

## WESTGATE GROUP TERMS AND CONDITIONS

The Customer's attention is particularly drawn to the provisions of clause 12.

### 1. Interpretation

Where the Contract includes the sale and purchase of Goods (and not the lease and hire of Goods), only Part 1 of these Conditions shall apply.

Where the Contract includes the lease and hire of Goods, Part 1 (excluding clauses 9 and 10) and Part 2 of these Conditions shall apply. In such circumstances, to the extent there is any conflict between the terms in Part 1 and Part 2, the terms in Part 2 shall take precedence.

### 1.1 Definitions

In these Conditions, the following definitions apply:

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

**Commencement Date:** has the meaning set out in clause 5.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with these Conditions.

**Contract:** the contract between Westgate and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person, firm, company or organisation who purchases the Goods and/or Services from Westgate.

**Deliverables:** the deliverables (if any) set out in the Specification.

**Delivery Location:** has the meaning set out in clause 7.1.

**Force Majeure Event:** has the meaning set out in clause 4.1.

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

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's acceptance (whether written, verbal or by conduct) of all the terms and conditions, or, if applicable, as shall be agreed in writing by the Customer and Westgate.

**Part 1:** part 1 of these Conditions comprising clauses 1 to 16 inclusive.

**Part 2:** part 2 of these Conditions comprising clauses 17 to 27 inclusive.

**Services:** the services, including the Deliverables, that Westgate has agreed in writing to supply to the Customer as set out in the Specification or Westgate's written acceptance of the Order.

**Specification:** any specification for the Goods and/or Services, including any relevant descriptions, designs, plans or drawings, that is agreed in writing by the Customer and Westgate and confirmed in writing by Westgate as being agreed.

**Warranties:** the warranties set out in clause 8.1 of these Conditions.

**Warranty Period:** has the meaning given in clause 8.2 of these Conditions.

**Westgate:** J. Gates Ltd, G. Gates Ltd, E. Gates Ltd and M.E. Gates Ltd trading as the partnership known as Westgate Group whose principal office is at Westgate House, Venulam Road, Stafford, ST16 5LH.

**Westgate Materials:** has the meaning set out in clause 16.1.

**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 statutory 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) where a Contract is for the lease and hire of Goods, a reference to the sale, purchase or supply of Goods shall be a reference to the lease, hire or supply of Goods in that context;

(e) 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; and

(f) a reference to writing or written includes faxes and e-mails.

## 2. General

### 2.1 Assignment and subcontracting.

(a) Westgate may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under these Conditions and may subcontract or delegate in any manner any or all of its obligations under these Conditions to any third party.

(b) The Customer shall not, without the prior written consent of Westgate, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Conditions.

### 2.2 Notices.

(a) Any notice or other communication required to be given to a party under or in connection with these Conditions shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.

(c) This clause 2.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.

(d) A waiver of any right under these Conditions is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.

### 2.3 Severance.

(a) If any part of or any other competent authority finds that any provision of these Conditions (or any part provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of these Conditions shall not be affected.

(b) If any invalid, unenforceable or illegal provision of these Conditions 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.

**2.4 No partnership or agency.** Nothing in these Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**2.5 Third parties.** A person who is not a party to these Conditions shall not have any rights under or in connection with these Conditions.

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

**2.6 Governing law and jurisdiction.** These Conditions, 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), shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## 3. Confidentiality

**3.1 A party (Receiving Party)** shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know that for the purpose of discharging the Receiving Party's obligations under these Conditions, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 3 shall survive termination of any contract made on the terms of these Conditions (or any part of them) including without limitation the Contract.

**3.2** No part of any drawing supplied by Westgate to the Customer at any stage prior to or during or after the Contract may be copied, reproduced, scanned or stored in any electronic database or made available to any third party whether in whole or in part by any form or by any means.

## 4. Force majeure

**4.1** For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of the relevant party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, inclement weather conditions or default of suppliers or subcontractors.

**4.2** Westgate shall not be liable to the Customer for any delay or failure to perform its obligations under these Conditions as a result of a Force Majeure Event.

