



Terms and Conditions

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.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.7.

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

Customer: the person, entity or firm who purchases the Goods and/or Services from Shade Zone.

Force Majeure Event: has the meaning given to it in clause 12.

Goods: the goods (or any part of them) set out in the Shade Zone's final quotation or order confirmation and any Specification.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service 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 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.

Services: the services, supplied by Shade Zone to the Customer as set out in the final quotation and/or order confirmation and Specification.

Shade Zone: S Zone UK Limited.

Specification: any specification for the Goods and Services, including any relevant plans or drawings, which are agreed in writing by the Customer and Shade Zone.

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 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** 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.
- 2.2** Any samples, drawings, advertising issued by Shade Zone and any illustrations or descriptions of the Goods or Services contained in Shade Zone's catalogues or brochures are issued 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.
- 2.3** Any quotation given by Shade Zone is subject to a site survey and confirmation of measurements and materials and may be varied by Shade Zone. Shade Zone reserves the right to issue a revised quotation. A quotation will only be valid for the time period specified on the quotation. The Contract will be formed upon Shade Zone's acceptance of the Customer's request to proceed with the quotation and the Customer's payment of any required deposit.

3. Supply of Goods and Services

- 3.1** Shade Zone shall deliver the Goods to the location set out in the final quotation, order confirmation or such other location as the parties may agree. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the delivery location.
- 3.2** Any dates quoted for delivery of the Goods and the provision of the Services are approximate only, and time is not of the essence. Shade Zone shall not be liable for any delay that is caused by a Force Majeure Event or the Customer's failure to provide Shade Zone with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Services.
- 3.3** Shade Zone 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.
- 3.4** Shade Zone reserves the right to amend the Specification if necessary in order to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Goods or Services, and Shade Zone shall notify the Customer in any such event. Any measurement or description provided in the Specification is approximate only.
- 3.5** To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer (including any artwork or logos supplied by the Customer), the Customer shall indemnify Shade Zone 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 Shade Zone arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Shade Zone's use of the Specification. This clause shall survive the termination of the contract.
- 3.6** Shade Zone shall not be liable for any errors or omissions in any Specification provided or agreed by the Customer.

4. Quality of Goods and Services

- 4.1** Shade Zone warrants to the Customer that the Services will be provided using reasonable care and skill.

- 4.2** Shade Zone warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- (a) subject to clause 3.4, conform in all material respects with their description and any applicable 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 Shade Zone.
- 4.3** Subject to clause 4.4, Shade Zone shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods 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 4.2;
 - (b) Shade Zone is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by Shade Zone) returns such Goods to Shade Zone's place of business at the Customer's cost.
- 4.4** Shade Zone shall not be liable for the Goods' failure to comply with the warranty in clause 4.2 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.3;
 - (b) the defect arises because the Customer failed to follow Shade Zone's oral or written instructions as to the storage/location, installation, commissioning, use or maintenance of the Goods or (if there are none) good practice;
 - (c) the defect arises as a result of Shade Zone following any instruction, drawing, design or Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of Shade Zone;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or environmental or weather conditions; or
 - (f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.5** Except as provided in this clause 4, Shade Zone shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.2.
- 4.6** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Shade Zone.
- 5. Title and risk**
- 5.1** The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2** Title to the Goods shall not pass to the Customer until Shade Zone receives payment in full (in cash or cleared funds) for the Goods and Services. 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 Shade Zone's property;
 - (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Shade Zone's behalf from the date of delivery;

- (c) not remove, deface or obscure any identifying mark on the Goods;
- (d) notify Shade Zone immediately if it becomes subject to any of the events listed in clause 10.1(b); and
- (e) give Shade Zone such information relating to the Goods as Shade Zone may require from time to time.

