

## **STONEGROVE REFRIGERATION SERVICES LTD CONDITIONS OF SALE FOR GOODS AND SERVICES (INCLUDING PLANNED MAINTENANCE SERVICES)**

### **1. GENERAL**

**1.1.** These Conditions shall be incorporated into all contracts between Stonegrove Refrigeration Services Limited (Stonegrove) and the customer (Customer) for the supply to the Customer of Goods and/or Services. The Customer's attention is particularly drawn to clause 15 (Limitation of Liability).

**1.2.** The following definitions and rules of interpretation apply:

**1.2.1.** Stonegrove Warranty: any warranty supplied by Stonegrove in respect of the Goods and/or Services.

**1.2.2.** Contract: the contract between Stonegrove and the Customer for the supply of Goods and/or Services in accordance with these Conditions. **1.2.3.** Force Majeure Event: has the meaning given to it in clause 19.

**1.2.4.** Goods and/or Services: respectively, products and materials supplied and/or services and works, including maintenance, carried out by Stonegrove under the Contract.

### **2. FORMATION OF CONTRACT**

**2.1.** The Customer's order or other form of acceptance of Stonegrove's quotation for the Goods and/or Services constitutes an offer by the Customer for the supply of the Goods and/or Services in accordance with these Conditions. The order/acceptance shall only be treated as accepted when Stonegrove has received satisfactory credit references in respect of the Customer and has confirmed acceptance and on which date the Contract shall come into effect, but shall apply from the date of commencement by Stonegrove of its obligations under the Contract.

**2.2.** 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.

**2.3.** Stonegrove shall not be bound by any variations, waiver or additions to the Contract unless agreed to in writing.

### **3. GOODS**

**3.1.** The Goods are as described in Stonegrove's quotation. Stonegrove reserves the right to modify the Goods to be supplied including if required by any applicable statutory or regulatory requirement. Stonegrove shall notify the Customer in any such event.

**3.2.** Particulars of dimensions, capacities, performance ratings, specifications, drawings and other data included in manufacturers' catalogues, price lists or other documents supplied by Stonegrove constitute only an approximate guide and shall not be of any contractual effect.

### **4. DELIVERY**

**4.1.** Stonegrove will deliver or arrange delivery of the Goods to the Customer or to the Customer's agent at the place agreed with the Customer. Delivery shall be completed on the completion of unloading of the Goods at the delivery location.

**4.2.** Stonegrove shall use reasonable endeavour's to deliver or arrange delivery of the Goods on the dates specified by the Customer or within a reasonable time thereof provided always that the time for delivery shall not be of the essence of the Contract. Stonegrove shall not be liable for any loss or

damage whatsoever arising directly or indirectly from any failure to effect delivery within such periods. The Customer shall accept deliveries of Goods by instalments.

**4.3.** If Stonegrove fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Stonegrove shall 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 Customer's failure to provide Stonegrove with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

## **5. QUALITY OF GOODS**

**5.1.** Stonegrove warrants that on delivery and if applicable in accordance with the Stonegrove Warranty period the Goods shall:

- 5.1.1.** conform in all material respects with their description;
- 5.1.2.** be free from material defects in design, material and workmanship;
- 5.1.3.** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

**5.2.** Subject to clause 5.3, Stonegrove shall, at its option, repair or replace any defective Goods, or refund the price of the defective Goods in full if:

- 5.2.1.** the Customer gives notice in writing in accordance with the terms of the Stonegrove Warranty where applicable or otherwise within 28 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- 5.2.2.** Stonegrove is given a reasonable opportunity of examining such Goods; and
- 5.2.3.** the Customer (if asked to do so by Stonegrove) returns such Goods to Stonegrove at Stonegrove's cost.