**4.3** If the Force Majeure Event prevents Westgate from performing its obligations for more than 24 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the other.

**5.1** The Order constitutes an offer by the Customer to purchase Goods and/or Services from Westgate in accordance with these Conditions.

**5.2** The Order shall only be deemed to be accepted when Westgate issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

**5.3** 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 Westgate which is not set out in the Contract.

**5.4** Any samples, drawings, plans, measurements, descriptive matter or advertising issued by Westgate and any descriptions of the Goods or illustrations or descriptions of the Services contained in Westgate's catalogues, website, quotation or other publications are issued or published for the sole purpose of giving an approximate indication of the Services and/or Goods described in them. They shall not form part of the Contract or any other contract between the Customer and Westgate for the supply of Goods and/or Services.

**5.5** 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.

**5.6** Any quotation given by Westgate shall not constitute an offer, and is only valid for a period of 40 Business Days from its date of issue.

## 6. Goods

**6.1** The Goods are described in the Specification.

**6.2** Westgate reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

## 7. Delivery of Goods and Services

**7.1** Westgate shall deliver the Goods to the location set out in the Order (**Delivery Location**).

**7.2** Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

**7.3** The Customer shall procure that a duly authorised representative of the Customer shall be present at the delivery of the Goods. The acceptance of Delivery by such representative shall constitute conclusive evidence that the Customer has examined the Goods and has found them to be compliant with any Warranties given by Westgate under the Contract, in good condition and complete and fit in every way for the purpose for which they are intended. If required by Westgate, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

**7.4** If the Customer provides Westgate with specific delivery instructions (beyond details of the Delivery Location), the Customer shall indemnify Westgate for all losses, expenses and costs of any kind incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Westgate shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Westgate with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

**7.5** If Westgate 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. Westgate shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Westgate with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

**7.6** If the Customer fails to accept or take delivery of the Goods within 10 Business Days of Westgate notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Westgate's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 11th Business Day following the day on which Westgate notified the Customer that the Goods were ready; and

(b) Westgate shall be entitled to accept or take delivery of the Goods, and charge the Customer for all related costs and expenses (including insurance).

**7.8** If 45 Business Days after Westgate notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, Westgate may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below that price to the Customer.

**7.9** Westgate may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 8. Quality of Goods

**8.1** Westgate warrants that on delivery and throughout the Warranty Period the Goods shall:

(a) conform in all respects with the Specification;

(b) be free from material defects in material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

**8.2** The Warranty Period for each of the Warranties shall be as follows:

(a) where a period of warranty is set out in the Specification, that period of warranty;

(b) where no period of warranty is set out in the Specification, the minimum period of warranty required by statute or law, or

(c) where no minimum period is required by statute or law, a period of 14 days from the date of delivery.

**8.3** Subject to clause 8.4, if:

(a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the Warranties;

(b) Westgate gives a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by Westgate) returns such Goods to Westgate's place of business at Westgate's cost,

Westgate shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

**8.4** Westgate shall not be liable for the Goods' failure to comply with the Warranties if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 8.3;

(b) the defect arises because the Customer failed to follow Westgate'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;

(c) the defect arises as a result of Westgate following any drawing, design, description or specification supplied by the Customer, including without limitation any drawing, design, calculation, specification or instruction in connection with wind engineering or wind loads;

(d) the Customer alters or repairs such Goods without the written consent of Westgate;

(e) the defect arises as a result of fair wear and tear, willful damage, negligence, misuse, abnormal working conditions, extreme weather conditions or improper storage conditions;

(f) the defect arises following any alteration to or repair of the Goods carried out by any person other than Westgate or its authorised agents;

(g) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory, regulatory or industry standards (including without limitation any British Standards Institution building and construction standards).

**8.5** Except as provided in this clause 8 or clause 24, Westgate shall have no liability to the Customer in respect of the Goods' failure to comply with the Warranties.

