

## Concept Sign and Display Ltd – Standard Terms and Conditions of Business

1. Definitions
 

**"Concept"** means Concept Sign and Display Ltd (company number 03522655) whose registered office is at 22 Gas St, Birmingham B1 2JT;

**"Confidential Information"** means any and all information acquired by the Customer about Concept's business including but not limited to any and all information relating to Concept's business matters, finances, customers, suppliers, ideas, strategies, concepts, methodologies, inventions, processes, formulae, products, software and programmes and/or given by Concept to the Customer and/or generated by the Customer from the Confidential Information;

**"Contract"** means any contract between the Company and the Customer for the sale of Products and/or the provision of the Services incorporating these Conditions, the Contract Summary and any non-disclosure agreement between the parties;

**"Contract Summary"** means the front sheet(s) of these terms and conditions entitled contract summary which sets out the terms of the agreement between Concept and the Customer;

**"Customer"** means the customer stated in the Contract Summary;

**"Group Company"** means any holding company or subsidiary of the Customer from time to time or any company under common control with the Customer and for this purpose "control" shall mean the power to direct the management and policies of the Customer, directly or indirectly, whether through ownership of voting securities, by contract or otherwise;

**"Liability"** means actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), debts, demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities;

**"Normal Working Hours"** means 9.00 am to 5.30 pm on any day which is not a Saturday, Sunday or bank or public holiday in England;

**"Practical Completion"** means the operational availability of the Products in accordance with any specification attached to the Contract Summary but excluding any minor faults which do not affect the operational availability of the Products, evidenced by the signature of a commissioning certificate by the Customer or Concept's engineer;

**"Products"** means any products ordered from Concept by the Customer or to be supplied by Concept to the Customer and any products and/or materials which are to be utilised in the performance of the Services and in which title is intended to pass to the Customer;

**"Services"** means the services and/or work to be performed by Concept for the Customer but excluding any content management service and/or technical support service;

**"Site"** means the site for installation of the Products set out in the Contract Summary;

**"Training"** means the training described in the schedule entitled Training Specification annexed to these Conditions (if any); and

**"Working Day"** means any day from 9.00 am until 5.30 pm which is not a bank or public holiday in England.
2. Formation of Contracts
  - 2.1 All Contracts made between Concept and the customer ("Customer") shall be deemed to incorporate these Conditions.
  - 2.2 These Conditions shall not govern any contract between the Customer and Concept in relation to the provision of content management services and/or technical support services.
  - 2.3 No variation of and/or addition to these Conditions shall be binding on Concept and/or form part of any Contract unless made or specifically accepted and signed by a director of Concept in writing.
  - 2.4 Concept's employees, sub-contractors and/or agents are not authorised to make any representations and/or warranties concerning the Products and/or Services unless confirmed by a director of Concept in writing.
  - 2.5 No oral warranties or representations shall bind Concept (unless given by a director of Concept).
  - 2.6 The Customer acknowledges that it does not rely on any representation and/or warranty which has not been made in accordance with these Conditions.
  - 2.7 These Conditions (together with the Contract Summary) are the only terms and conditions on which Concept agrees to contract with the Customer and they shall govern the Contract to the entire exclusion of any other express or implied terms and conditions. Where there is an inconsistency between these Conditions and those in the Contract Summary these Conditions shall prevail.
- 2.8 The Contract contains the whole agreement between the parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in the Contract shall exclude liability for any fraudulent statement or act made prior to the date of the Contract.
- 2.9 Orders placed by the Customer leading to the Contract which are not expressed to be subject to these Conditions shall still be subject to them.
- 2.10 These Conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Customer.
- 2.11 Concept shall have the right to refuse to accept any orders placed for Products and/or Services.
- 2.12 The Customer shall be responsible for the accuracy of any order and for giving Concept any information necessary for Concept to perform the Contract.
- 2.13 The Contract between Concept and the Customer shall come into effect on Concept's acceptance of the Customer's order.
- 2.14 No Contract shall come into effect until the Customer's order has been accepted in writing by an authorised representative of Concept.
3. Variations to the Products and/or Services
  - 3.1 For the purposes of these Conditions a variation to Products and/or Services to be carried out by Concept pursuant to any Contract shall include without limitation any alteration or modification of or to the design, quality or quantity of the Products and/or Services the subject of the Contract (including without limitation any addition to, omission from or substitution of any Products and/or Services or alteration to the kind of materials to be used).
  - 3.2 Any request by the Customer to Concept to carry out any variation to the Products and/or Services to be carried out by Concept pursuant to the Contract shall be in writing and if Concept in its sole discretion is prepared and agrees to carry out the said variation such an agreement shall be on the basis that:
    - 3.2.1 the cost of the variation shall be assessed by Concept and any additional cost thereby caused shall be notified to the Customer by Concept and such additional cost shall be added to and shall form part of the price;
    - 3.2.2 where Concept is not able to assess all or any part of the cost of the variation before the Products and/or Services are delivered and/or carried out, Concept shall be entitled to charge the Customer on the basis of the materials and time involved (including without limitation any relevant overtime premium for any work undertaken outside Normal Working Hours and any sub-contractor's costs which Concept in its sole discretion deems reasonable or necessary to incur).
4. Prices
  - 4.1 Unless otherwise expressly stated in writing by Concept orders are accepted on the basis that:
    - 4.1.1 the price of the Products and/or the Services shall be as shown in the Contract Summary (as varied from time to time in accordance with Conditions 4.1.3, 4.1.4 and/or 4.1.5) or, if not stated in the Contract Summary, as shown in Concept's price list current at the date of the acceptance of the order;
    - 4.1.2 the price of the Products and/or the Services stated in the Contract Summary is the net price of the Products and/or Services (after deduction of any discounts) for delivery in accordance with the Contract;
    - 4.1.3 Concept is entitled without prior notice to adjust upwards or downwards the price of the Products and/or the Services to take into account any increase in the cost of producing the Products and/or performing the Services which is due to any factor beyond its control, such as, without limitation, alteration of import or export duties or tariffs or any relevant tax and/or any increase in the cost of labour, materials or costs of manufacture including any such fluctuation resulting from changes in specification made at the request of the Customer;