**5.3.** Stonegrove shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- 5.3.1.** the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.2.** the defect arises because the Customer failed to follow Stonegrove's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 5.3.3.** the defect arises as a result of Stonegrove following any drawing, design or specification supplied by the Customer;
- 5.3.4.** the Customer alters or repairs such Goods without the written consent of Stonegrove;
- 5.3.5.** the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
- 5.3.6.** the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

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

**5.5.** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Stonegrove.

## **6. TITLE AND RISK**

**6.1.** Until Stonegrove has been paid in full for any Goods supplied under the Contract, the Customer holds the Goods:

- 6.1.1.** in a fiduciary capacity as bailee of Stonegrove and;
- 6.1.2.** title to the Goods shall remain with Stonegrove and the Customer shall store the Goods in such

a manner that they are clearly identifiable as the property of Stonegrove; and

**6.1.3.** Stonegrove reserves the right to dispose of the Goods and may retake possession thereof at any time for that purpose and may by its servants or agents enter upon any land or premises owned or occupied by the Customer or any subsequent purchaser of the Goods from the Customer and in addition the Customer shall include in any contract with a sub-purchaser a licence in favour of Stonegrove covering the right of entering covered in this sub-clause; and

**6.1.4.** if the Customer incorporates or allows the incorporation of the Goods into other goods or products in any way, legal and beneficial title to those other goods, both during the process of incorporation and thereafter shall vest forthwith in Stonegrove, and the Customer shall hold them in a fiduciary capacity as bailee for Stonegrove; if Stonegrove so requires the Customer shall observe the conditions regarding storage in this clause as if such other goods were the Goods originally supplied; and

**6.1.5.** the parties agree that incorporation of the Goods into other goods or products in any way is not intended to extinguish Stonegrove's title to the Goods as provided for under these Conditions; and

**6.1.6.** without prejudice to the above sub-clauses the Customer shall (subject to notice from Stonegrove to the contrary or in case of the events referred to in 6.3 below) have the power to sell the Goods in the normal course of its business on behalf of Stonegrove; and

**6.1.7.** the Customer shall include within its contract with a sub-purchaser provisions which cover Stonegrove's rights under this clause; and.

**6.1.8.** the Customer shall notify any subsequent purchaser of the Goods that title to the Goods remains with Stonegrove until the Customer has made payment in full to Stonegrove for the Goods; and

**6.1.9.** any monies received by the Customer from any subsequent purchaser shall be held separately from any monies of the Customer or any other party on behalf of Stonegrove and the Customer has a fiduciary duty to account for such monies to the extent of its indebtedness and to this extent is to pay Stonegrove any sums received in respect of the Goods.

**6.2.** Notwithstanding the foregoing, risk in the Goods shall pass to the Customer upon the terms of clause 7 below.

**6.3.** On receipt of notice from Stonegrove or on the happening of any of the events set out under clause 17.2 below, all Goods shall be immediately delivered to Stonegrove and/or Stonegrove acting by its servants or agents shall have the right without notice during normal business hours to enter upon the land or buildings of the Customer or any subsequent purchaser of the Customer to take possession of the Goods.

## **7. RISK**

**7.1.** The Goods shall be at the Customer's risk from the time that they are delivered to the Customer in accordance with the Contract. The Customer shall insure the Goods for the full Contract price against loss or damage arising from any cause whatsoever. If requested by Stonegrove the Customer shall execute an assignment in favour of Stonegrove of all rights of the Customer to claim against the insurers in respect of the Goods covered by such insurance and shall join Stonegrove in notifying such insurers of Stonegrove's interest in any policy effected hereunder. Such insurance (with insurers to be approved by Stonegrove) shall be effected by the Customer to cover the period from the time when the risk in the Goods passes to the Customer as provided above to the time when the property in the Goods passes to the Customer and Stonegrove's interest as a vendor of the Goods shall be notified by the Customer to the insurers.

## **8. CLAIMS IN TRANSIT**

**8.1.** Stonegrove will not accept any responsibility whatsoever for loss, damage, discrepancy or shortfall to the Goods in transit if carried by a carrier nominated or requested by the Customer or by a carrier who is the servant or agent of the Customer. Claims shall be made immediately by the Customer to the carrier.

**8.2.** Save as provided above, Stonegrove will repair, or at its option, replace free of charge, any part of the Goods lost or damaged in transit provided that Stonegrove and the carrier are given notice of

such loss or damage within the time required by the carrier's conditions of carriage or, where deliveries are made by Stonegrove's own transport, within three days of the receipt of the Goods or of the day upon which the Goods should have arrived had they not been lost and provided that any damaged Goods or part thereof are returned carriage paid by the Customer to Stonegrove.

## **9. ACCEPTANCE PROCEDURE**

**9.1.** Goods shall be deemed to have been accepted by the Customer on delivery unless the Customer shall notify Stonegrove in writing of non-acceptance of the Goods within three days of delivery.

