

BIRMINGHAM JOINERY LTD - TERMS AND CONDITIONS OF SALE

1. Definitions

- 1.1 Birmingham Joinery – Birmingham Joinery Ltd, Patrick House, Talbot Way, Small Heath, Birmingham, UK, B10 0HJ.
- 1.2 Contract - these terms and conditions and the quotation or other document agreed between the parties setting out the identity of the Customer, Specification of Goods and any specific exclusions, Target Date(s), Delivery Address and Contract Price.
- 1.3 Contract Price - the price agreed between the parties for the Goods.
- 1.4 Customer - the person, firm or company with which Birmingham Joinery contracts, as identified in the Contract.
- 1.5 Delivery Address - the address to which the parties have agreed in writing the Goods will be delivered, or in default of such agreement, the Customer's usual trading address.
- 1.6 Goods - the goods set out in the Specification.
- 1.7 Intellectual Property - any intellectual property rights including without limitation patents, registered and unregistered trademarks and service marks, registered designs, utility models, design rights, copyright or any application to register any of the same and any other rights in the nature of intellectual property in the UK or elsewhere in the world, and including the right to bring, oppose and appeal proceedings in respect of alleged infringement.
- 1.8 Specification - the specification of the Goods and any services to be provided under the Contract set out in writing in Birmingham Joinery's quotation and agreed by both parties, subject to any specific exclusions recorded.
- 1.9 Target Date(s) - any date(s) agreed between the parties on which Birmingham Joinery will endeavour to deliver the Goods or any part of them.
- 1.10 Warranty Period - the period of 12 months from the date of delivery of the Goods.

2. Basis of the Contract

- 2.1 Birmingham Joinery agrees to supply the Goods described in and in accordance with the Specification to the Customer and the Customer agrees to pay the Contract Price in accordance with the terms of the Contract.
- 2.2 Any tender or quotation provided by Birmingham Joinery shall:-
 - 2.2.1 be subject to these terms;
 - 2.2.2 not constitute a contractual offer, and a Contract shall only be formed on acceptance by Birmingham Joinery of the Customer's order;
 - 2.2.3 be valid for 30 days and may be revoked at any time.
- 2.3 These terms and conditions shall apply to all contracts for the provision of goods and/or services by Birmingham Joinery to the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any order enquiry, purchase order, procurement terms or other document. In the case of any conflict or ambiguity between the Customer's specification and the Specification set out in the quotation or other document supplied by Birmingham Joinery, the latter shall prevail.
- 2.4 Acceptance of delivery of the Goods by the Customer shall be deemed conclusive evidence of the Customer's acceptance of the Contract.
- 2.5 Birmingham Joinery may engage sub-contractors to carry out any part of its obligations under the Contract at its sole discretion and it may assign its rights and obligations under this Contract, or any of them, to any other party. The Customer may not assign its rights and obligations under this Contract without the written consent of Birmingham Joinery.
- 2.6 No contract shall be concluded between Birmingham Joinery and the Customer on these terms or otherwise except by authority of a duly authorised officer of Birmingham Joinery.
- 2.7 Any variation of these terms and conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a duly authorised officer of Birmingham Joinery.
- 2.8 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 2.9 Where delivery is agreed to be made by stages, each stage may be deemed at Birmingham Joinery's discretion to be a separate and distinct contract and no default by Birmingham Joinery in respect of any one or more stage shall entitle the Customer to reject or withhold payment in respect of any other stage.

3. Customer's responsibilities

- 3.1 The Customer will provide Birmingham Joinery with such drawings, designs, plans, information, material, copies, logos, samples, prototypes, answers to queries, licences, decisions and approvals and access to the Customer's systems, premises and staff, as may be reasonably necessary for or requested by Birmingham Joinery

to perform the Contract and deliver the Goods. The Customer is responsible for ensuring that such material and answers are accurate and complete. Birmingham Joinery shall not be required to amend or comment on any such material supplied by the Customer or any architect, contractor or other third party engaged by the Customer and shall not be responsible for any deficiency in such material.