**8.6** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.

**8.7** The Customer acknowledges that it is the Customer's sole responsibility to determine the suitability of the Goods for its purposes in all circumstances including without limitation in cases where wind load calculations are appropriate. The Customer further acknowledges that Westgate shall have no responsibility for undertaking or verifying such calculations and gives no warranty as to the fitness of the Goods for any particular use.

**8.8** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Westgate under clause 8.3.

## 9. Title and risk

**9.1** The risk in the Goods shall pass to the Customer on completion of delivery.

**9.2** Title to the Goods shall not pass to the Customer until Westgate has received payment in full (in cash or cleared funds) for:

(a) the Goods;

(b) any Services supplied to the Customer in connection with those Goods; and

(c) other goods that Westgate has supplied to the Customer.

**9.3** Until title to the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as Westgate's bailee;

(b) Westgate is given reasonable opportunity of examining such Goods; and

(c) not remove, defect or obscure any identifying mark or packaging or relating to the Goods;

(d) not install or attach the Goods to any premises without the prior consent of Westgate;

(e) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price to the Customer's benefit from the date of delivery;

(f) Westgate immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(i); and

(g) give Westgate such information relating to the Goods and allow Westgate access to premises where the Goods are located as Westgate may require from time to time.

**9.4** Before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(i), if Westgate reasonably believes that any such event is about to happen or notifies the Customer accordingly, then, and without limiting any other right or remedy Westgate may have, Westgate may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party (access to which the Customer shall procure) where the Goods are located in order to recover them and such rights or remedies shall apply regardless of whether the Goods have been incorporated into or attached to or form part of any other goods, materials or structures.

## 10. Charge and payment

**10.1** The price for the Goods and Services shall be the price set out in the Specification or, if no price is set out in the Specification, the price set out in Westgate's quotation for the Goods and Services or, failing that, Westgate's published price list as at the date of delivery.

**10.2** Westgate reserves the right to:

(a) increase the price of the Goods and Services, by giving notice to the Customer at any time before delivery of the Goods or performance of the Services, to reflect any increase in the cost of the Goods or Services that is due to:

(i) any factor beyond the control of Westgate (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, services to be provided, or the Specification; or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give Westgate adequate or accurate information or instructions in respect of the Goods or Services.

**10.3** If the Customer terminates the Contract for whatever reason prior to the earlier of delivery of the Goods or commencement of the Services (as applicable), Westgate reserves the right to charge the Customer for the costs and expenses it has incurred in preparing for the commencement of that Contract up to a maximum amount equal to 15% of the aggregate value of the Goods and/or Services to be supplied under the Contract in question.

**10.4** Subject to clause 10.5 and clause 10.6, unless otherwise agreed in writing the Customer shall pay for the Goods and Services as follows in full and in cleared funds to a bank account nominated in writing by Westgate:

(a) fully in advance (50%) of the price shall be payable on the completion of delivery of the Goods (or if earlier, the commencement of the Services); and

(b) the balance shall be payable within 30 days of the date of the invoice issued to the Customer by Westgate; and

(c) time for payment shall be of the essence of the Contract.

**10.5** In all circumstances, Westgate reserves the right prior to delivery of the Goods and/or commencement of the Services to apply to demand in full (in cash or cleared funds) from the Customer all sums due or to become due to Westgate in respect of:

(a) the Goods;

(b) the Services; and/or

(c) all other sums which are or may become due to Westgate from the Customer.

**10.6** If the Customer fails to pay any amount under the Contract as it falls due or any event occurs (or circumstances exist) which, in the opinion of Westgate, has or is likely to adversely affect the Customer's ability to perform all or any of its obligations under, or otherwise comply with the terms of, the Contract, Westgate reserves the right to demand in full (in cash or cleared funds) from the Customer all sums due or to become due to Westgate in respect of:

(a) the Goods;

(b) the Services; and/or

(c) all other sums which are or may become due to Westgate from the Customer.