- 4.1.4 Concept is entitled to adjust the price of the Products and/or Services to include an overtime premium where, at the Customer's request, Concept undertakes work on the Customer's behalf outside Normal Working Hours; and
- 4.1.5 if the currency denominating the price of the Products and/or Services changes in value against the British Pound Sterling by more than 3% from the date of the quotation until the date of delivery of the Products and/or the commencement of performance of the Services.
- 4.2 Concept's prices are exclusive of any applicable VAT for which the Customer shall additionally be liable.
- 4.3 Except as otherwise stated in the Contract Summary, the prices stated in the Contract Summary include Concept's charges (if any) for transport, packaging and insurance.
- 4.4 A quotation shall, prior to acceptance and unless otherwise stated, be valid for a period of 30 days from the date of the quotation, after which period the quotation will lapse. Quotations may be withdrawn by Concept at any time during this period by oral or written notice. Concept may increase prices stated in any quotation in accordance with Condition 4.1.
- 4.5 The prices agreed between the parties are based on the assumption that the Site is suitable for the installation and maintenance of the Products without any further works being required to the Site. If any works are required to make the Site suitable for the installation and/or maintenance of the Products, Concept may:
- 4.5.1 terminate the Contract and charge the Customer on a quantum meruit basis for that part of the Products and/or Services supplied at Concept's rates from time to time and for any Liabilities incurred by Concept as a result of such termination including but not limited to any Liabilities incurred by Concept to any manufacturer of the Products and/or any subcontractor of Concept. Concept may invoice the Customer accordingly and such monies shall be immediately due for payment; or
- 4.5.2 carry out such additional works at Concept's rates from time to time or such additional cost as is agreed in writing by an authorised representative of each party.
- 5. Payment**
- 5.1 Unless otherwise expressly stated in the Contract Summary prices are due and payable in British Pounds Sterling within 14 days from the date of the invoice.
- 5.2 If the Customer fails to make payment in full on the due date then (without prejudice to any other rights of Concept including the right to recover the value of work in progress):
- 5.2.1 the Customer shall, without any need for Concept to give notice pay Concept interest on the amount for the time being unpaid at the rate of 4 per cent per annum above the current base rate of the Bank of England from time to time calculated from the date of due payment until the date of actual payment as well after as before any judgement;
- 5.2.2 Concept shall be entitled to suspend all or any other deliveries to be made and/or Services to be performed under the Contract or any other contract with the Customer and in such event the Customer shall not in any respect be released from its obligations to Concept under the Contract or any such other contract;
- 5.2.3 instead of suspension in accordance with Condition 5.2.2 Concept shall be entitled to terminate the relevant Contract or any other contract with the Customer in accordance with Condition 25 and without limiting the Concept's rights and remedies in relation to any such non-payment, claim damages from the Customer; and
- 5.2.4 Concept may retain such sums paid by the Customer to Concept as are equal to the value of Concept's work in progress and all Liabilities suffered by Concept arising from the Customer's failure to pay and any resultant cancellation, termination and/or suspension of the Contract to include but not limited to any sums claimed from Concept by any sub-contractor.
- 5.3 If any Services are cancelled or this Contract terminated or performance is suspended before completion of the Services, Concept shall be entitled to be paid on a quantum meruit basis for that part of the Services performed and any Liabilities suffered by Concept arising from such cancellation, termination and/or suspension, to include but not limited to any sums claimed from Concept by any sub-contractor. Concept may invoice the Customer accordingly and such monies shall be immediately due for payment.
- 5.4 Any monies received by Concept from the Customer may be applied by Concept at its option against any administrative costs and/or interest charged prior to application against any principal sums due from the Customer against which it may be applied in any order.
- 5.5 Concept shall be entitled to invoice the Customer for the Products and/or Services at such times as are stated in the Contract Summary.
- 5.6 Where transport, packaging and insurance are stated separately from the price in the Contract Summary they will nevertheless be payable by the Customer at the same time as if they formed part of the price and shall be treated as such.
- 5.7 Time for payment is of the essence.
- 5.8 The Customer shall pay all sums due to Concept under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 5.9 Payment shall not be deemed to be made until Concept has received either cash or cleared funds in respect of the full amount outstanding.
- 6. Despatch**
- 6.1 Whilst Concept will use reasonable endeavours to keep to any estimated despatch, delivery, performance and/or practical completion date, such dates are estimates only and are not guaranteed. Time is not of the essence in relation to such dates. They are also subject to any matter beyond Concept's reasonable control.
- 6.2 Concept shall have no liability whatsoever for any Liability arising from any delay howsoever the same shall have been caused.
- 6.3 Concept is entitled in its sole discretion to despatch the Products in more than one instalment on different days and to install the Products on more than one visit.
- 6.4 The Customer shall have no right to reject Products and/or Services and shall have no right to rescind for late delivery and/or performance unless the due date for delivery and/or performance has passed and the Customer has served on Concept a written notice requiring the Contract to be performed and giving Concept not less than 30 days in which to do so and the notice has not been complied with.
- 6.5 The Customer shall allow and/or procure that Concept and Concept's employees, agents, subcontractors and/or representatives have free right of access to the address for the purpose of delivering the Products and/or performing the Services at such times as are required by Concept.
- 6.6 If the Customer refuses to take delivery of any Products and/or to allow performance of the Services then Concept shall be entitled to withhold delivery and/or performance of any other Products and/or Services and to treat the Contract as repudiated by the Customer.
- 6.7 Concept is entitled at its sole discretion and without prior notice to the Customer to store at the Customer's cost and risk and to insure at the Customer's cost Products which are ready for delivery:
- 6.7.1 where the Customer advises Concept or Concept in its sole discretion deems that the Site will not be ready and/or suitable for the installation of the Products pursuant to the Contract on the agreed date;
- 6.7.2 where in Concept's sole discretion Concept deems that the Customer has failed to give adequate or reasonable instructions and/or sufficient notice to Concept for delivery and/or installation;
- 6.7.3 where the Customer has not paid all sums due to Concept; or
- 6.7.4 where the Products are not collected by the Customer by any collection time agreed between Concept and the Customer.
- 6.8 If the Customer does not:
- 6.8.1 make the Site ready and suitable for the installation of the Products;
- 6.8.2 provide Concept with adequate and reasonable instructions and sufficient notice for delivery and/or installation of the Products; and/or
- 6.8.3 collect any Products stored in accordance with Condition 6.7;
- within 30 days of the date the Products are first stored by Concept, Concept shall be entitled to dispose of, sell and/or destroy the Products in Concept possession and to discharge any sums due to Concept under the Contract or any other contract between Concept and the Customer.
- 6.9 The risk in the Products shall pass to the Customer at the time of delivery. Delivery shall be deemed to occur (unless otherwise stated on the Contract Summary):
- 6.9.1 at the time such Products arrive at the Site; or
- 6.9.2 after the expiration of 3 working days after the Customer has been notified of it, if the Products are available for collection from Concept by the Customer.