**9.2.** Where the Contract is for the sale and installation of a complete system incorporating Goods, Stonegrove shall, unless otherwise agreed, be responsible for the installation, testing and commissioning of the system.

**9.3.** Completion of installation, testing and commissioning and acceptance of a system by the Customer (which the Customer shall not be entitled unreasonably to refuse) shall be evidenced by the signature of a certificate offhand-over by an authorised representative of Stonegrove and by the Customer or its representative.

## **10. SERVICES**

**10.1.** The Services shall be as identified in the quotation. Stonegrove reserves the right to amend any specification for the Services if necessary, including to comply with any applicable law or regulatory requirement. Stonegrove shall notify the Customer in any such event.

**10.2.** Stonegrove warrants to the Customer that the Services will be provided using reasonable skill and care. Stonegrove shall use all reasonable endeavours to meet any performance dates for the Services agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

**10.3.** In order that Stonegrove can carry out the Services the Customer shall provide access to the relevant premises or site and ensure at all times that the working environment is acceptable to the health and safety of Stonegrove's employees, agents and subcontractors. The Customer shall indemnify Stonegrove against all costs, claims, liabilities and expenses incurred by Stonegrove arising from or in connection with any personal injury to or death of any of its employees, agents or subcontractors which is occasioned directly or indirectly by any act or omission (whether negligent or not) on the part of the Customer, its agents or employees.

**10.4.** Stonegrove shall have the right to refuse to perform its obligations under the Contract where to do otherwise would bring Stonegrove's employees, agents or sub-contractors into contact with any hazardous substances not previously informed of to Stonegrove or where any hazardous substance was not reasonably apparent from any inspection that Stonegrove has made ahead of Stonegrove issuing its quotation for the Goods and/or Services.

**10.5.** Maintenance Services. Where the Contract is for Stonegrove to undertake Services relating to the maintenance of an installation, the following additional provisions shall apply.

**10.5.1.** Unless agreed in writing otherwise, or in the case of emergency call outs, maintenance Services will be performed during the hours of 8.00 and 17.00, Monday to Friday.

**10.5.2.** The stopping and starting of an installation shall not be included as part of the maintenance Services, or the opening and closing of valves, dampers or regulators installed to protect equipment against damage, or the defrosting of evaporators or for obtaining the proper operation of the installation.



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**10.5.3.** Stonegrove will make recommendations in regard to such matters as repairs, refrigerants and supplies for the proper and efficient operation and performance of an installation. If the Customer fails to accept and/or implement such recommendations then Stonegrove will not be responsible for any failures in performance or inefficiencies in operation.

**10.5.4.** In the event of Stonegrove being called to undertake emergency Services due to; the improper operation of an installation, the failure to accept and/or implement recommendations relating to the operation and performance of the installation, the effect on the installation of natural events such as flooding, lightning, the result of events such as war, invasion, terrorism, strikes, civil commotion, or due to the result of any matter beyond the control of Stonegrove, the Customer shall reimburse Stonegrove at the Stonegrove charge out rate for such a Service current at the date of the call out.

**10.5.5.** Stonegrove shall not be liable for the day to day operation of the installation or for the cost of removing or reinstating of any part of any structure in which the installation is contained or to which it is attached or otherwise held and which is necessary to incur in order to undertake the Services, and to the extent that it is necessary for Stonegrove itself to incur such cost in order to fulfil its obligations under the Contract, the Customer shall be liable for Stonegrove's reasonable costs in addition to the payment of sums otherwise due from the Customer. Otherwise, the terms of clause 15 shall apply to all Services.

**10.5.6.** The price agreed in the Contract for maintenance Services will be based on the types and rates of cost to Stonegrove of undertaking such Services. Stonegrove reserves the right to be paid a reasonable variation in the Contract price where the costs to Stonegrove of undertaking the maintenance Services increase ahead of completion of the Contract. Any such variation shall be payable in addition to the Contract price and shall be due following notification by Stonegrove to the Customer of the details that apply.

**10.5.7.** Notwithstanding any other provision in the Contract, in the case of maintenance Services the Contract shall remain in effect for one year from the date of the Contract and shall continue from year to year thereafter unless terminated by the giving of 30 days' notice in writing by one party to the other of the intention to terminate and which notice period must expire ahead of each yearly anniversary. In the event of termination, the provisions of clause 18 shall apply.

