

1. Introduction

- 1.1 Dapa Atelier Limited is primarily a business-to-business supplier of interior design goods and related installation services.
- 1.2 These terms relate to and govern all sales of Goods and/or Services by Dapa Atelier Limited and they apply to the exclusion of all other terms except as specifically stated below. The Client should read and familiarise itself with these Terms before ordering or purchasing anything from Dapa Atelier, Limited.

2. Defined Terms

- 2.1 In these Terms the following definitions will apply:

"Agreement"	The Quotation, any applicable Specifications and these Terms.
"Business Day"	A day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Client"	The purchaser of Goods and/or Services from Dapa as identified in the Quotation.
"Commencement Date"	The date referred to in clause 4.3.
"Condition Report"	A report completed by Dapa to report on the condition of the Delivery Location or Site and any surrounding access areas.
"Dapa"	Dapa Atelier, Limited, a company registered in England and Wales under company number 09037828 and with its registered office at Units 4 Wharfedale, Rounds Green Road, Oldbury, West Midlands, B69 2BU.
"Delivery Location" "Delivery"	The location for Delivery of the Goods, as specified in the Quotation. The Goods' arrival at the Delivery Location. "Delivery" and "Delivered" will be construed accordingly.
"Force Majeure Event"	has the meaning given to it in clause 18.
"Goods"	The goods ordered by the Client, as referred to in the Quotation.
"Intellectual Property Rights"	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Price"	The price of the Goods and/or Services as specified in the Quotation or as otherwise specified by Dapa from time to time.
"Quotation"	The quotation for the supply of Goods and/or Services by Dapa to the Client to which these Terms are appended.
"Services"	The installation and/or design services (as applicable) ordered by the Client, as described in the Quotation.
"Site"	The location where the Services are to be provided as specified in the Quotation.
"Specification"	Any applicable specification for the Goods and/or Services provided by Dapa to the Client which may include (without limitation) any design boards, designs and any other relevant documentation such as any relevant manufacturer's specification(s).
"Terms"	These terms and conditions of sale, which will apply to all sales and supplies between Dapa and the Client.

3. Interpretation

- 3.1 The singular will include the plural and vice versa.
- 3.2 Any reference to one gender will include reference to the other genders.
- 3.3 Headings are included for convenience only and do not affect interpretation.

- 3.4 References to clauses of a particular number are references to the clauses of that number in these Terms.

- 3.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 3.6 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted from time to time and includes all subordinate legislation made under that legislation or legislative provision.

- 3.7 A reference to **writing** or **written** includes email but not fax.

- 3.8 Any words following the terms **including**, **include** or **in particular** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

4. Basis of Agreement

- 4.1 These Terms apply to all offers, quotations and sales of Goods and/or Services which Dapa provides to the Client.

- 4.2 A Quotation will be issued by Dapa to the Client detailing the Goods and/or Services intended to be sold. If the Client is happy with the Quotation, the Client will sign the Quotation and return the same to Dapa. If the Client is a new client of Dapa, the Client will also complete Dapa's credit account application form and return this to Dapa along with the signed Quotation. The Client returning the signed Quotation (and the credit account application form, where applicable) will constitute an offer by the Client to purchase the Goods and/or Services outlined in the Quotation in accordance with these Terms.

- 4.3 The Quotation will only be deemed to be accepted by Dapa and the Agreement will come into existence on the date ("**Commencement Date**") when Dapa issues written acceptance to the Client of the relevant Quotation.

- 4.4 A Quotation is valid for a period of 60 days from its date of issue unless otherwise stated on the face of the Quotation. If Dapa receives the Client's signed acceptance of the Quotation outside of this period (or outside of any other relevant validity period stated on the face of the Quotation), Dapa reserves the right to vary any of the terms of the Quotation, including (without limitation) the Price.

- 4.5 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties whether written or oral, relating to the subject matter hereof. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Dapa, which is not set out in the Agreement.

- 4.6 All samples, drawings, descriptive matter or advertising issued by Dapa are illustrative only and are issued, sent or published by Dapa for the sole purpose of giving an approximate indication of the Goods and/or Services described or depicted in them. They will not form part of the Agreement or have any contractual force and their accuracy is not guaranteed. Representations of colours are approximate only.