- 7. Site For Services**
- 7.1 The Customer will ensure and/or procure there is sufficient unloading space, facilities, equipment, access to power supplies and supply of power to allow the Services to be performed.
- 7.2 The Customer will ensure and/or procure that the Site is cleared and prepared before the Services are due to commence.
- 7.3 Unless otherwise stated in the Contract Summary, Concept will provide such access equipment as is required in order for Concept to install, commission and maintain the Products.
- 8. Postponement**
- 8.1 Concept may comply with reasonable requests by the Customer for postponement of delivery of the Products and/or performance of the Services.
- 8.2 Where delivery of the Products and/or performance of the Services is postponed at the Customer's request then the Customer shall indemnify and keep indemnified Concept on a full indemnity basis against any and all Liabilities incurred by Concept arising from such postponement, including charges for storage, transportation and insurance and any Liabilities incurred by Concept to any sub-contractor of Concept as a result of such postponement. In addition the Customer shall be obliged to pay for the Products and/or Services as if delivery and/or performance had not been postponed.
- 9. Specification**
- 9.1 Any specification supplied by Concept to the Customer shall only be approximate unless stated on Concept's quotation or agreed in writing by a director of Concept.
- 9.2 The quantity, quality, description and/or specification for the Products and/or the Services shall be that set out in the Contract Summary.
- 9.3 The Customer is responsible for checking the Contract Summary and satisfying itself that any specification for the Products and Services in the Contract Summary given is accurate and adequate for the purpose for which the Products and/or Services will be used and the Site.
- 9.4 If there is an error in the Contract Summary then, where that error is material and it has been relied upon by the Customer, the Customer may cancel that part of the Contract which is affected by the error without Liability due to the cancellation.
- 9.5 Concept shall have no Liability for errors in any specification or details supplied by the Customer and the Customer is solely responsible for their accuracy.
- 9.6 Details and/or specifications in brochures, proposals and price lists produced by Concept are intended as a guide only and only give a general approximation of the Products and/or Services.
- 9.7 The Customer agrees to indemnify and keep indemnified Concept against any and all claims, losses, expenses, proceedings, actions, awards, liabilities, costs (including legal costs on a full indemnity basis and increased administration costs) and any other losses and/or liabilities arising out of Concept's use of specifications, details and/or drawings supplied by the Customer.
- 9.8 Concept reserves the right to make changes to the specification of the Products and/or Services as required from time to time by law, applicable safety requirements and/or manufacturing requirements provided that such changes do not have a material adverse effect on the quality and/or performance of the Products and/or the Services.
- 9.9 If Concept does make changes to the specification of the Products and/or Services which have a material adverse effect then the Customer shall have the right to cancel the Contract without Liability.
- 10. Customer Warranties**
- 10.1 The Customer warrants to Concept that:
- 10.1.1 the Customer owns the Site, or has sufficient permissions, approvals, licences, consents, authorities and/or interest in the Site, to grant permission to Concept, Concept's employees, agents, subcontractors and/or representatives to install, maintain and support the Products and to perform the Services at the Site; and
- 10.1.2 the Site is suitable for the installation, maintenance and support of the Products and performance of the Services.
- 10.2 The Customer must supply all such documentation and/or information as Concept requires in order to verify the warranties set out in Condition 10.1 including but not limited to a structural engineer's report as to the suitability of the Site if required by Concept.
- 10.3 The Customer shall be responsible for the purchase of any Site or any interest in any Site, including but not limited to the purchase price and/or any rent payments and any associated expenses and fees.
- 11. Electrical Supplies and Connections relating to Illuminated Signs and Digital Signs**