**10.7** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Westgate to the Customer, the Customer shall, on receipt of a valid VAT invoice from Westgate, pay to Westgate such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

**10.8** Without limiting any other right or remedy of Westgate, if the Customer fails to make any payment due to Westgate under the Contract by the due date for payment (**Due Date**), Westgate shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the base rate from time to time of Barclays Bank plc or, if higher, the then current rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1988. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

**10.9** 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 Westgate in order to justify withholding payment of any such amount in whole or in part. Westgate may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Westgate to the Customer. In the event the Customer has not paid an amount due under the Contract by the due date, the Customer hereby authorises Westgate to take payment from the Customer using any Customer card or bank account details that Westgate may have on its records and the Customer hereby undertakes to indemnify Westgate for any losses or costs or expenses that Westgate may incur as a result of or in connection with the taking of any payment in this way.

**10.10** Operation and maintenance manuals will not be submitted until payment is received in full.

**10.11** In the event of default of payment by the Customer to Westgate under the Contract for any reason (including, without limitation, bankruptcy, insolvency or re-financing) then the directors partners or members (as appropriate) of the Customer (if it is a company) limited partnership or limited liability partnership shall jointly and severally undertake to indemnify Westgate and guarantee such payment immediately on demand for all and any losses claims damages costs charges expenses liabilities demands proceedings and actions which Westgate may sustain or incur or which may be brought or established against Westgate by any person which arises out of or in relation to or by reason of any such breach of any term of the Contract.

**11. Intellectual Property Rights** In or arising out of or in connection with the Goods and Services shall be owned by Westgate.

**11.2** The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Westgate obtaining a written licence from the relevant licensor on such terms as will entitle Westgate to license such rights to the Customer.

**11.3** All Westgate Materials are the exclusive property of Westgate.

**12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**12.1** Nothing in these Conditions shall limit or exclude Westgate's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

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

(e) defective products under the Consumer Protection Act 1987.

**12.2** Subject to clause 12.1:

(a) Westgate 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; and

(b) Westgate's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, the provision of Goods or the Services shall be limited to the amount that Westgate is able to recover from time to time in accordance with Westgate's liability insurance effected by Westgate, a copy of which policy shall be provided to the Customer on request.

**12.5** Subject to clause 12.1, Westgate shall have no liability to the Customer or any third party in respect of any cracking, thermal cracking, breakage of glass and/or scratches to glass or damage to decoration from soapy overspray, water contact or otherwise at any time before, during or after installation of the Goods, or any other damage or loss of profit or other loss or damage to the Goods. Each of the Customer and any relevant third party accepts the risk of any such damage occurring.

**12.6** Subject to clause 12.1, Westgate shall have no liability to the Customer or any third party whether in contract, tort (including negligence), breach of statutory duty, or otherwise in respect of any loss of profit, any indirect or consequential loss or any other damage or costs arising in connection with the Contract.

(a) any of the assumptions set out in clause 15.6 being untrue in whole or in part; or

(b) Westgate, or any person on its behalf or at its direction, carrying out any of the services set out in clause 15.6 to facilitate the installation of the Goods and/or the carrying out of the Services.

**12.7** Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**12.8** This clause 12 shall survive termination of the Contract.

## 13. Termination

**13.1** Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party:

(a) 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 45 days after receipt of notice in writing of the breach; or

(b) the other party becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(i) or 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;

(c) the other party enters into negotiations with all or an class of its creditors with a view to rescinding any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to

irrevocable licence at any time to enter any premises where Westgate Materials or Deliverables are or may be stored in order to recover 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 the Contract.

(c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and  
(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### 15. Supply of Services

15.1 The Contract shall only provide for a supply of Services (for example, without prejudice to the generality of the foregoing, any installation services) by Westgate to the Customer where Westgate has confirmed in the Specification, Westgate's written acceptance of the Order or otherwise in writing that Westgate is contracting to provide the Services in question.

15.2 Westgate shall provide the Services to the Customer in accordance with the Specification in all material respects.

15.3 Westgate shall use all reasonable endeavours to meet any performance dates for the Services specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

15.4 Westgate shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Westgate shall notify the Customer in any such event.

