

JOHNSON BROS. TOURS LTD
GENERAL TERMS AND CONDITIONS (for the Supply of Goods and Services)

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time.

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

Customer: the person or entity that purchases the Goods and/or Services from the Supplier.

Force Majeure Event: has the meaning given in *clause 10*.

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

Order: the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form **OR** in the Customer's written acceptance of the Supplier's quotation as the case may be.

Order Acknowledgment: the Supplier's written acknowledgment of the Customer's Order.

Services: the services to be carried out by the Suppliers as per the Order/Order Acknowledgment.

Specification: any specification for the Goods and/or Services, including any related plans and drawings, that are agreed in writing by the Customer and the Supplier.

Supplier: Johnson Bros (Tours) Limited Company Number 02921086).

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

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

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 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods and/or Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 60 Business Days from its date of issue.

3. GOODS

3.1 To the extent that the Goods are to be manufactured and/or installed in accordance with the Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 and other professional costs and expenses) suffered or incurred by the Supplier 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 the Supplier's use of the Specification. This *clause 3.1* shall survive termination of the Contract.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 Any dates quoted for delivery of the Goods/performance of the Services are approximate only and the time of delivery is not of the essence. Whilst every effort will be made by the Supplier to deliver the Goods/performance of the Services on or before the date stated, no binding guarantee is given or implied and no claim will be accepted by the Supplier arising from or in connection with late delivery of the Goods/performance of the Services. Also, the Supplier reserves the right at all times to cancel any Order(s) without incurring any liability to the Customer.

4.2 Without prejudice to its rights at 4.1 above, If the Supplier fails to deliver the Goods and/or perform the Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining

replacement Goods and/or Services of similar description and quality in the cheapest market available, less the price of the Goods and/or Services. The Supplier shall have no liability for any failure to deliver the Goods and/or Services to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or perform the Services.

4.3 The Supplier will be entitled to charge the Customer for all related losses, costs and expenses caused as a result of having to re-schedule the delivery/installation of the Goods/performance of the Services.

5 QUALITY

5.1 The Supplier warrants that on delivery, and for a period of 6 months from the date of delivery of the goods/completion of works (**warranty period**), the Goods and Services shall:

- (a) conform (in essence) with their description and the Specification/Order;
- (b) In relation to Goods be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality and in relation to Services be carried out with reasonable skill and care (within the meaning of the Sale of Goods Act 1979 and/or the supply of Goods and Services Act 1982); and
- (d) be fit for any purpose held out by the Supplier.

5.2 The Customer must:

- (a) Give notice in writing to the Supplier during the warranty period and within a reasonable time of discovery (in any event no later than 14 days from discovery) that some or all of the Goods and/or Services do not comply with the warranty set out in *clause 5.1*;
- (b) In the event that clause 5.2(a) applies the Supplier is given a reasonable opportunity to examine the Goods and/or Services and rectify any issues.
- (c) Compensate the Supplier (on an indemnity basis) for any costs it incurs if the Customer provides such notice under clause 5.2(a) but no defect is found with regards the Goods and/or Services.

5.3 The Supplier shall not be liable for Goods'/and/or Services failure to comply with the warranty set out in *clause 5.1* in any of the following events:

- (a) In relation to the Goods, if the Customer makes any further use of such Goods after giving notice in accordance with *clause 5.2*;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance.or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods/Services without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods/Services differ from their original description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

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

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and Section 4 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier to the Customer

6. TITLE AND RISK

6.1 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for;

(a) The Goods; and

(b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

6.2 The provisions of Title & Risk shall survive the termination of the Contract for whatever reason and in particular, but without limitation, termination of the Contract by the Supplier by the acceptance of any repudiation of the Contract by the Customer.

6.3 The Supplier shall be entitled to exercise a general lien or right of retention on all goods or any parts thereof in the Supplier's possession which are the Customer's property (or which are supplied to the Supplier by the Customer) for any sums whatsoever due to the Supplier and pursuant to such lien or right the Supplier shall be entitled, without notice to the Purchaser, to sell all or any part of such Goods/property privately or by auction or otherwise and to keep the proceeds of sale in diminution of such sums and of all costs and expenses incurred by the Supplier in effecting the said sales. Any balance remaining thereafter, shall be remitted to the Customer by the Supplier. Upon such sale title in the goods shall pass to the buyer thereof.

7. PRICE AND PAYMENT

7.1 The price of the Goods and/or Services shall be the price set out in the Order Acknowledgment, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery/performance.

7.2 The Supplier may, by giving notice to the Customer at any time before delivery/performance, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:

- (a) any factor beyond the Supplier's control (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 and/or Services ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The Supplier may invoice the Customer for the Goods and/or Services on or at any time after the completion of delivery/performance.

7.4 The Customer shall pay the invoice in full and in cleared funds within the time period specified in the Order Acknowledgment or within 7 days of the date of the invoice (if no date is mentioned in the Order Acknowledgement).

7.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount as follows:

7.5.1 In relation to the a business to business transaction, in accordance with the Late Payment of Commercial Debts legislation; or

7.5.2 In relation to a business to provide consumer transaction, at a rate of 8% per annum.

7.6 The Customer will indemnify the Supplier in respect of all/any cost/losses that the Supplier incurs in recovering any debts against the Customer on a full indemnity basis.

7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes subject to any of the events listed in *clause 8.2*, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries/performance under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods

delivered/services performed shall become immediately due.

8.2 For the purposes of *clause 8.1*, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors.
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sue against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment or an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in *clause 8.2(a) to clause 8.2(h)* (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

- (l) (being an individual) the Customer does or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

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

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to *clause 9.1*:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and/or Services.

10. FORCE MAJEURE

10.1 Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstances beyond the control of the parties such as fire, war (whether declared or not), extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and effects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this clause. A circumstance referred to in this clause which had occurred prior to the formation of the contract shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.

10.2 The Party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

10.3 Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under Clause 10.1 for more than six months.

11. GENERAL

11.1 Assignment and subcontracting.

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

11.2 Intellectual Property.

- (a) All drawings and technical documents relating to the Goods or their manufacture submitted by one party to the other, prior or subsequent to the formation of the contract shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than erection, commissioning, operation or maintenance of the Goods. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

11.3 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business/residence (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in *clause 11.3(a)*; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.4 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.5 **Waiver**

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.6 **Third party rights.**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.7 **Variation.**

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the parties.

11.8 **Governing law and jurisdiction.**

The parties will use reasonable endeavours to settle all disputes in a reasonable and amicable way. If any dispute cannot be settled by way of written or verbal communications then the parties will meet to discuss matters with a view to reaching a compromise. If a compromise/settlement can't be reached then the dispute must be referred to Arbitration to be conducted by the governing body of the Freight Transport Association (FTA).

If, for whatever reason, matters are not or cannot be settled by reference to FTA Arbitration then any dispute or claim arising out this contract shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.