- 3.2 The Customer will provide free of charge the following facilities to authorised personnel of Birmingham Joinery and any sub-contractors at such times not limited to the Customer's normal business hours as Birmingham Joinery requires to allow it to perform the Contract:-
 - 3.2.1 access to the Delivery Address and any facilities required to perform the Contract;
 - 3.2.2 access to the Customer's employees for information purposes.
- 3.3 The Customer will ensure that the Delivery Address is prepared and conforms with any requirements or description specified to it by Birmingham Joinery prior to commencement of installation or usage of the Goods.
- 3.4 The Customer will obtain all necessary licences or authorities that may be needed in connection with the Goods.
- 3.5 The Customer will follow any instructions of Birmingham Joinery as to the preparation, installation, use and maintenance of any Goods supplied under this Contract.
- 3.6 The Customer shall be responsible for verifying that the Specification contained in any quotation or order confirmation meets its requirements, including any design changes proposed in such Specification, and such Specification shall override any prior order enquiry or other communications. Any order placed following receipt of such Specification shall constitute acceptance of it.

4. Payment provisions

- 4.1 The Contract Price shall be agreed between the parties in writing before delivery of the Goods, failing which Birmingham Joinery shall be entitled to charge based on its normal list or commercial charges from time to time.
- 4.2 Birmingham Joinery may levy additional charges for Goods provided, or for any agreed variation to Goods supplied, in either case falling outside the Specification.
- 4.3 Birmingham Joinery reserves the right by giving notice to the Customer at any time before delivery of the Goods to increase the Contract Price if:-
 - 4.3.1 the costs to Birmingham Joinery of providing or producing such Goods increase due to any factor beyond the control of Birmingham Joinery, including increased supplier and sub-contractor charges;
 - 4.3.2 the Customer changes the Specification or agrees to any change to the Specification proposed by Birmingham Joinery;
 - 4.3.3 the Customer causes any delay;
 - 4.3.4 Goods are required by the Customer with exceptional urgency or at anti-social hours;
 - 4.3.5 the Customer fails to give Birmingham Joinery adequate or accurate information, instructions or facilities or to comply with its obligations at clause 3.
- 4.4 Unless alternative payment provisions are agreed, such as specific stage payments, Birmingham Joinery may submit an invoice or invoices at any time at or after delivery of the Goods in respect of such Goods as have been delivered to that date. Birmingham Joinery may submit an invoice for any balance of the Contract Price immediately on delivery of any balance of the Goods.
- 4.5 Invoices shall be sent or delivered to the Customer's address recorded in this Contract unless otherwise agreed.
- 4.6 All sums due under the Contract will be paid by the Customer within 30 days after the end of the month in which an invoice is raised, subject to contrary written agreement, without any deduction, set-off, counterclaim or abatement and time for payment shall be of the essence.
- 4.7 Where Birmingham Joinery is dealing with the Customer for the first time or has not yet approved credit facilities for the Customer, Birmingham Joinery may raise an invoice on a pro forma basis in advance of performance of the Contract and such invoice shall be payable with immediate effect as a pre-condition of work commencing.
- 4.8 The Contract Price does not include VAT or any similar sales tax, impost or customs duties which will be paid additionally by the Customer at the then prevailing rate.
- 4.9 The Contract Price does not include carriage, packing or insurance unless expressly stated, and such sums may be added by Birmingham Joinery to the Contract Price.
- 4.10 Unless expressly stated, the Contract Price does not include any third party costs or disbursements, and Birmingham Joinery may

levy additional charges if the Customer requires it to procure such items. When reasonably practicable, and save in the case of reasonable travelling, accommodation and subsistence expenses, Birmingham Joinery shall seek the Customer's prior consent to material disbursements. However, Birmingham Joinery reserves the right to incur chargeable disbursements without obtaining the Customer's prior approval, in the event that those are modest in relation to the Contract Price or are required with exceptional urgency.

- 4.11 No act or omission of the Customer which prevents Birmingham Joinery from delivering the Goods or continuing to perform the Contract or performing it according to any agreed time-scale, shall prevent Birmingham Joinery from raising invoices in accordance with this clause 4.
- 4.12 If the Customer fails to make any payment within the time specified in this Contract Birmingham Joinery may take any or all of the following steps:-
 - 4.12.1 suspend delivery of further Goods and provision of any further services (including any warranty or support services) whether under this Contract or any other contract or otherwise, until payment is made in full;
 - 4.12.2 impose a condition of advance payment or payment of a specified deposit on the delivery of further Goods, and invoice the same with immediate effect and for immediate payment;
 - 4.12.3 charge the Customer interest (both before and after any judgement) on the amount unpaid at the compound rate of 8% per annum from time to time until payment in full is made, and also charge the Customer for all costs and expenses (including legal costs on a full indemnity basis) incurred by Birmingham Joinery in the collection of any overdue amount;
 - 4.12.4 retain any property of the Customer then in its possession under a general lien for any payment falling due under this Contract;
 - 4.12.5 cancel the Contract and/or any part of the Contract and/or any other contract between Birmingham Joinery and the Customer.