15.5 Westgate warrants to the Customer that the Services will be provided using reasonable care and skill.

15.6 Unless specifically agreed by Westgate and the Customer in writing, any price quoted or agreed for the Goods and Services:

- (a) does not include any provision for reinstatement (including without limitation redecoration) of surrounding areas, which if required will be charged in addition;
- (b) does not include structural, building and ground conditions appropriate for the installation of the Goods and does not take into account any alteration or excavation work through unforeseen material, which if required will be charged in addition;
- (c) assumes any fixtures and fittings to which the Goods may be attached or installed are free of any defect of any kind and are suitable for the proposed installation;
- (d) does not include locating services situated within areas where works are to be carried out, which if required will be charged in addition;
- (e) does not include the alteration or redirection of any services that may be present, which if required will be charged in addition;
- (f) does not include any structural calculations, which if required will be charged in addition;
- (g) does not include any reinstatement or repositioning of equipment, machinery or chattels, which if required will be charged in addition.

15.7 Where preparatory works are to be carried out by third parties and on inspection by Westgate are not satisfactory, Westgate reserves the right to raise abortive charges and/or contra-charge the Customer for hire of equipment, materials and labour to rectify the area to make good and enable installation.

15.8 Where a lead time has been quoted for the provision of Services, this is indicative only.

15.9 Where advice has been given by a representative of Westgate relating to planning permission it is given in good faith but without liability and the Customer is responsible for seeking its own professional advice in relation to planning or related matters.

15.10 Unless specifically agreed by Westgate and Customer in writing, no guarantee is given that Westgate's or sub-contractor staff on site will conform to any specific accreditation, training or industry standards.

15.11 The Customer will make available appropriate welfare facilities to Westgate's or sub-contractor staff on site.

#### 16. Customer's obligations

16.1 The Customer shall:

- (a) ensure that the terms of the Order and the information it provides in the Specification are complete and accurate;
- (b) facilitate delivery of the Goods by providing, at its own expense, all requisite materials, facilities, access and suitable working conditions to enable delivery to be carried out safely and expeditiously;
- (c) where the Contract provides that Westgate are to supply the Customer with the Service of installing the Goods (which shall always be subject to clause 15.1 of these Conditions), facilities, access and suitable working conditions to enable installation to be carried out safely and expeditiously;
- (d) co-operate with Westgate in all matters relating to the Services;
- (e) use and otherwise exercise access to Westgate's premises in clauses 16.1(b) and 16.1(c) above shall be available from 8.00am until 8.00pm and if Westgate is not able to gain such access, or Westgate is otherwise unable to perform the Services due to the Customer's fault or due to any of the matters referred to in clauses 15.6, 15.7 and 15.11, then additional charges shall apply as follows:
  - (i) from 9.00am at a rate of £75 per hour until work can commence;
  - (ii) a charge of £300 per day if a site visit is fully aborted;
  - (iii) provide Westgate with such information and materials as Westgate may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - (iv) prepare the Customer's premises for the supply of the Services;
  - (v) 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;
  - (vi) keep and maintain all materials, equipment, documents and other property of Westgate Materials in the Customer's premises in safe custody at its own risk, maintain Westgate Materials in good condition until returned to Westgate, and not dispose of or use Westgate Materials other than in accordance with Westgate's written instructions or authorisation;
  - (vii) indemnify Westgate against all liabilities, costs or claims arising out of damage caused above, below, on or around the location where the Goods are to be installed or erected or Services provided, where such damage arises due to the failure of the Customer to inform Westgate of the location of drains, pipes, cables or other services;
  - (viii) indemnify Westgate against all liabilities, costs or claims arising out of the improper or inappropriate use of the Goods; and
  - (ix) ensure that signage and materials warning against the dangers of improper use of the Goods are provided and appropriately displayed.
- (f) Westgate's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default);
- (g) Westgate shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays Westgate's performance of any of its obligations;
- (h) Westgate shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Westgate's failure or delay to perform any of its obligations as set out in the Contract; and
- (i) the Customer shall reimburse Westgate on written demand for any costs or losses sustained or incurred by Westgate arising directly or indirectly from the Customer Default.