- 4.7 These Terms apply to the Agreement to the exclusion of all other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 4.8 All of the terms set out in these Terms will apply to the supply of both Goods and Services except where application to one or the other is specified.

- 4.9 Any advice or recommendations given by Dapa or its employees or agents relating to the suitability of the Goods or Services is supplied in good faith but the Client must satisfy itself that the Goods and/or Services are suitable for the intended purpose.

5. Goods and Services

- 5.1 The Goods and/or the Services are described in the Quotation and any applicable Specification.

- 5.2 Dapa will supply the Services to the Client in accordance with the Quotation and any applicable Specification in all material respects and using reasonable care and skill.

- 5.3 All technical information and particulars of the Goods and/or Services and their performance given by Dapa are accurate to the best of Dapa's knowledge but are not to be treated as binding or as forming part of the Agreement unless Dapa agrees otherwise in writing.

- 5.4 Dapa will use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation and/or any Specification or otherwise agreed between the parties, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.

- 5.5 If the Delivery Location or Site is found to be unsafe, damaged or in a state of disrepair, Dapa may issue a Condition Report to the Client which will describe the hazard, damage or state of disrepair discovered. The Condition Report will be provided to the Client.

- 5.6 If it becomes apparent to Dapa that there are one or more problems:

- 5.6.1 with the structure of the building or premises into which the Goods are to be installed;
- 5.6.2 with any dimensions or measurements provided by the Client;
- 5.6.3 with access to the Site or Delivery Location;
- 5.6.4 with safety at the Site or Delivery Location;
- 5.6.5 relating to technical matters regarding the Goods and/or Services;
- 5.6.6 resulting (or which may result) in additional works being required before the Services can be carried out or alongside the Services,

which result in the requirement to increase the price of the Goods and/or the Services, then Dapa reserves the right to so increase the price of the Goods and/or the Services accordingly. If the Client does not accept such price increase, Dapa may cancel the Client's order without liability and the Client will pay Dapa fair and reasonable compensation for any work in progress on or in relation to the Goods and/or Services at the time of termination and

management time incurred by Dapa in relation to that order prior to the time of termination, but such compensation will not include loss of anticipated profits or any consequential loss.

6. Changes

6.1 Dapa reserves the right to make improvements and modifications to any Specification and/or Quotation:

6.1.1 if required to reflect changes in relevant laws and regulatory requirements; or

6.1.2 to implement adjustments and improvements, which do not significantly adversely affect the Client's use or enjoyment of the Goods and/or the nature or quality of the Services to which such adjustments or improvements are made.

6.2 Dapa will not implement any material improvements or modifications to any Goods or Services without prior written notification to the Client if such modification will materially adversely affect the form, fit or function of the Goods or the nature or quality of the Services.

6.3 If the Client wishes to make changes to a Quotation after the Commencement Date but prior to Delivery then it must notify Dapa immediately and Dapa will not be obliged to agree to such change. If Dapa does agree to any proposed change requested by Client then Dapa will be entitled to adjust the Price and any other factor including (without limitation) agreed delivery dates to reflect the agreed change.

7. Delivery of Goods

7.1 Unless otherwise agreed, Delivery of the Goods will be completed on the Goods' arrival at the Delivery Location. The Client will accept Delivery by signing for the Goods using Dapa's standard delivery form.

7.2 Any dates or times quoted or agreed for Delivery of the Goods are approximate only, and the time of Delivery is not of the essence.

7.3 If Dapa fails to deliver the Goods, its liability will be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Dapa will have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide Dapa with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.4 All requests from the Client for Delivery outside mainland United Kingdom are subject to Dapa's prior consent and will entitle Dapa to adjust the Price and Delivery terms accordingly.

7.5 Dapa may deliver the Goods in instalments, which will be invoiced and paid for separately by the Client. Any delay in Delivery or defect in an instalment of Goods will not entitle the Client to cancel any other instalment.

7.6 If the Client fails to accept delivery of the Goods within 3 Business Days of Dapa notifying the Client that the Goods are ready or attempting delivery, then except where such failure or delay is caused by a Force Majeure Event or by Dapa's failure to comply with its obligations under the Agreement in respect of the Goods, Dapa will store the Goods until delivery takes place, and charge the Client for all related costs and expenses (including insurance).