- 11.1 Unless otherwise stated on the Contract Summary, in the case of illuminated signs and digital signs the Customer must provide all power supplies and data connections necessary for the proper operation of such signs, including but not limited to electrical supply, any data cabling, internet connections and TV aerial feeds and must make final connections between the Products and such power supplies and data connections and ensure that such connections are properly made and certified by appropriately qualified and experienced electrical contractors at no cost to Concept. At Concept's request, the Customer shall immediately provide Concept with a copy of all certifications provided to the Customer in relation to such final connections.
- 12. Reservation of Title**
- 12.1 Until all sums due to Concept on any amount whatsoever in relation to the Contract and any other agreement between Concept and the Customer have been paid to Concept in full in cash or cleared funds:
- 12.1.1 all legal and equitable title to the Products shall remain with Concept and Concept shall be entitled to repossess the Products and Concept may and is hereby permitted by the Customer to enter any premises of the Customer for the purpose of dismantling, removing and repossessing the Products;
- 12.1.2 the Customer shall procure that any owner and/or tenant of the Site provides Concept with the right to enter the Site at any time for the purpose of dismantling, removing and/or repossessing the Products;
- 12.1.3 the Customer shall keep the Products insured for the price at which the Products were sold to the Customer against all normal risks and shall procure that Concept's interest is noted on such policy of insurance and hold any proceeds of such policy of insurance in relation to the Products on trust for Concept upon receipt of the same. Any monies received from the Customer by Concept in accordance with this Condition shall not discharge the Customer's liability to pay the price for the Products plus interest accrued but shall be set off against any such liability;
- 12.1.4 should the Products be converted into a new product, whether or not such conversion involves the a mixture of any other products or thing whatsoever, the conversion shall be deemed to have been effected on behalf of Concept; and
- 12.1.5 any proceeds from any disposal of the Products or of any such new product by the Customer shall to the extent of any sums due to Concept be held on trust for Concept absolutely in a separate bank account and Concept shall have the right to trace such proceeds according to the principles in *In re Hallett's Estate* (1880) CH D 696.
- 12.2 If Concept considers the credit rating of the Customer to be such that the Customer may not be able to pay all sums due to Concept in relation to the Contract, Concept shall be entitled to repossess the Products and Concept may and is hereby permitted by the Customer and enter any premises of the Customer for the purpose of dismantling, removing and repossessing the Products.
- 13. Acceptance**
- 13.1 If Concept only supplies Products, and no Services, to the Customer, the Customer shall be deemed to have accepted the Products once the Customer has had a reasonable time to inspect them following delivery. Concept and the Customer acknowledge that a reasonable time to inspect the Products shall be within 7 days of the date of delivery of such Products.
- 13.2 If Concept supplies Products and Services to the Customer the Customer shall be deemed to have accepted any Products and/or Services on Practical Completion.
- 14. Planning Permission**
- 14.1 Unless otherwise stated in the Contract Summary, the Customer shall obtain planning permission, consent and/or approval and/or any structural survey for the installation of the Products.
- 14.2 The Customer shall provide all such documentation and/or information as Concept requires to evidence that such planning permission, consent and/or approval has been properly obtained and remains in force.
- 14.3 If the Customer does not provide all such documentation and information as Concept requests in accordance with Condition 14.2 or fails to obtain any such permission, consent and/or approval and/or structural survey (in whole or in part), Concept may terminate the Contract and charge the Customer on a quantum meruit basis for that part of the Products and/or Services supplied for such works at Concept's rates from time to time and any Liabilities incurred by Concept as a result of such termination including but not limited to any Liabilities incurred by Concept to any manufacturer of the Products and/or any subcontractor of Concept.