16.3 Subject always to clause 15.1, where Westgate is to supply to the Customer the Service of installing the Goods the Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Goods. Acceptance by such representative of installation shall constitute conclusive evidence that the Customer has examined the Goods and has found them to be compliant with any Warranties given by Westgate under the Contract, in good condition and complete and fit in every way for the purpose for which they are intended.

## PART 2

### 17. Interpretation

17.1 The following definitions apply in Part 2 of these Conditions.

**Deposit:** the deposit amount (if any) set out in the Specification, Westgate's quotation for the supply of the Goods or Westgate's written acceptance of the Order (as applicable); or

**Rental Payments:** the payments made by or on behalf of the Customer for hire of the Goods.

**Rental Period:** the period of hire as set out in clause 19 of these Conditions.

#### 18. Goods hire

18.1 Westgate shall lease and the Customer shall hire the Goods subject to the terms and conditions of the Contract.

18.2 Westgate shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Goods.

#### 19. Rental Period

19.1 Subject always to clause 19.3, the Rental Period starts on the Goods' arrival at the Delivery Location and shall continue for the period set out in the Specification or Westgate's written acceptance of the Order (Initial Rental Period). Unless the Initial Rental Period is expressed to be a fixed term, the Rental Period shall continue until either party gives to the other party not less than one week's written notice to terminate, expiring on or after the last day of the Initial Rental Period.

19.2 Subject always to clause 19.3, where no Initial Rental Period is set out in the Specification or Westgate's written acceptance of the Order, the Rental Period starts on the Goods' arrival at the Delivery Location and shall continue for four weeks (Initial Rental Period) and shall automatically extend for one week (Extended Term) at the end of the Initial Rental Period and each Extended Term. Either party may give not less than one week's written notice to the other party to terminate, expiring on or after the last day of the Initial Rental Period.

19.3 The Contract may be terminated earlier by Westgate in accordance with the terms of these Conditions.

#### 20. Rental Payments and Deposit

20.1 The price for the hiring of the Goods shall be the price set out in the Specification, Westgate's quotation for the hiring of the Goods or Westgate's written acceptance of the Order (as applicable); or, if not stated in any of those, the price set out in Westgate's published price list as at the Commencement Date.

20.2 The Customer shall pay the Rental Payments to Westgate in accordance with the payment terms set out in the Specification, Westgate's quotation for the hiring of the Goods or Westgate's written acceptance of the Order (as applicable). Where no payment terms are stated, at any time following delivery of the Goods Westgate may invoice the Customer for all delivery and installation charges plus the Rental Payments applicable to the first four weeks of the Rental Period and the Customer shall pay the invoice in full within 30 days of the invoice date.

20.3 Westgate reserves the right prior to delivery of the Goods and throughout the Rental Period to:

- (a) increase the price of the Goods and Services, by giving notice to the Customer at any time before delivery of the Goods or performance of the Services, to reflect any increase in the cost of the Goods or Services that is due to

(i) any factor beyond the control of Westgate (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, services to be provided, or the Specification; or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give Westgate adequate or accurate information or instructions in respect of the Goods or Services.

20.4 In all circumstances, Westgate reserves the right prior to delivery of the Goods and/or commencement of the Services (as applicable) to demand in full (in cash or cleared funds) from the Customer all sums due or to become due to Westgate in respect of:

(a) the Goods;

(b) the Services; and/or

(c) all other sums which are or may become due to Westgate from the Customer.

20.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Westgate to the Customer, the Customer shall, on receipt of a valid VAT invoice from Westgate, pay to Westgate such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

20.6 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 Westgate in order to justify withholding payment of any such amount in whole or in part. Westgate may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Westgate to the Customer.

20.7 Without limiting any other right or remedy of Westgate, if the Customer fails to make any payment due to Westgate under the Contract by the due date for payment, then, without limiting Westgate's remedies under these Conditions, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the base lending rate from time to time of Barclays Bank plc or, if higher, the then current rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1988. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and compounding quarterly. The Customer shall pay the interest together with the overdue amount.