8. Title and Risk

8.1 Risk in the Goods will pass to the Client upon Delivery.

8.2 Title in the Goods will pass to the Client when the Goods have been paid for in full accordance with clause 9.

8.3 The Client accepts that in signing for Delivery of the Goods from Dapa in accordance with clause 7.1 that it has checked that all items ordered are present and correct and free from defects apparent on inspection.

8.4 Until title has passed to the Client in accordance with clause 8.2, the Client will:

8.4.1 hold the Goods on a fiduciary basis as Dapa's bailee;

8.4.2 ensure that it is aware at all times of the location of the Goods and has full details of any person into whose possession or control they have been passed;

8.4.3 give Dapa such information relating to the Goods as it may require from time to time;

8.4.4 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and ensure that the Goods remain readily identifiable as owned by Dapa; and

8.4.5 maintain the Goods in good condition and keep them insured against all risks for their full price from the date of Delivery ensuring that Dapa is named as owner and beneficiary of the Goods on all relevant insurance policies.

9. Price and Payment

9.1 The Client will pay the Price for the Goods and/or Services and all other sums payable to Dapa in accordance with this clause 9.

9.2 Unless otherwise agreed, the Price is inclusive of Dapa's packaging, transport and delivery costs and charges, except where delivery of the Goods and/or supply of the Services is prevented, delayed or frustrated by the Client. Where additional costs are incurred by Dapa for reasons outside of Dapa's reasonable control (including, without limitation, any actions or omissions of the Client), these additional costs will be charged to the Client separately and will be added to the amount invoiced to the Client.

9.3 The Client will bear the cost of all applicable sales, value added, excise, or similar tax or duties in relation to the Goods unless the Client provides Dapa with a tax exemption certificate or licence acceptable to the taxing authorities before shipment. Prices are exclusive of VAT and other taxes, which will be added to the amount invoiced to the Client.

9.4 Subject to clause 9.5, unless otherwise stated in the Quotation or agreed in advance in writing by Dapa, the Client will pay in full and in cleared funds to a bank account nominated in writing by Dapa:

9.4.1 50% of the Price on signing and returning the Quotation to Dapa; and

9.4.2 the remaining 50% of the Price within 30 days of Delivery of the Goods if only Goods are being provided to the Client and within 30 days of completion of the Services if both Goods and Services are being provided to the Client.

9.5 If the Client delays a pre-agreed date for supply of the Services by more than 4 weeks, Dapa reserves the right to require 75% of the Price to be paid in full and in cleared funds to a bank account nominated in writing by Dapa before carrying out the Services. In these circumstances, the balance of the Price will be required to be paid by the Client in full and in cleared funds to a bank account nominated in writing by Dapa within 30 days of completion of the Services.

9.6 If the Client fails to pay any amount when due in accordance with the Agreement, Dapa reserves the right to charge interest on overdue amounts from the due date until the date that full payment is received, both before and after any judgment, at the greater of 5% per month above the base rate of the Bank of England and the rate from time to time applicable to High Court judgement debts.

9.7 Dapa will carry out such security checks as it decides in relation to and prior to committing to or executing any Quotation or transaction in order to protect against identity theft and fraud. If additional checks are required Dapa will inform the Client. The time allowed for Delivery or dispatch will be extended by the time taken to resolve any queries raised.

9.8 Any orders for additional goods will be subject to a new Quotation by Dapa and supplied under a separate reference number. Such additional orders will be subject to these Terms unless otherwise agreed.

9.9 Time for payment will be of the essence of the Agreement.

10. Warranty

10.1 Subject to clause 10.5, Dapa warrants that for the periods stated in clause 10.2, the Goods will, on Delivery:

10.1.1 conform with their description and any applicable Specification in all material respects; and

10.1.2 be free from material defects in design, material and workmanship.

10.2 The period for which the warranty given in clause 10.1 will apply will commence on the date of Delivery and continue for:

10.2.1 the period specified in the manufacturer's guarantee for all Goods, which will always be at the manufacturer's discretion; and

10.2.2 30 days for light fittings and fixtures.