5. Goods

- 5.1 The Goods shall be at the Customer's risk as from delivery to the Delivery Address, or in the case of collection by the Customer, from the date and time of such collection, save for later damage caused to the Goods by any negligent act of Birmingham Joinery or any of its sub-contractors, and the Customer will be responsible for insuring the Goods from the time risk passes.
- 5.2 In spite of delivery having been made, legal and beneficial title in the Goods shall not pass from Birmingham Joinery to the Customer until the Contract Price has been paid in full.
- 5.3 Notwithstanding that the Goods remain the property of Birmingham Joinery, the Customer may use the Goods in the ordinary course of its business.
- 5.4 Birmingham Joinery shall be entitled to recover the Contract Price notwithstanding that title has not passed to the Customer.
- 5.5 Until such time as title in the Goods passes to the Customer, and provided that the Customer is in default in payment or Birmingham Joinery in good faith on reasonable grounds believes the Customer is or may be insolvent or to have ceased trading, the Customer shall on request deliver up such Goods to Birmingham Joinery. If the Customer fails to do so, Birmingham Joinery may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods, using only such force as may be necessary. On the making of such request the Customer's rights under clause 5.3 shall cease.
- 5.6 The Customer shall insure and keep insured the Goods to the full Contract Price against "all risks" to the reasonable satisfaction of Birmingham Joinery until the date when property in the Goods passes, and shall whenever requested by Birmingham Joinery produce a copy of the policy of insurance.
- 5.7 Where any tooling has been prepared by Birmingham Joinery in connection with the manufacture or supply of the Goods, whether on a bespoke basis for the Customer or otherwise, and whether or not based on designs, samples or prototypes supplied by the Customer, title to such tooling shall be retained by Birmingham Joinery both before and after delivery of any Goods. Birmingham Joinery shall be entitled to retain such tooling, which may be used in relation to future orders from the Customer and otherwise at Birmingham Joinery's discretion.

6. Intellectual Property

- 6.1 Any Intellectual Property in the Goods, in any samples, prototypes, proofs, designs, drawings, plans, logos, specifications, tooling, moulds or any other material, in any packaging, in any product or brand names, and in any documentation and instructions, whether in paper or electronic form, in each case whether generic or produced on a bespoke basis by Birmingham Joinery for the Customer for purpose of this Contract, shall remain the property of Birmingham Joinery.

- 6.2 The Customer shall promptly notify Birmingham Joinery, in the event that it becomes aware of any infringement by any party of Birmingham Joinery's Intellectual Property rights in the Goods or any other material.
- 6.3 No right or licence is granted to the Customer in respect of any such material, except the right to use and resell the Goods in the ordinary course of the Customer's business, for the purpose and as otherwise anticipated by this Contract.
- 6.4 Birmingham Joinery shall not be required to assign, nor to procure the assignment or licensing, to the Customer of any Intellectual Property rights belonging to any third party.
- 6.5 To the extent that the Customer supplies Birmingham Joinery with any drawings, designs, plans, samples or prototypes or any other material in relation to this Contract, the Customer grants a licence to Birmingham Joinery to use such material for the purposes of its performance of this Contract but not otherwise.
- 6.6 The provisions of this clause 6 shall survive the termination of this Contract.