20.8 The Deposit is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Goods. The Customer shall, within five Business Days of the Commencement Date and in any event prior to delivery of the Goods, pay the Deposit to Westgate. If the Customer fails to make any Rental Payments in accordance with the terms of the Contract, or allows any third party to take possession of the Goods (in whole or in part), Westgate shall apply the Deposit against such default, loss or damage. The Customer shall pay to Westgate any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within 10 Business Days of the end of the Rental Period.

20.9 Where Westgate agrees in its absolute discretion to terminate the hire Contract prior to the end of the Initial Rental Period, Westgate reserves the right to invoice the Customer for all Rental Payments that Westgate has made under the Contract prior to the end of the Initial Rental Period and Westgate may provide its agreement to the early termination of the Contract conditional on receipt of such Rental Payments.

#### 21. Delivery and installation

21.1 Westgate shall deliver the Goods in accordance with clause 7 of the Contract.

21.2 Westgate shall only be responsible for installing the Goods where Westgate has confirmed in the Specification or Westgate's written acceptance of the Order or otherwise in writing that Westgate is to supply to the Customer the Service of installing the Goods in accordance with the terms of these Conditions.

#### 22. Title, risk and insurance

22.1 The Goods shall at all times remain the property of Westgate, and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to the terms and conditions of the Contract).

22.2 The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on the Goods' arrival at the Delivery Location. The Goods shall remain at the sole risk of the Customer during the Rental Period and any other period during which the Goods are in the possession, custody or control of the Customer (Risk Period) until such time as the Goods are redelivered to Westgate. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Goods to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Westgate may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Goods would insure for, or such amounts as Westgate may from time to time reasonably require, to cover any third party or public liability claims that Westgate may have against Westgate or its employees in respect of the Goods;
- (c) insurance against such other or further risks relating to the Goods as may be required by law, together with such other insurance as Westgate may from time to time consider reasonably necessary and advise to the Customer.

22.3 All insurance policies procured by the Customer shall be endorsed to provide Westgate with at least one month's prior written notice of cancellation or material change (including any reduction in cover) and to ensure that the Customer remains liable to Westgate for the full amount of the premium payable in relation to any claim relating to the Goods. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

22.4 The Customer shall give immediate written notice to Westgate in the event of any loss, accident or damage to the Goods arising out of or in connection with the Customer's possession or use of the Goods.

22.5 If the Customer fails to effect or maintain any of the insurances required under the Contract, Westgate shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

22.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Westgate and proof of premium payment to Westgate to confirm the insurance arrangements.

#### 23. Customer's obligations

23.1 The Customer shall during the term of the Contract:

- (a) ensure that the Goods are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by Westgate;
- (b) take such steps (including compliance with all safety and usage instructions provided by Westgate) as may be necessary to ensure, so far as is reasonably practicable, that the Goods is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (c) maintain at its own expense the Goods in good and substantial repair in order to keep it in as good an operating condition as it was on the arrival of the Goods at the Delivery Location (fair wear and tear only excepted);
- (d) make no alteration to the Goods and shall not remove any existing component(s) from the Goods without the prior written consent of Westgate unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately at the Customer's cost (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Goods shall vest in Westgate immediately upon installation;
- (e) keep Westgate fully informed of all material matters relating to the Goods;
- (f) subject to clause 27, at all times keep the Goods in the possession or control of the Customer and keep Westgate informed of its location;
- (g) permit Westgate or its duly authorised representative to inspect the Goods at all reasonable times and for such purpose to enter upon any premises at which the Goods may be located, and shall grant reasonable access and facilities for such inspection;
- (h) maintain operating and maintenance records of the Goods and make copies of such records readily available to Westgate, together with such additional information as Westgate may reasonably require;
- (i) not without the prior written consent of Westgate, attach the Goods to any land or building so as to become fixtures or part of a permanent or impermanent fixture on such land or building. If the Goods do not become affixed to any land or building then the Goods must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Goods from any land or building and indemnify Westgate against all losses, costs or expenses incurred as a result of such affixation or removal;
- (j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Westgate in the Goods and, where the Goods have become affixed to any land or building, the Customer must take all necessary steps to ensure that Westgate may enter such land or building and recover the Goods both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of Westgate of any rights such person may have or acquire in the Goods and a right for Westgate to enter onto such land or building to remove the Goods;
- (k) not suffer or permit the Goods to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process. But if the Goods are so confiscated, seized or taken, the Customer shall notify Westgate and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Goods and shall indemnify Westgate on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l) not use the Goods for any unlawful purpose;
- (m) ensure that at all times the Goods remain identifiable as being Westgate's property and wherever possible shall ensure that a visible sign to that effect is attached to the Goods;
- (n) deliver up the Goods at the end of the Rental Period or on earlier termination of the Contract at such address as Westgate requires, or if necessary allow Westgate or its representatives access to any premises where the Goods are located for the purpose of removing the Goods; and
- (o) not do or permit to be done anything which could invalidate the insurances referred to in clause 22 of these Conditions.