10.3 If the Client or any third party instructed by the Client, alleges that the Goods are defective at the time of Delivery, missing parts, or are incomplete:

10.3.1 the Client will notify Dapa in writing of the alleged defects and cause of the fault within 24 hours of Delivery; and

10.3.2 the Client will, at Dapa's option, return the Goods and all of their original packing at its own expense to Dapa or hold the Goods and packing for reasonable inspection by Dapa.

10.4 Subject to clause 10.5, if upon inspection, the Goods are in Dapa's opinion defective at the time of Delivery or were incomplete or missing parts, Dapa will repair or replace the defective Goods free of charge.

10.5 The warranty in clause 10.1 will not apply if:

10.5.1 the Client does not notify Dapa in accordance with clause 10.3.1;

10.5.2 the Client fails to check the quantity of Goods delivered or required before using them, including (without limitation) wallpaper;

10.5.3 the Client fails to check the weight of the Goods, including (without limitation) light fittings, before opening the packaging, either by checking the weight specified on the side of the packaging, or by lifting the packaging;

10.5.4 the Client makes any further use of such Goods after giving a notice pursuant to clause 10.3;

10.5.5 the Client does not return the defective or incomplete Goods in their original packaging and free from any further defects or damage (and the Client accepts that in such circumstances Dapa will be unable to return the Goods to their manufacturer and may therefore charge the Client for a replacement product);

10.5.6 the defect arises because the Client has failed to follow Dapa's or the manufacturer's oral or written instructions, or any written instructions provided with the Goods as to the storage, hanging (in relation to wallpaper), installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

10.5.7 the defect arises as a result of Dapa following any drawing, design or Goods specification supplied by the Client or which the Client has approved prior to Delivery;

10.5.8 the Client alters or repairs such Goods without the written consent of Dapa;

10.5.9 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions by the Client or any third party howsoever arising;

10.5.10 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

10.5.11 the defect arises as a result of incomplete, inaccurate or defective information or instructions provided by the Client;

10.5.12 the defect arises as a result of faulty, defective or poor installation or handling of the Goods by the Client or any third party;

10.5.13 the Client has not paid for the Goods in accordance with clause 9; or

10.5.14 the defect arises as a result of third party installation.

10.6 Except as provided in this clause 10, Dapa will have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 10.1.

11. Client's Obligations

11.1 The Client will:

11.1.1 ensure that the terms of the Quotation and any Specification are complete and accurate;

11.1.2 ensure that all measurements, plans, drawings and designs forming part of the Quotation and any Specification are accurate, complete and fit for the intended purpose;

11.1.3 co-operate with Dapa in all matters relating to the Services;

11.1.4 provide Dapa (or procure for Dapa), its employees, agents, consultants and subcontractors, with access to the Site, office accommodation and other facilities as reasonably required by Dapa to provide the Services;

11.1.5 provide Dapa with such information and materials as Dapa may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

11.1.6 if requested at any time, allow Dapa (or procure permission for Dapa) to inspect the Site;

11.1.7 prepare the Delivery Location or Site for the Delivery of the Goods and the supply of the Services;

11.1.8 arrange and attend all feasibility, inspection, survey or other meetings relating to the Goods and/or Services required by Dapa at the Client's expense;

11.1.9 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

11.1.10 comply with all applicable laws, including health and safety laws;

11.1.11 keep all materials, equipment, documents and other property of Dapa (**Dapa Materials**) at the Site in safe custody at its own risk, maintain the Dapa Materials in good condition until returned to Dapa, and not dispose of or use the Dapa Materials other than in accordance with Dapa's written instructions or authorisation; and

11.1.12 comply with any additional obligations as set out in the Quotation or any Specification.

11.2 If the Client wishes to change a pre-agreed date for the Delivery of Goods or the supply of Services then it must give Dapa at least 48 hours' notice. The Client will pay Dapa's costs in connection with such a request if at least 48 hours' notice is not given.

11.3 The Client will not export or permit the export of any Goods outside of the UK, or use or permit the use of any Goods, other than in accordance with all applicable laws (including complying with and obtaining appropriate permits in accordance with all applicable export and custom laws).

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

11.4.1 without limiting or affecting any other right or remedy available to it, Dapa will have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Dapa's performance of any of its obligations;

11.4.2 Dapa will not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Dapa's failure or delay to perform any of its obligations as set out in this clause 11.4; and

11.4.3 the Client will reimburse Dapa on written demand for any costs or losses sustained or incurred by Dapa arising directly or indirectly from the Client Default.