- Concept may invoice the Customer accordingly and such monies shall be immediately due for payment.
- 15. General Liabilities**
- 15.1 Concept will not manufacture any Products. The Products are manufactured by third party manufacturers. Concept shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to Concept by such manufacturers in respect of the Products subject to any burdens and/or conditions attached to such warranty or guarantee.
- 15.2 Other than its obligations in Condition 15.1, Concept gives no warranty or guarantee in respect of Products where Concept is not the manufacturer of such Products.
- 15.3 Subject to Condition 15.4, the Company guarantees that the Services (but not Products used and/or installed in the Services or any training) will be free from defects in workmanship for a period of 12 months from Practical Completion.
- 15.4 The Company shall be under no Liability in respect of any defect in the Services arising which is caused by:
- 15.4.1 any drawing, design, specification or material supplied by the Customer;
- 15.4.2 the incorporation and/or use of any materials and/or components supplied by the Customer in the Products and/or Services;
- 15.4.3 fair wear and tear, wilful damage, negligence, improper, incorrect and/or abnormal working or operating conditions, failure to follow Concept's instructions (whether oral or in writing), misuse, abnormal use or alteration, servicing or repair of the Products and/or Site and/or using the Products with equipment not approved and/or recommended by Concept in writing;
- 15.4.4 any mechanical, chemical, electrolytic and/or other damage which is not due to a defect in the Products and/or Services as appropriate;
- 15.4.5 any vandalism;
- 15.4.6 any power surge;
- 15.4.7 any negligence by the customer or any third party;
- 15.4.8 the unavailability of access to Site;
- 15.4.9 any intervention of any government or regulatory authority; and/or
- 15.4.10 any structural defect or failure of the Site, save to the extent that any defect arises from any structure constructed by Concept.
- 15.5 If any Services prove to be defective and are covered by the guarantee in Condition 15.3 above then the Company shall at its sole option either re-perform such Services or refund the price for such Services. Provided the Company complies with this Condition the repair, replacement and/or re-performance shall be the Customer's sole remedy in respect of claims under the guarantee under Condition 15.3 above.
- 15.6 Any Services re-performed in accordance with Condition 15.5 above shall only be guaranteed in accordance with this Condition 15 for the unexpired term of the guarantee pursuant to which such Services were re-performed.
- 15.7 Any work carried out by the Company which is not covered by the guarantee in Condition 15.3 above will be charged for.
- 15.8 The Company agrees that it will repair, replace or re-perform defective Services covered by the guarantee in Condition 15.3 above within a reasonable time of being notified by the Customer of the defect.
- 15.9 The Company shall have no Liability to the Customer under the guarantee in Condition 15.3 above unless any defect is notified to the Company within 14 working days of the defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by the Customer.
- 15.10 The guarantee in Condition 15.3 above will not apply if the Customer has not paid in full for the relevant Services on the due date for payment.
- 16. Limitations On Liability**
- 16.1 Concept shall have no Liability for defective Products and/or Services where the defect has been caused or contributed to by the Customer to the extent so contributed.
- 16.2 Concept shall have no Liability to the Customer if the price for the Products and/or the Services has not been paid in full by the due date for payment.
- 16.3 Concept shall have no Liability to the Customer for defective Products and/or Services unless the event is notified to Concept within the appropriate time limit set out in this Contract.
- 16.4 Concept shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Products and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 16.5 The Customer shall give Concept a reasonable opportunity to remedy any matter for which Concept is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so Concept shall have no Liability to the Customer for that matter.
- 16.6 Concept shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against Concept.
- 16.7 Concept shall have no Liability for any matters which are outside its reasonable control.
- 16.8 Concept shall have no Liability to the Customer for any:
- 16.8.1 consequential losses;
- 16.8.2 loss of profits and/or damage to goodwill;
- 16.8.3 economic and/or other similar losses;
- 16.8.4 special damages and indirect losses;
- 16.8.5 loss of and/or loss of use of and/or corruption of data and/or recordings;
- 16.8.6 loss of, damage to and/or loss of use of software; and/or
- 16.8.7 business interruption, loss of business, contracts, opportunity and/or production.
- 16.9 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.
- 16.10 Concept's total Liability to the Customer in relation to any one claim shall not exceed 125% of the total price of the Products and Services supplied under this Contract.
- 16.11 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 16.11.1 Liability for breach of contract and/or under this Contract;
- 16.11.2 Liability in tort (including negligence);
- 16.11.3 Liability for breach of statutory duty; and
- 16.11.4 Liability for breach of Common Law.
- except Condition 16.10 above which shall apply once only in respect of all the said types of Liability.
- 16.12 Concept shall not vet the content of any data to be displayed on the Products and shall have no Liability for any claims made against the Customer in relation to any data displayed on the Products.
- 16.13 Nothing in the Contract shall exclude or limit the Liability of Concept for death or personal injury due to its negligence or any Liability which is due to Concept's fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
- 16.14 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 16.15 The limitations in this Contract are necessary in order to allow Concept to provide the Products and/or the Services at its current prices.
- 16.16 If the Customer requires greater protection then Concept may agree to modify the limitations and extend its guarantees in return for the payment of a higher price for the Products and/or Services.
- 17. Health and Safety**
- 17.1 The Products are sold on condition that:
- 17.1.1 the Customer carries out such tests and examination of the Products as are reasonably practicable to ensure that when used the Products are without risk to health and comply with all local laws and regulations;
- 17.1.2 the Customer shall, if so requested by Concept, enter into a written undertaking to take such steps as may be specified by Concept relating to such tests and examination; and