7. Delivery, timescales, suspension

- 7.1 Birmingham Joinery will be responsible at the Customer's cost for the delivery of the Goods to the Delivery Address, save where agreed to the contrary in this Contract.
- 7.2 Birmingham Joinery will use all reasonable endeavours to deliver the Goods on any Target Date(s) but such date(s) will be treated as targets only and time will not be of the essence. If no dates are specified, delivery of the Goods will be within a reasonable time of order. Any Target Dates and any agreed lead times for production and delivery shall be contingent on prompt confirmation by the Customer of its order, provision of any and all drawings, designs and any other material required for Birmingham Joinery to start production, and also on prompt compliance by the Customer with all its other obligations under this agreement. Any material delay in such provision shall automatically extend any Target Date(s) and/or agreed lead times accordingly.
- 7.3 In particular, but without limitation, Birmingham Joinery shall not be responsible for delay caused by factors beyond its control, including delays caused by the Customer, any main contractor and any other contractors, and by adverse weather conditions.
- 7.4 Birmingham Joinery reserves the right by giving notice to the Customer at any time before delivery of the Goods to change the Target Date(s) if:-
 - 7.4.1 the Customer changes or agrees to change the Specification;
 - 7.4.2 the Customer or any third party causes any delay;
 - 7.4.3 the Customer fails to give Birmingham Joinery adequate or accurate information, instructions or facilities, or fails to comply with its obligations at clause 3.
- 7.5 The Customer shall make such arrangements as are necessary to take delivery of the Goods and to receive supply of any associated services at the Delivery Address on the Target Date(s) or on such other date(s) as Birmingham Joinery notifies the Customer that delivery or supply will be made.
- 7.6 If the Customer changes the Target Date(s) of any Goods or any associated services or fails to take delivery or receive supply on the date(s) the Goods and/or such services are ready for delivery or supply or indicates to Birmingham Joinery that it will not accept delivery or supply on any date(s) agreed or notified under clauses 7.4 or 7.5 or purports to suspend delivery or supply of the whole or any material part of the Contract for any reason, Birmingham Joinery shall be entitled:-
 - 7.6.1 at the Customer's risk and expense to store the Goods at Birmingham Joinery's premises or elsewhere and to invoice for payment as if they had been delivered;
 - 7.6.2 to levy a reasonable stocking charge in addition to the Contract Price in respect of the period from that date to the actual date of delivery;
 - 7.6.3 to levy a redelivery charge;
 - 7.6.4 to invoice the total value of Goods delivered and any services performed up to the date of such event or suspension, the Contract Price for which shall then become payable immediately notwithstanding any prior contrary arrangement;
 - 7.6.5 to recover any cancellation charges payable to Birmingham Joinery's sub-contractors;
 - 7.6.6 to recover the cost of the Goods or components or services associated with the Goods ordered for the purposes of the Contract for which Birmingham Joinery has paid or is legally bound to pay;
 - 7.6.7 to recover the cost of removal from the Delivery Address of any property of Birmingham Joinery;
 - 7.6.8 to recover any other costs incurred by Birmingham Joinery in connection with the Contract or its suspension including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used;provided that on resumption of contractual performance by the Customer, reasonable credit shall be given for the value of Goods

and materials for which payment has been made by the Customer under this clause.

7.7 Birmingham Joinery shall not be liable for any claim for loss or damage to the Goods in transit unless such claim is notified in writing both to Birmingham Joinery and the carrier within 3 days of delivery of the Goods. Where the Customer accepts the Goods from the carrier without checking, Birmingham Joinery shall not be liable for such claim unless the Customer has clearly marked the delivery note "not examined".

8. Approval, defects, warranty terms

8.1 Birmingham Joinery may submit drawings, designs, specifications, plans, proofs, samples, prototypes and other material to the Customer for its specific approval as may be relevant. Within 2 working days of receipt by the Customer of such items (or such longer or shorter period as Birmingham Joinery specifies), the Customer shall notify Birmingham Joinery in writing of its approval of, or of any change or rejection of, such material. Where applicable, the Customer shall return the material duly marked approved or amended by a duly authorised person within that time period. Birmingham Joinery shall, however, be entitled to rely upon verbal or electronic approval or other instructions received from the Customer.

8.2 If no such notification is received within the period specified, the Customer shall be deemed to have accepted the item or material concerned.

8.3 The Customer shall be responsible for any specific material which it has approved, or which is manufactured to a drawing, design or specification so approved, whether such approval is express or deemed. After such approval, the Customer shall not be entitled to reject the items nor to have any defects remedied by Birmingham Joinery, whether or not they comply with the Specification, without the agreement of Birmingham Joinery, in which event Birmingham Joinery may levy reasonable additional charges for such work.