12. Intellectual Property Rights

12.1 All Intellectual Property Rights in or arising out of or in connection with the Services including (without limitation) designs (other than Intellectual Property Rights in any materials provided by the Client) will be owned by Dapa.

12.2 The Client grants Dapa a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to Dapa for the term of the Agreement for the purpose of providing the Services to the Client.

13. Termination by the Client

13.1 The Client may cancel an order at any time before Delivery of the Goods. If this happens:

13.1.1 the Client will notify Dapa immediately;

13.1.2 any deposit or advance payment paid by the Client for Goods will not be refunded; and

13.1.3 the Client will indemnify Dapa for all costs and expenses incurred by Dapa as a result of such cancellation and will pay to Dapa fair and reasonable compensation for any work in progress on or in relation to the ordered Goods and/or Services at the time of termination and management time

incurred by Dapa in relation to that order prior to the time of termination, but such compensation will not include loss of anticipated profits or any consequential loss.

14. Termination

14.1 Dapa may have to cancel any Quotation before Delivery of the Goods and/or performance of the Services, due to an event outside its reasonable control or the unavailability of stock. If this happens, Dapa will:

14.1.1 notify the Client as soon as reasonably practicable with as much information relating to such cancellation as possible; and

14.1.2 refund any sums paid by the Client for Goods which the Client has not received and for Services which have not been performed.

14.2 Without affecting any other right or remedy available to it, Dapa may terminate the Agreement with immediate effect by giving written notice to the Client if:

14.2.1 the Client has committed a crime or has become involved in any situation or activity which tends in the reasonable opinion of Dapa to expose Dapa to disrepute, contempt, scandal or ridicule or reflects unfavourably on Dapa's reputation;

14.2.2 the Client commits a material breach of its obligations under the Agreement and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

14.2.3 the Client fails to comply with applicable laws and regulations in relation to the Agreement or its business activities generally;

14.2.4 the Client takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.2.5 the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

14.2.6 the Client's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy;

14.2.7 the Client fails to pay any amount due under the Agreement on the due date for payment.

14.3 Without affecting any other right or remedy available to it, Dapa may suspend the supply of Services or all further deliveries of Goods under the Agreement or any other contract between the Client and Dapa if the Client fails to pay any amount due under the Agreement on the due date for payment, the Client becomes subject to any of the events listed in clause 14.2.4 to clause 14.2.6, or Dapa reasonably believes that the Client is about to become subject to any of them.

14.4 On termination of the Agreement:

14.4.1 the Client will immediately pay to Dapa all of Dapa's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Dapa will submit an invoice, which will be payable by the Client immediately on receipt;

14.4.2 the Client will return all of the Dapa Materials and any Goods which have not been fully paid for. If the Client fails to do so, then Dapa may enter the Client's premises or the Site (as the case may be) and take possession of them. Until they have been returned, the Client will be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

14.5 Termination or expiry of the Agreement will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

14.6 Any provision of the Agreement that expressly or by implication is intended to have effect after termination or expiry will continue in full force and effect.

15. Limitations of Liability

15.1 Nothing in the Agreement will exclude or in any way limit either party's liability for:

15.1.1 death or personal injury caused by its own negligence;

15.1.2 fraudulent misrepresentation or other dishonesty; or

15.1.3 any other liability which cannot be excluded by law.

15.2 Subject only to clause 15.1, Dapa will not be liable whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise under or in connection with the Agreement, for any (whether direct, indirect of consequential and without limitation):

15.2.1 loss of profit;

15.2.2 loss of or damage to goodwill;

15.2.3 loss of agreements or contracts;

15.2.4 loss of sales or business;

15.2.5 loss of business opportunity;

15.2.6 indirect or consequential loss;

