - (l) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

8.2 If Metalcraft's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Metalcraft shall have the right to suspend the manufacture and/or delivery of the Goods and/or the 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 in each case to the extent the Customer Default prevents or delays Metalcraft's performance of any of its obligations;

- (b) Metalcraft shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Metalcraft's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Metalcraft on written demand for any costs or losses sustained or incurred by Metalcraft arising directly or indirectly from the Customer Default.

## 9. Charges and payment

### 9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in Metalcraft's published price list as at the date of the Order; and
- (b) shall, unless otherwise agreed in writing, be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer; and
- (c) does not include any sum for weld testing, but Metalcraft can arrange for that to be carried out by an independent body at cost plus 20%.

### 9.2 The charges for Services (unless included in the price for the Goods) shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with Metalcraft's daily fee rates, as set out in its current price list at the date of the Contract or as otherwise specified in the Order;
- (b) Metalcraft's 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;
- (c) Metalcraft shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) Metalcraft shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Metalcraft engages in connection with the Services, including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Metalcraft for the performance of the Services, and for the cost of any materials.

### 9.3 Metalcraft reserves the right to 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 Metalcraft that is due to:

- (a) any factor beyond the control of Metalcraft (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Metalcraft adequate or accurate information or instructions in respect of the Goods.
- 9.4 In respect of Goods, Metalcraft shall invoice the Customer on or at any time after completion of delivery, unless the Order specifies otherwise - for example, Metalcraft may require payment of a deposit when the Contract comes into existence.
- 9.5 In respect of Services, unless the charges for Services are included in the price of the Goods, Metalcraft shall invoice the Customer on completion of the Services.
- 9.6 The Customer shall pay each invoice submitted by Metalcraft:
  - (a) within 30 days of the date of the invoice or otherwise in accordance with any credit terms agreed by Metalcraft and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Metalcraft, andtime for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Metalcraft to the Customer, the Customer shall, on receipt of a valid VAT invoice from Metalcraft, pay to Metalcraft such additional amounts in respect of VAT as are chargeable on the supply of the Services and/or Goods at the same time as payment is due for the supply of the Services and/or Goods.
- 9.8 If the Customer fails to make a payment due to Metalcraft under the Contract by the due date, then, without limiting Metalcraft's remedies under clause 14 (**Termination**), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Metalcraft.
- 10.2 Metalcraft grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Goods, the Services and/or the Deliverables in the particular project only for which the Goods, the Services and/or the Deliverables are to be supplied by Metalcraft.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 The Customer grants Metalcraft a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Metalcraft for the term of the Contract for the purpose of supplying the Goods and/or providing the Services to the Customer.

## 11. Data protection

- 11.1 The following definitions apply in this clause 11:
  - (a) **Controller, Processor, Personal Data, and processing:** as defined in the Data Protection Legislation.
  - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
  - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation and/or under Domestic Law.
- 11.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Metalcraft is the Processor.

- 11.4 Without prejudice to the generality of clause (c), the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to Metalcraft and/or lawful collection and/or processing of the Personal Data by Metalcraft on behalf of the Customer for the duration and purposes of the Contract.

## 12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 13.1 Metalcraft has obtained product liability insurance cover and professional indemnity insurance cover in respect of its own legal liability for claims not exceeding a total of **£5 million** during any one period of insurance. The limits and exclusions in this clause reflect the insurance cover Metalcraft has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 13.2 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract, including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - (d) defective products under the Consumer Protection Act 1987.
- 13.5 Subject to clause 13.4, Metalcraft's total liability to the Customer shall not exceed **£1 million**.
- 13.6 The amounts awarded or agreed to be paid under any of these Conditions shall count towards the cap on Metalcraft's liability under clause 13.5.
- 13.7 This clause 13.7 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 13.4, the types of loss listed in clause 13.7(c) are wholly excluded by the parties, but the types of loss listed in clause 13.7(d) are not excluded.
  - (b) If any loss falls into one or more of the categories in clause 13.7(c) and also falls into a category in clause 13.7(d), then it is not excluded.
  - (c) The following types of loss are wholly excluded:
    - (a) loss of profits;
    - (b) loss of sales or business;
    - (c) loss of agreements or contracts;
    - (d) loss of anticipated savings;
    - (e) loss of use or corruption of software, data or information;
    - (f) loss of or damage to goodwill; and
    - (g) indirect or consequential loss.
  - (d) The following types of loss and specific loss are not excluded:
    - (a) sums paid by the Customer to Metalcraft pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
    - (b) wasted expenditure;

- (c) additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
- (d) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of Metalcraft. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, Metalcraft's personnel, regulators and customers of the Customer.

13.8 Metalcraft has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.9 This clause 13 shall survive termination of the Contract.

#### 14. Termination

- 14.1 Without affecting any other right or remedy available to it, either 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 the Contract and (if such breach is remediable) fails to remedy that breach within [14] days after receipt of notice in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.



- 14.2 Without affecting any other right or remedy available to it, Metalcraft may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
  - (b) there is a change of Control of the Customer.
- 14.3 Without affecting any other right or remedy available to it, Metalcraft may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Metalcraft if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), or Metalcraft reasonably believes that the Customer is about to become subject to any of them.

## 15. Consequences of termination

- 15.1 On termination of the Contract:
- (a) the Customer shall immediately pay to Metalcraft all of Metalcraft's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Metalcraft shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of Metalcraft Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Metalcraft may enter the Customer's premises or facilities 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.
- 15.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 16. Force majeure

- 16.1 Provided it has complied with clause 16.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in

the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 16.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 16.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 16.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 1 week's written notice to the Affected Party.

## 17. General

### 17.1 Assignment and other dealings

- (a) Metalcraft may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Metalcraft.

### 17.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by fax to its main fax number or sent by email to the address specified in the Order.
- (b) Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
    - (b) 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 at the time recorded by the delivery service; and
    - (c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(b)(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
  - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 17.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or

negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

**17.7 Third party rights.**

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**17.8 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 parties (or their authorised representatives).

**17.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

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