8.4 The approval of items by the Customer will constitute Birmingham Joinery's authority, where applicable within the Specification, to:

- 8.4.1 incur chargeable disbursements;
- 8.4.2 contract with third parties, whether as chargeable disbursements or acting as agent for the Customer;
- 8.4.3 purchase production materials and enter into production contracts.

8.5 As soon as reasonably practicable, and in any event within 3 days of delivery of Goods, or immediately in the event of non-delivery of any scheduled Goods, and save to the extent that material has already been approved at clause 8.1, the Customer shall notify Birmingham Joinery in writing either that it accepts the Goods and that both they and any services provided are satisfactory, in compliance with the Contract and free of defects, or a list of any alleged non-compliance or defects ("Faults") as are known to it at that time. If no such notification is received the Customer shall be deemed to have accepted the Goods and any services. After acceptance, whether deemed or otherwise, the Customer shall not be entitled to reject the Goods outright.

8.6 During the Warranty Period, the Customer shall notify Birmingham Joinery in writing as soon as reasonably practicable, and in any event within 3 days, of discovery of any alleged Faults. The Customer will, on Birmingham Joinery's request and at the Customer's expense, permit Birmingham Joinery prompt access to inspect the Goods in situ or return any allegedly defective Goods or as may be requested, a sample of the same, to Birmingham Joinery for examination.

8.7 Birmingham Joinery shall use its best endeavours to correct any Fault arising under normal use and due solely to faulty design (except where supplied by or on behalf of the Customer or approved by the Customer), materials or workmanship, which is notified to it within the Warranty Period, within a reasonable time of receiving such notification, and may at its discretion:-

- 8.7.1 carry out such work as is necessary to remedy the defect;
 - 8.7.2 take such part of the Goods as necessary away from the Delivery Address to examine the Goods or carry out repair work;
 - 8.7.3 replace all or any part of the Goods;
 - 8.7.4 refund the Contract Price or such part of it as relates to the defective Goods or any services;
- and such action shall be accepted by the Customer in full satisfaction of Birmingham Joinery's liability for the Fault concerned.

8.8 The Customer's obligations at clause 3 shall apply in relation to this clause 8, as to the original provision.

8.9 Goods which are repaired or replaced shall be warranted for the remainder of the original Warranty Period.

8.10 Birmingham Joinery may refuse to provide any warranty services or may invoice the Customer for the cost of any work or materials brought about by the Customer's notification of any Fault, where such Fault is not attributable to any act or omission of Birmingham Joinery or is attributable to:-

- 8.10.1 incorrect installation or installation by a tradesperson who is not suitably qualified or experienced;
- 8.10.2 installation in a damp or otherwise unsuitable environment;
- 8.10.3 failure to follow Birmingham Joinery's advice as to the site preparation, installation, use or care of the Goods;
- 8.10.4 misuse of the Goods by the Customer;
- 8.10.5 any modification made to the Goods, or any other action or default, by the Customer or by third party without the prior written consent of Birmingham Joinery;

8.10.6 any other matter which is not the fault of Birmingham Joinery

8.11 If any unauthorised modification is made to the Goods or the Customer continues to use them or re-sells them (or any of them) after identification of a defect, Birmingham Joinery shall not be obliged to correct any defects or provide any warranty services under this Contract.

8.12 The Customer accepts specifically that Goods must be installed strictly in accordance with Birmingham Joinery's installation guidelines and advice in order to achieve any stated or agreed level of fire resistance, and Birmingham Joinery shall not be liable for any failure caused by the Customer or its contractors failing to do so.

9. Warranties

9.1 Birmingham Joinery warrants that the Goods and any services will comply with the Specification.

9.2 Birmingham Joinery reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable legal or regulatory requirements or quality standards or which do not materially affect their quality or performance.

9.3 The above warranty does not extend to parts, materials or equipment not manufactured by Birmingham Joinery, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Birmingham Joinery.

9.4 The Customer shall be responsible for ensuring that the Goods are fit for the purpose for which it or any third party intends to use them, and covenants that the Goods will only be used for purposes for which they are sufficient and suitable.

9.5 The Customer warrants that it has not relied on any representations made by or on behalf of Birmingham Joinery or upon any descriptions, illustrations, samples, prototypes or specifications or any other material produced by or on behalf of Birmingham Joinery save for the Specification.