## **11. CUSTOMER'S OBLIGATIONS**

**11.1.** The Customer shall:

**11.1.1.** co-operate with Stonegrove in all matters relating to the Goods and/or Services;

**11.1.2.** provide Stonegrove, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Stonegrove to supply the Goods and/or Services;

**11.1.3.** provide Stonegrove with such information and materials as Stonegrove may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects;

**11.1.4.** obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the same are to be delivered or start;

**11.1.5.** comply with all applicable laws, including health and safety laws.

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

**11.2.1.** without limiting or affecting any other right or remedy available to it, Stonegrove shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Stonegrove's performance of any of its obligations;

**11.2.2.** Stonegrove shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Stonegrove's failure or delay to perform any of its obligations as set out in this clause 11.2; and



**11.2.3.** the Customer shall reimburse Stonegrove on written demand for any costs or losses sustained or incurred by Stonegrove arising directly or indirectly from the Customer Default.

## **12. PAYMENT**

**12.1.** The price of the Goods and/or Services shall be as set out in the Contract. All prices are exclusive of VAT and all other applicable taxes and duties, which will be payable in addition to the Contract price at the rate in force at the date of any application for payment submitted by Stonegrove. Stonegrove may require payments to be made by instalments on the basis of a percentage of the total Contract price or as otherwise agreed in writing with the Customer.

**12.2.** Payments shall become due to Stonegrove on the date of receipt by the Customer of Stonegrove's application for payment. Each application shall set out the amount that Stonegrove considers to be due and the basis upon which that amount has been calculated.

**12.3.** No later than 5 days after each amount becomes due, the Customer shall notify Stonegrove of the sum that the Customer considers to have been due at the payment due date in respect of the amount of the relevant application and the basis upon which that amount has been calculated.

**12.4.** The final date for payment by the Customer shall be 30 days after the relevant amount becomes due.

**12.5.** Unless the Customer has served a notice under clause 12.6, it shall pay Stonegrove the sum referred to in the Customer's notice under clause 12.3 (or if the Customer has not served such a notice, then the sum referred to in Stonegrove's application and in either case, payment shall be made without deductions) (together referred to as "the notified sum") on or before the final date for payment of the relevant amount.

**12.6.** Not less than 7 days before the final date for payment, the Customer may give Stonegrove notice that it intends to pay less than the notified sum and any such notice shall specify the sum that the Customer considers to be due on the date the notice is served and the basis upon which that sum is calculated. The Customer must pay at least the sum so notified and without deduction.

**12.7.** Stonegrove reserves the right to charge interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 and it is agreed that the rights provided under the said Act shall apply after any judgement or binding determination as well as before.

**12.8.** If for any reason any payment of an amount due is not made by the final date for payment, Stonegrove shall be entitled to:

**12.8.1.** be paid on an indemnity basis for any costs it incurs in recovering money due under the Contract (and the costs of recovering such costs) including its administrative costs and any costs incurred with lawyers or debt collection agencies and/or;

**12.8.2.** notwithstanding any previously agreed credit periods, be paid on all applications for payments already delivered to the Customer whether or not the final date for payment in each case has been reached and/or;

**12.8.3.** be paid a reasonable proportion in respect of Goods delivered or of Services undertaken but not yet due for payment as if such amounts were already due.

**12.9.** In the event of the Customer being in default of payment of any amount due to Stonegrove under the Contract then on giving the Customer 7 days' notice in writing specifying the grounds for so doing, Stonegrove may suspend performance of any or all of its obligations under the Contract. Stonegrove shall resume its obligations under the Contract within a reasonable time after receipt of any outstanding payment. Any suspension arising under this clause shall entitle Stonegrove to payment of its reasonable costs and expenses incurred as a result and the period of suspension shall

be disregarded in computing any agreed date for completion of Stonegrove's obligations and Stonegrove shall not otherwise be liable to the Customer in regard to such suspension.

### **13. INTELLECTUAL PROPERTY RIGHTS**

**13.1.** All intellectual property rights in or arising out of or in connection with the Contract (other than intellectual property rights in any materials provided by the Customer) shall be owned by Stonegrove.

**13.2.** Subject to payment of all sums due to Stonegrove under the Contract, Stonegrove grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the materials (excluding materials provided by the Customer) for the purpose of receiving and using the Goods and Services in its business.