- 15.2.7 loss of anticipated saving; or
- 15.2.8 loss or corruption of data or information.
- 15.3 Without prejudice to clauses 15.1 and 15.2, Dapa's total liability arising under or in connection with the Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, will in all circumstances be limited to the Price (excluding VAT and delivery) of the Goods and Services actually supplied by Dapa.
- 15.4 Together with clause 10, this clause 15 sets forth the full extent of Dapa's liabilities in respect of the Agreement. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on Dapa except as specifically stated in the Agreement. All conditions, warranties and other terms regarding the Goods, which might otherwise be implied into or incorporated into these Terms, whether by statute, common law or otherwise, are expressly excluded to the fullest extent permitted in law.
- 15.5 This clause 15 will survive termination of the Agreement.
- 16. Confidential Information**
- 16.1 The Client will not, without Dapa's written consent, disclose to any third party any secret or confidential information supplied by Dapa to the Client including (without limitation) information relating to the business, affairs, customers, clients or suppliers of Dapa, except as permitted by clause 16.2. For the purposes of this clause 16, any Quotation, tender, offer, Specification or similar document and all contents thereof and all items referred to therein will be deemed to be Dapa's confidential information.
- 16.2 Each party may disclose the other party's confidential information:
- 16.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party will ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16; and
- 16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 The Client will not copy or reproduce drawings, specifications, or other written material supplied by Dapa in connection with the Goods or Services or any of the Goods themselves or any part thereof.
- 16.4 The Client will indemnify Dapa against any and all costs, claims, expenses, demands, losses or liabilities, which Dapa may suffer or incur as a result, whether direct or indirect of any breach by the Client (or those to whom the Client has disclosed Dapa's confidential information pursuant to clause 16.2) of this clause 16.
- 17. Data Protection**
- 17.1 Dapa will use the personal information provided by or on behalf of the Client to:
- 17.1.1 provide the Quotation and prepare any Specification;
- 17.1.2 process the Client's payment for Goods and/or Services ordered; and
- 17.1.3 inform the Client about goods and/or services that Dapa provides which are similar to the Goods and/or Services ordered by the Client, but the Client may request to stop receiving these notifications at any time by contacting Dapa.
- 17.2 The Client agrees that Dapa may pass personal information provided by or on behalf of the Client to credit reference agencies and that they may keep a record of any search that they do.
- 17.3 Dapa will not give personal information provided by or on behalf of the Client to any other third party without the Client's prior consent unless required to do so by law.
- 17.4 Dapa's website may also use a website recording service which may record mouse clicks, mouse movements, page scrolling and any text keyed into website forms. Data collected by this service is used to improve Dapa's website usability. The information collected is stored and is used for aggregated and statistical reporting, and is not shared with anybody else.
- 17.5 Each party will, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK). Each party will ensure that it has all necessary consents and notices in place to enable the lawful transfer of personal data to the other for the purposes of each party fulfilling its obligations under the Agreement. Neither party will use or disclose personal data provided to it by the other in connection with the Agreement other than for the purpose of fulfilling the Agreement or as otherwise set out in this clause 17.
- 18. Force Majeure**
- 18.1 Without prejudice to any other provisions hereof, Dapa may cancel the Agreement and will not be liable for delay in performing or failing to perform or for any loss or damage to the Client if its ability to perform its obligations under the Agreement is in any way adversely affected for any reason outside Dapa's reasonable control, or by commercial unfeasibility including (without limitation):
- 18.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 18.1.2 epidemic or pandemic;
- 18.1.3 nuclear, chemical or biological contamination, or sonic boom;
- 18.1.4 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 18.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent or substantial increases in the costs of performance;
- 18.1.6 collapse of buildings, fire, explosion or accident; or
- 18.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause 18, or companies in the same group as that party).
- 19. Miscellaneous**
- 19.1 All amounts due under the Agreement will be paid by the Client to Dapa in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 19.2 The Client will not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of Dapa.
- 19.3 Each party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 19.4 No variation of the Agreement will be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19.5 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.
- 19.6 Except as expressly provided herein, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.7 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 19.7 will not affect the validity and enforceability of the rest of these Terms. If any provision or part-provision of these Terms is invalid, illegal or unenforceable, the parties will negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 19.8 Nothing in the Agreement is intended to, or will be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 19.9 Any notice given to a party under or in connection with the Agreement will be in writing and will be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice will be deemed to have been received:
- 19.9.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- 19.9.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 19.10 A person who is not a party to the Agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 19.11 The Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or their subject matter or formation (including non-contractual disputes or claims).