9.6 The Customer warrants that any drawings, designs, plans, specifications, proofs, samples, prototypes and other material which may be supplied by it to Birmingham Joinery in connection with this Contract will not infringe any intellectual property or other rights of any third party, nor will it be misleading, defamatory or otherwise unlawful, and the Customer will indemnify Birmingham Joinery in respect of any claim relating to such infringement.

10. Limitation of liability

10.1 Birmingham Joinery shall not be responsible for any Fault in the Goods or any services which is:-

- 10.1.1 not notified in writing to it within the Warranty Period;
- 10.1.2 notified to it outside the time limits set out in clause 8;
- 10.1.3 the fault of the Customer or any third party.

10.2 The terms of this Contract represent the whole agreement between the parties and all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of any goods or services under or in connection with the Contract including (without limitation) as to the condition, quality, performance or fitness for purpose of the Goods or any of them or the standard of care used in the provision of any services are expressly excluded from the Contract save for the undertakings implied by the Sale of Goods Act 1979 section 12 in respect of title to any goods.

10.3 Birmingham Joinery shall not be liable under contract, tort (including negligence) or otherwise for any loss of production, loss or corruption of data, loss of business, profits or of contracts, loss of operation time, standing labour, delayed opening time, loss of goodwill, loss of anticipated savings, nor for any indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party), damage, cost or expense of any kind whatever and however caused.

10.4 Birmingham Joinery accepts liability for death or injury caused by the negligence of Birmingham Joinery or that of its employees, agents or sub-contractors acting in the course of their engagement under this Contract, or by fraud, and such other liability which cannot be excluded by law, without limit.

10.5 In all other cases not falling within clause 10.4, Birmingham Joinery's total liability (whether in contract, tort including negligence or otherwise) under or in connection with this Contract or based on any claim for indemnity or contribution in respect of any single claim or series of connected claims shall not exceed the Contract Price paid in respect of the Goods and any services concerned.