- 17.1.3 the Customer shall indemnify Concept and keep Concept indemnified on a full indemnity basis against all Liabilities arising from the Customer's failure in whole or in part to carry out any such tests or examinations required under Conditions 17.1.1 and 17.1.2 above.
- 17.2 Concept shall draft a method statement and risk assessment in relation to the installation. The Customer shall review such statement and risk assessment and shall, if the Customer is satisfied that the statement and risk assessment comply with any relevant laws and regulations, approve such statement.
- 18. Intellectual Property Rights**
- 18.1 The Customer acknowledges and agrees that the Company may display such logos, trademarks, trade names and/or promotional materials on the Products and/or the Site as the Company in its discretion considers appropriate. The Customer shall not deface, alter and/or delete any logos, trademarks, trade names and/or promotional materials displayed on the Products and/or the Site.
- 18.2 Concept shall be free to utilise for the benefit of its other customers any skill and/or know-how that it may develop or acquire in the performance of the Contract.
- 19. Confidentiality**
- 19.1 The Customer shall not directly and/or indirectly use and/or disclose Concept's Confidential Information disclosed to it whether before or after the date of this Contract except in the proper performance of this Contract.
- 19.2 The obligations of confidentiality and non-use set out above shall continue indefinitely except they shall not apply to information:
- 19.2.1 which the Customer proves by documentary evidence produced within 28 days of disclosure was already in its possession and at its free disposal prior to disclosure by Concept's;
- 19.2.2 which the Customer proves by documentary evidence produced within 28 days of disclosure was developed by it without reference to any Confidential Information;
- 19.2.3 which is after the date of this Contract disclosed to the Customer without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so;
- 19.2.4 which is or becomes generally available to the public through no default and/or omission on the Customer's part; or
- 19.2.5 to the extent it is required to be disclosed by law and/or the rules of any recognised stock exchange and/or regulatory authority on condition that the Customer gives Concept as much advance notice of such disclosure as possible.
- 19.3 The exceptions in Condition 19.2 above shall not apply to any combination of features merely because individual features (but not the combination itself) fall within any one or more of such exceptions.
- 19.4 At Concept's request, made at any time during the course of this Contract, and in any event upon termination of this Contract for whatever reason, the Customer will deliver up to Concept or at Concept's option destroy any and all materials containing Confidential Information in whatever medium which is in its possession, power or control.
- 19.5 The Customer will be liable under the Contract for the acts and/or omissions of any agent, employee, officer, shareholder and/or sub-contractor and/or those of any other Group Company as if they were its own acts and/or omissions under the Contract.
- 19.6 The Customer acknowledges that damages may not be an adequate remedy for breach of this Condition 19 and accordingly the Customer agrees that Concept shall be entitled to seek and obtain any injunctive and/or other equitable relief in relation to any breach of this Condition 19.
- 20. Copyright**
- 20.1 All drawings, designs, specifications, prototypes, models, plans, illustrations, discs, computer print outs and other documents prepared by Concept shall remain the property of Concept and shall be returned to it by the Customer on demand and the copyright therein shall at all times remain that of Concept. All such drawings, designs, specifications, prototypes, models, plans, illustrations, discs, computer print outs and other documents shall be treated by the Customer as confidential and the Customer shall not copy or reproduce or disclose them to any third party without the written consent of Concept.
- 20.2 In the event that Concept prepares any drawings, designs, specifications, prototypes, models, plans, illustrations, discs, computer print outs and other documents at the request of the Customer and for whatever reason the Contract is not proceeded with, Concept shall be entitled to charge to the Customer and the Customer shall pay to Concept the costs of such work as assessed by Concept.