**13.3.** The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 13.2.

**13.4.** The Customer grants Stonegrove a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Stonegrove for the purpose of performing its obligations under the Contract.

### **14. DATA PROTECTION AND DATA PROCESSING**

**14.1.** The Customer and Stonegrove acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and Stonegrove is the Data Processor in respect of any Personal Data (having the meanings as set out in 1998 Act).

**14.2.** Stonegrove shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.

**14.3.** Stonegrove shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

**14.4.** Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

**14.5.** Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause.

**14.6.** The Customer acknowledges that Stonegrove is reliant on the Customer for direction as to the extent to which Stonegrove is entitled to use and process the Personal Data. Consequently, Stonegrove will not be liable for any claim brought by a Data Subject arising from any action or omission by Stonegrove, to the extent that such action or omission resulted directly from the Customer's instructions.

### **15. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

**15.1.** Nothing in these Conditions shall limit or exclude Stonegrove's liability for:

**15.1.1.** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

**15.1.2.** fraud or fraudulent misrepresentation;

**15.1.3.** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title

and quiet possession);

**15.1.4.** breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

**15.1.5.** defective products under the Consumer Protection Act 1987.

**15.2.** Subject to clause 15.1, Stonegrove shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

**15.2.1.** loss of profits;

**15.2.2.** loss of sales or business;

**15.2.3.** loss of agreements or contracts;

**15.2.4.** loss of anticipated savings;

**15.2.5.** loss of use or corruption of software, data or information;

**15.2.6.** loss of or damage to goodwill; and

**15.2.7.** any indirect or consequential loss.

**15.3.** Subject to clause 15.1, Stonegrove's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the price to be paid under the Contract.

**15.4.** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**15.5.** This clause shall survive termination of the Contract.

## **16. SUSPENSION**

If the Customer fails to comply with any of the terms of the Contract whether a condition or warranty express or implied or if any of the events set out in clause 17.2 occurs or if Stonegrove reasonably believes that they might occur and notifies the Customer accordingly, then, without limiting any other right or remedy, Stonegrove may suspend all further obligations under the Contract or under any other contract between the Customer and Stonegrove without incurring any liability to the Customer, and all outstanding sums shall become immediately due and Stonegrove may apply the rights under clause 18. In such an event Stonegrove will be discharged from further performance of the Contract (subject to the end of any period of suspension as applicable following the rectification of the terms of the Contract to Stonegrove's reasonable satisfaction) and the Customer shall forthwith upon demand pay to Stonegrove all costs and expenses and overheads incurred in connection with the Contract together with any loss or profit and all sums due to Stonegrove hereunder.

## **17. TERMINATION**

**17.1.** Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than one month's written notice.

**17.2.** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

**17.2.1.** the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing to do so;

**17.2.2.** the other party 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), 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;

**17.2.2.1.** the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

**17.2.2.2.** the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**17.3.** Without affecting any other right or remedy available to it, Stonegrove may terminate the Contract with immediate effect by giving written notice to the Customer if:

**17.3.1.** the Customer fails to pay any amount due under the Contract on the due date for payment; or

**17.3.2.** there is a change of control of the Customer.

## **18. CONSEQUENCES OF TERMINATION**

**18.1.** On termination of the Contract:

**18.1.1.** the Customer shall immediately pay to Stonegrove all of Stonegrove's outstanding unpaid applications for payment and interest and, in respect of Services and Goods supplied but for which no application has been submitted, Stonegrove shall submit an application, which shall be payable by the Customer immediately on receipt;

**18.1.2.** the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then Stonegrove may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

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

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

## **19. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## **20. GENERAL**

**20.1.** Assignment and other dealings. Stonegrove may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall 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 Contract without the prior written consent of Stonegrove.

**20.2.** Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall 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); or sent by fax to its main fax number or sent by email to the address specified in the Contract or otherwise specified by either party to the other.

**20.3.** Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next working day after transmission. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**20.4.** Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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

**20.6.** No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**20.7.** Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**20.8.** Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

**20.9.** Third parties' rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**20.10.** Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**20.11.** Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**20.12.** Disputes. Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.

**20.13.** Adjudication. Notwithstanding any other provision of the Contract either party may refer a dispute arising under the Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was



STONEGROVE  
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incorporated into this clause. The adjudicator shall be appointed by: The Royal Institute of Chartered Surveyors.