- 10.6 In all other cases not falling within clause 10.4, no action or proceedings in relation to or arising out of this Contract (whether in contract, tort including negligence or otherwise) shall be commenced against Birmingham Joinery after the expiry of the Warranty Period.
- 10.7 Birmingham Joinery shall not be liable for any change to the Specification if the variation does not materially affect the characteristics of the Goods, and the substituted materials (if any) are of comparable quality to the originals. The Customer recognises that timber is a natural product with natural variances, textures, tones, colours and other features, and the Customer shall have no claim in respect of variance in these characteristics, including if they differ aesthetically from any samples or designs.
- 10.8 The Customer agrees that except as expressly provided in this Contract, Birmingham Joinery will not be under any liability of any kind whatever and however caused, arising directly or indirectly in connection with this Contract.
- 10.9 Any liability of Birmingham Joinery under the Contract shall be subject to and conditional upon the due performance by the Customer of all its obligations under this Contract and, subject to these terms, the Customer shall not be entitled to withhold or delay payment or exercise any right of set-off which might otherwise have been available to it.
- 10.10 The Customer shall maintain such insurance protection as shall be reasonable and prudent, taking account of the nature of the Customer's business. Birmingham Joinery shall not be liable under this Contract for losses suffered by the Customer which are, or would have, been recoverable under such policy of insurance.
- 11. Termination**
- 11.1 Birmingham Joinery may terminate this Contract or suspend its performance with immediate effect on written notice if:-
- 11.1.1 the Customer ceases or threatens to cease to carry on its business or becomes insolvent;
- 11.1.2 a Receiver, Administrator or similar Officer is appointed over all or any part of the assets or undertaking of the Customer;
- 11.1.3 the Customer makes any arrangement for the benefit of its creditors;
- 11.1.4 the Customer goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;
- 11.1.5 the Customer commits a material breach of this Contract and (in the case of a breach capable of remedy) fails to remedy it within 7 days of receipt of written notice from Birmingham Joinery specifying the breach and containing a warning of an intention to terminate if the breach is not remedied;
- 11.1.6 the Customer refuses to take delivery of the Goods or any part of them or collect them on the Target Date(s) or on such later date as they are ready for delivery;
- 11.1.7 the Customer defaults in paying the Contract Price or any part of it.
- 11.2 In the event of a suspension, Birmingham Joinery shall be entitled to demand pre-payment of any part of the Contract Price not yet due for payment as a condition of re-commencing its performance.
- 11.3 Birmingham Joinery may terminate this Contract at its discretion at any time by giving 21 days notice in writing to the Customer.
- 11.4 Upon termination of this Contract for whatever cause, the Customer shall pay to Birmingham Joinery all monies due to Birmingham Joinery at that date after taking into account amounts previously paid including:-
- 11.4.1 the total value of Goods delivered and any services performed up to the date of termination, the Contract Price for which shall then become payable immediately notwithstanding any prior contrary arrangement;
- 11.4.2 any cancellation charges payable to Birmingham Joinery's sub-contractors and suppliers;
- 11.4.3 the cost of the Goods or components or services associated with the Goods ordered for the purposes of the Contract for which Birmingham Joinery has paid or is legally bound to pay;
- 11.4.4 any other costs incurred by Birmingham Joinery in connection with the Contract or its termination including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used.
- 11.5 Termination of this Contract shall not affect any rights of the parties accrued to them up to the date of termination.
- 12. Confidentiality and GDPR**
- 12.1 For the purposes of this clause 12, the following definitions will apply:-
- 12.1.1 Confidential Information - all information (whether commercial, financial, technical or otherwise) relating to the disclosing party, its business, customers, suppliers and subcontractors, disclosed to or otherwise obtained by the recipient party under or in connection with this Contract and which is designated as being confidential or which is by its nature clearly confidential, including any and all Protected Data;
- 12.1.2 GDPR - The General Data Protection Regulation (EU) 2016/679 ("GDPR"), and any laws which implement GDPR or replace, extend, re-enact, consolidate or amend it;
- 12.1.3 Protected Data - personal data received from or on behalf of one party in connection with the performance of the other party's obligations under this Contract.
- 12.2 Each party undertakes in respect of Confidential Information for which it is the recipient, to treat such Confidential Information as confidential and not without the disclosing party's prior written consent to communicate or disclose any part of such Confidential Information to any person except only to those employees, agents, sub-contractors and other suppliers on a need to know basis who are directly involved in the Contract and the recipient's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the recipient.
- 12.3 The obligations in clause 12.2 will not apply to any Confidential Information which is in the recipient's possession (with full right to disclose) before receiving it, becomes public knowledge other than by breach of this clause, is independently developed by the recipient without access to or use of the Confidential Information, or is lawfully received from a third party (with full right to disclose).
- 12.4 Both parties shall at all times comply with GDPR in connection with the supply and processing of Protected Data.
- 12.5 The Customer accepts the terms of any privacy policy of Birmingham Joinery which has been supplied to it or which is otherwise publicly accessible, for example on the website of Birmingham Joinery. The Customer will comply with the terms of any such policy in respect of any Protected Data.
- 13. Force majeure**
- 13.1 Neither party shall be liable for any delay in performing or failing to perform any of its obligations under this Contract due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest, disease, pandemic, governmental restriction or other event beyond the reasonable control of either party. Inability to make payment under this agreement shall not constitute a force majeure event.
- 13.2 The party claiming the force majeure event will promptly notify the other of it, will take all reasonable steps to minimise its effect and where applicable shall be given reasonable additional time to complete its performance of this agreement. Any costs associated with such event shall be borne by the party incurring those costs.
- 14. Miscellaneous**
- 14.1 All notices to be given under this Contract shall be in writing and shall be sent to the normal business address of the party concerned by first class post or by hand or may be sent electronically to the regular e-mail address of the party concerned.
- 14.2 No delay or failure by Birmingham Joinery to exercise any of its powers, rights or remedies under this Contract will operate as a waiver of them and any waiver, to be effective, must be in writing.
- 14.3 If any part of this Contract, including for the avoidance of doubt any part of limitation clause 11, is found by a court or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract which will continue to be valid and enforceable to the fullest extent permitted by law.
- 14.4 Birmingham Joinery shall be entitled to set-off against any monies payable to it by the Customer under this Contract, any monies which may be payable by it to the Customer, whether under this Contract or otherwise. The Customer shall not be entitled to any right of set-off.
- 14.5 No person who is not a party to this Contract may enforce any term of this Contract. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract, nor to any agreement or document entered into pursuant to this Contract.
- 14.6 This Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all previous communications, representations and other arrangements, written or oral.
- 14.7 Applicable law and jurisdiction - This Contract will be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the jurisdiction of the courts of England and Wales.