- 21. Intellectual Property Rights Infringement Claims**
- 21.1 The Customer shall indemnify and keep indemnified Concept against any and all losses, lost profits, claims, actions, proceedings, demands, damages, penalties, costs (including increased administration and legal costs on a full indemnity basis), expenses, damages, awards and any other losses or liabilities whatsoever to which Concept may suffer as a result of work carried out by Concept in accordance with any specification, design, drawing, illustration, plan, model, prototype, disc, computer print, out or any other document of or supplied by or required by the Customer which does or may involve the infringement of any letters patent, registered design, copyright, trademark or any other intellectual property right owned by a third party.
- 21.2 If any claim is made or threatened against Concept by any third party that the work carried out by Concept in accordance with any specification, design, drawing, illustration, plan, model, prototype, disc, computer print, out or any other document of or supplied by or required by the Customer infringes any intellectual property rights of any third party, Concept shall be given control of any proceedings or negotiations in connection with the claim or threatened claim and shall be exclusively entitled to appoint and instruct legal advisers and/or counsel in connection with any such proceedings or negotiations and to determine the forum for any such proceedings. If the Customer is notified of any such claim, the Customer must:
- 21.2.1 notify Concept in writing within 7 days of the date it becomes aware of such claim;
- 21.2.2 not make any admission or settlement or do any act and/or thing which may compromise the position of Concept in relation to such claim; and
- 21.2.3 provide Concept with such assistance, information and/or authority as reasonably requested by Concept to exercise its rights under this Condition 21.
- 22. Tools**
- 22.1 Unless otherwise agreed in writing all tools, moulds, dies, patterns, or other data produced by Concept or Concept's agents and/or sub-contractors shall remain the property of Concept. Concept reserves the right to destroy any such tools, moulds, dies, patterns, or other data after the completion of the Contract for which they were made or prepared.
- 23. Force Majeure**
- 23.1 Concept shall have no Liability for any loss or damage caused by delay in performance or by non-performance of any of its obligations hereunder to the extent that any such delay and/or non-performance is occasioned by any cause whatsoever which is beyond its reasonable control including, but not limited to, Acts of God, war (whether or not declared), riots, civil commotion, fire, explosion, sabotage, malicious damage, storm, flood, earthquake, fog, subsidence, adverse weather conditions, pestilence, epidemics, legal restrictions, or acts of any government or branch or agency thereof (including without limitation any local government), non-availability of transport, strikes, lock-outs or trade disputes of whatever kind, sub-contractor delays, cessation or interruption of operation of any plant or process, failure of supply of raw materials or components or breakdown of machinery.
- 23.2 If Concept is affected by any such event then:
- 23.2.1 time for performance shall be extended for a period equal to the period that such event or events delayed such performance; and/or
- 23.2.2 Concept shall be entitled to cancel or rescind or suspend the Contract or suspend any delivery without liability for loss or damage resulting there from but only after advising the Customer in writing of the cause of the cancellation or rescission or suspension.
- 24. Sub-Contractors**
- 24.1 Concept reserves the right at its sole discretion to place any part or parts of the work with one or more sub-contractors of its sole choice.
- 24.2 The Customer shall not assign any Contract or any rights hereunder in whole or in part without the prior written consent of Concept.
- 25. Default**
- 25.1 Concept may by notice in writing to the Customer terminate any contract immediately if:
- 25.1.1 the Customer commits any breach of any of the Contract (including without limitation terms concerning the time for payment) or any other contract with Concept and on its part to be observed or performed PROVIDED that if such breach is remediable that Concept has previously given to the Customer notice thereof and the same has not been remedied by the Customer within 7 days of the date of such notice;