23.2 The Customer acknowledges that Westgate shall not be responsible for any loss of or damage to the Goods arising out of or in connection with any negligence, misuse, mishandling of the Goods or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify Westgate on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of the Contract.

#### 24. Quality of Goods

The provisions of clause 8 shall apply to any Contract under which Westgate shall lease and the Customer shall hire Goods, save that the wording "Westgate shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full" at the end of clause 8.3 shall be amended to read "Westgate shall, at its option, repair or replace the defective Goods, or make an appropriate reduction in the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it)".

#### 25. Termination

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

(a) the Customer commits a material breach of its obligations under the Contract which breach and (if such breach is remediable) fails to remedy that breach within 45 days after receipt of notice in writing of the breach;

(b) 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 or limited liability partnership) 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;

(c) the Customer commences negotiations with all or any class of its creditors with a view to restructurising any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (other than being 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);

(d) 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 (being a company) other than for the sole purpose of a scheme for the solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company);

(f) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;

(g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

(h) the Customer (being an individual) is the subject of a bankruptcy petition or order;

(i) 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 sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;

(j) 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 25.1(b) to clause 25.1(i) (inclusive) of these Conditions;

(k) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

(l) the Customer (being an individual) dies 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; or

(m) Westgate are of the opinion that the Goods should be recalled to facilitate compliance with any mandatory modifications required by law or any regulatory authority.

25.2 Without limiting its other rights or remedies, Westgate may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

25.3 Without limiting its other rights or remedies, Westgate shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Westgate if:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) the Customer becomes subject to any of the events listed in clause 25.1(b) to clause 25.1(i) of these Conditions, or Westgate reasonably believes that the Customer is about to become subject to any of them.

25.4 Without limiting its other rights or remedies, each party may terminate the Contract by giving one month's written notice to the other party, provided that if the Rental Period is for a fixed term one month's written notice is required to expire at the end of the fixed term at the earliest.

26.1 Upon termination of the Contract, however caused:

(a) Westgate's consent to the Customer's possession of the Goods shall terminate and Westgate may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Goods and for this purpose may enter any premises at which the Goods are located; and

(b) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to Westgate on demand:

(i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 20.7 of these Conditions;

(ii) any costs and expenses incurred by Westgate in recovering the Goods and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

26.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or 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.

#### 27. Underletting of Goods

27.1 The Customer shall not, without the prior written consent of Westgate, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet and lend the Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of it.

27.2 In all circumstances where Westgate provides its prior written consent to any of the prohibited events referred to in clause 27.1, the Customer hereby acknowledges that it shall remain liable to perform its obligations to Westgate under the Contract and undertakes to indemnify Westgate against all losses, costs and expenses incurred by Westgate as a result of or in connection with the prohibited event to which Westgate has consented.

27.3 Where Westgate consent in accordance with clause 11.1 to the underletting or lending of the Goods by the Customer to a third party hirer, the Customer shall use its best endeavours to procure that the third party hirer complies with the terms, restrictions and obligations of the Contract as if they were named in it as the Customer.