5.3 If the Customer fails to pay for the Goods and/or Services when due, Shade Zone may at any time:

- (a) require the Customer to deliver up all Goods in its possession; and
- (b) 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. Customer's obligations

6.1 The Customer shall:

- (a) ensure that the terms and details of the quotation, any order confirmation and Specification are complete and accurate;
- (b) co-operate with Shade Zone in all matters relating to the Services;
- (c) provide Shade Zone, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Shade Zone to provide the Goods and Services;
- (d) provide Shade Zone with such information and materials as Shade Zone may reasonably require in order to supply the Goods and Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Goods and Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services and the installation of the Goods before the date on which the Services are to start; and
- (g) comply with any additional obligations as required by Shade Zone.

6.2 If Shade Zone'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, Shade Zone shall 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 in each case to the extent the Customer Default prevents or delays Shade Zone's performance of any of its obligations;
- (b) Shade Zone shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Shade Zone's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- (c) the Customer shall reimburse Shade Zone on written demand for any costs or losses sustained or incurred by Shade Zone arising directly or indirectly from the Customer Default.

7. Charges and payment

7.1 The price for Goods and Services shall be the price set out in Shade Zone's invoice(s).

7.2 Shade Zone reserves the right to:

- (a) increase the price of the Goods and Services, by giving notice to the Customer at any time before the supply of the Goods and Services, to reflect any increase in the cost of the supply of the Goods and Services to Shade Zone that is due to:
 - (a) any factor beyond the control of Shade Zone (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 Specification; and
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Shade Zone adequate or accurate information or instructions in respect of the Goods.
- (b) amend or reissue any quotation or invoice in order to rectify any genuine error or mistake in relation to the pricing of the Goods or Services.

7.3 The Customer shall pay each invoice submitted by Shade Zone:

- (a) within the time limits set out in the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Shade Zone, and

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

7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time, unless otherwise stated.

7.5 If the Customer fails to make a payment due to Shade Zone under the Contract by the due date, then, without limiting Shade Zone's remedies under clause 10 (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 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%.

7.6 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).

8. Intellectual property rights

8.1 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 Shade Zone.

8.2 The Customer grants Shade Zone a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Shade Zone for the term of the Contract for the purpose of providing the Goods and Services to the Customer.

9. Limitation of liability

9.1 Shade Zone has obtained insurance cover in respect of its own legal liability. The limits and exclusions in this clause reflect the insurance cover Shade Zone has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

9.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and

- (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).

9.3 Subject to clause 9.2, Shade Zone's total liability to the Customer shall not exceed £1 million. Shade Zone's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

9.4 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.
- (g) Indirect or consequential loss.

9.5 Shade Zone has given commitments as to compliance of the Goods and Services with relevant specification in clause 4. 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 Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.5 This clause 9 shall survive termination of the Contract.

10. Termination

10.1 Without affecting any other right or remedy available to it, Shade Zone 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 commits any other material breach of its obligations under Contract; or
- (b) the Customer takes any step or action in connection with its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, being wound up, having a receiver appointed to any of its assets or ceasing to carry on business, if applicable.

10.2 Without affecting any other right or remedy available to it, Shade Zone may suspend the supply of Services or deliveries of Goods under the Contract or any other contract between the Customer and Shade Zone 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 10.1(b), or Shade Zone reasonably believes that the Customer is about to become subject to any of them.

11. Consequences of termination

11.1 On termination of the Contract the Customer shall immediately pay to Shade Zone all of Shade Zone's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Shade Zone shall submit an invoice, which shall be payable by the Customer immediately on receipt.

11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

12. Force majeure

Shade Zone shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (**Force Majeure**).

13. General

13.1 Assignment and other dealings. Shade Zone may at any time assign, subcontract, delegate or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign or deal in any other manner with any of its rights and obligations under the Contract without the written consent of Shade Zone.

13.2 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. 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.

13.3 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.

13.4 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.

13.5 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.

13.6 Third parties rights. 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.

13.7 Variation. Shade Zone reserves the right to vary these Conditions from time to time.

13.8 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.

13.9 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.