- 25.1.2 the Customer persistently breaches any one or more terms of the Contract;
- 25.1.3 the Customer pledges or charges any Products which remain the property of Concept's;
- 25.1.4 the Customer compounds with or negotiates for any compensation with its creditors generally or permits any judgement against it to remain unsatisfied for 7 days;
- 25.1.5 being an individual the Customer shall die, become bankrupt or have a receiving order made against him or commit any acts of bankruptcy or threaten to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Customer or by any other person in respect of any of these circumstances; or
- 25.1.6 being a company the Customer becomes insolvent, has a moratorium declared in respect of any of its indebtedness, shall call any meeting of its creditors or enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances; and/or
- 25.1.7 the Customer ceases or threatens to cease to carry on business.
- 25.2 In the event of any such termination:
- 25.2.1 Concept shall be entitled to dismantle, remove and repossess any Products which are in the possession or control of the Customer, including but not limited to any structures, and the property in which remains with Concept and for such purpose to enter by its servants or agents into and upon the premises of the Customer and/or the Site (and the Customer shall procure that any owner and/or tenant of the Site consents to any such access) and may dispose of or sell any Products found which are owned by Concept so as to discharge any sums due to Concept under this Contract or any other contract with the Customer;
- 25.2.2 the Customer automatically is no longer entitled to re-sell, use and/or part with the possession of any Products owned by Concept until the Customer has paid in full all sums due to Concept under this Contract or any other contract with the Customer unless Concept gives its express written agreement to such use and/or disposal of the Products;
- 25.2.3 Concept may withhold delivery of any undelivered Products and stop any Products in transit;
- 25.2.4 Concept may withhold the performance of any Services and cease any Services in progress;
- 25.2.5 Concept may cancel, terminate and/or suspend without Liability to the Customer any contract with the Customer;
- 25.2.6 Concept shall be entitled by notice in writing to the Customer to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Customer to Concept under the Contract or any other contract and all such amounts shall bear interest at the rate which is four percent per annum above the base rate of the Bank of England from time to time calculated from the date of the notice until actual payment;
- 25.2.7 all monies owed by the Customer to Concept shall forthwith become due and payable; and
- 25.2.8 retain such sums paid by the Customer to Concept as are equal to the value of Concept's work in progress and all Liabilities which Concept may have suffered arising out of termination of this Contract to include but not limited to any sums claimed from Concept by any sub-contractor.
- 25.3 Concept shall have a lien over all property or Products belonging to the Customer which may be in Concept's possession in respect of all sums due from the Customer to Concept.
- 25.4 Upon the termination of the Contract for any reason if any monies due to Concept from the Customer have not been paid within 14 days of such termination Concept may sell any property or Products over which it has a lien in accordance with Condition 25.2.1 above (and the Customer agrees that Concept may give good title for such property and/or Products) and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by the Customer to Concept, thirdly in payment of any principal sums owed to Concept and fourthly Concept shall account to the Customer for the remainder (if any).
- 26. General**
- 26.1 The phrase "and/or" shall mean either of the alternatives or both of the alternatives as the context requires.
- 26.2 Any obligation to "ensure" or "procure" shall be deemed to create a primary obligation and liability and not merely a guarantee or a secondary obligation and liability.
- 26.3 Any notice under this Contract shall be in writing and shall be deemed to have been duly given if delivered to the party concerned at the address set out on the Contract Summary or such other address as that party may from time to time notify in writing and shall be deemed to have been served if sent by registered post 48 hours after posting.
- 26.4 The Customer agrees to indemnify and keep indemnified Concept against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by Concept and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.
- 26.5 No waiver by Concept of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 26.6 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 26.7 All third party rights are excluded and no third party shall have any right to enforce this Contract. This shall not apply to members of Concept's group from time to time who shall, subject to Concept's consent, have the right to enforce this Contract as if they were Concept.
- These Conditions and any Contract shall be construed in accordance with the laws of England and Wales and the courts of England and Wales shall have non-exclusive jurisdiction in relation to any disputes or claims arising there from.