

TERMS OF TRADING – SUPPLY
ONLY

1. DEFINITIONS

a. In these Conditions the following definitions apply:

Conditions: the terms and conditions set out in this document.

Contract: the contract between “Genius Facades Limited” and the “Customer” for the sale and/or purchase of Goods in accordance with these Conditions.

Customer: the person or firm and/or company who sells and/or purchases goods and/or services from Genius Facades.

Genius: means Genius Limited, a company incorporated in England and Wales with company number 08431887.

Order: the customer's order for the goods and/or services as set out in the customer's purchase order form or the customer's written acceptance of Genius's quotation. In the absence of a customer's order and/or written acceptance of Genius's quotation, Genius's quotation is the basis of the Order.

Goods: means all or any of the goods, works, or material to be supplied by Genius and where appropriate, the services. To the extent that the goods are to be manufactured and/or installed in accordance with a specification and/or drawings and/or documents supplied by the customer, the customer shall indemnify Genius against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Genius in connection with any claim made against Genius for actual and/or alleged infringement of a third parties intellectual property rights arising out of or in connection with Genius use of the specification and/or drawings and/or documents.

To the extent that the goods are to be manufactured and/or installed in accordance with a specification and/or drawings and/or documents supplied by the customer, the customer shall indemnify Genius against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Genius in connection with any claim made against Genius for actual and/or alleged infringement not being fit for purpose and/or contravening and/or breaching any statutory instrument.

Genius reserves the right to amend the specification of the goods and/or any agreed specification if required by any applicable statutory or regulatory requirements. Genius are not at liberty to do so and any amendments not made, Genius, shall not be liable for any liabilities incurred. However, should Genius amend the specification then any further costs and/or Damages incurred shall be reimbursable.

Services: means all or any of the services to be supplied by Genius.

Specification: Any specification for the goods, including any related plans, drawings, specifications, documents that is agreed by the Customer and Genius.

Force Majeure Event: Genius shall not be liable for any failure or delay in performing its obligations under the contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a parties reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third parties), failure of energy sources or transport network, acts of God, war or national emergency, terrorism, riot, civil commotion, protest, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, compliance with any law or governmental order, rule, regulation or direction, accident, or default of suppliers or subcontractors.

b. Genius' terms and conditions take precedence over the terms and conditions of the customer.

2. APPLICATION OF TERMS and CONDITIONS

a. The contract will be on these terms and conditions to the exclusion of all terms, conditions and warranties including any terms and conditions which the customer purports to apply under any purchase order, confirmation of order, or similar document, whether or not such document is referred to in the contract or which are implied by trade, custom, practice or course of dealing. The signing by Genius of the customer's documentation shall not imply any modification of these terms and conditions.

b. Any samples, drawings, descriptive matter, or advertising produced by Genius and any descriptions or illustrations contained catalogues or brochures are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the contract or have any contractual force.

c. Each order or acceptance of a quotation for goods and/or services will be deemed to be an offer by the customer to purchase goods and/or services subject to these conditions. A quotation by Genius for the goods and/or services shall only be valid for a period of 30 Business Days from its date of issue.

d. The contract is formed when any order is accepted by Genius issuing a written acceptance (including email) of the order or where no such document is issued by Genius dispatching the goods and or providing the services and for the avoidance of doubt, the order shall not be regarded as a counter-offer (notwithstanding it may make reference to separate terms and conditions) in fact the order will be regarded as unequivocal acceptance of these conditions. The customer is responsible for ensuring that the terms of the order and any applicable specifications are complete and accurate.

e. No employee, agent or representative of Genius has any authority to give any representation, guarantee or warranty relating to the goods unless expressed in writing; and signed on behalf of Genius by a duly authorized officer of Genius.

f. Variations of these terms and conditions are not binding unless agreed in writing by authorised officers of each of Genius and the customer.

g. Subject to paragraph (c) above the customer acknowledges that it has not been induced to enter into the contract by any representation guarantee or warranty made by Genius, its employees, agents or representatives. Genius is not seeking to exclude its liability (if any) for fraudulent misrepresentation.

h. The customer can only cancel the contract or an order once it is accepted, with Genius's prior consent.

i. The customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the customer that is inconsistent with these terms and conditions.

j. A reference to a party includes its personal representatives, successors or permitted assigns.

k. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

l. A reference to writing or written includes faxes and emails.

3. QUOTATIONS

Quotations given by Genius shall not constitute an offer and a quotation is subject to withdrawal at any time. Quotations are only valid for 30 days from the date of issue. The order (which must be in writing and including email) will be regarded as an offer and written acceptance of the same by Genius will create a binding contract. The terms and conditions of acceptance will be these terms and conditions 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 unless specifically agreed in writing (including email) by Genius, at the time of acceptance.

4. PRICES

a. All prices are quoted without commitment and subject to alterations or withdrawal by Genius without notice prior to acceptance of the order and orders can only be accepted on condition that the prices charged are those ruling on the date of dispatch.

b. The price of the goods and/or services shall be the price set out by Genius for delivery of the goods and/or services in respect of the order whether pursuant to a quotation or otherwise. All prices included in quotations are calculated having regard to the price of raw materials, labour, haulage and all other overheads of Genius applicable at the date of such quotation and are subject to the goods and/or services remaining unsold at the date of dispatch. In the event of any increase in such costs between quotation and dispatch Genius shall be entitled to increase the quoted price.

c. Genius may, by giving notice to the customer at any time before delivery, increase the price of the goods and/or services to reflect any increase in the cost of the goods and/or services that is due to:

i. Any factor beyond Genius control (including foreign exchange fluctuations, increase in taxes and duties, and increase in labour, materials and other manufacturing costs),

- ii. Any request by the customer to change the delivery date(s), method of delivery, quantities or types of goods and/or services ordered, or the specification; sequence of works, or
 - iii. Any delay caused by any instructions of the customer or failure of the customer to give Genius adequate information or instructions,
 - d. Where a quotation is given for a particular quantity of goods and/or services and a different quantity is ordered by the customer or delivery instructions are varied after the date of the order Genius shall be at liberty to revise the quoted price.
 - e. All prices are exclusive of VAT which shall be at the appropriate ruling rate at the date of the submission of the invoice. The customer shall, on receipt of a valid VAT invoice from Genius, pay to Genius such additional amounts in respect of VAT as are chargeable on the supply of the goods and/or services.
 - f. The price of the goods and/or services is exclusive of the costs and charges of packaging, insurance and transport of the goods, which shall be invoiced to the customer.
5. TERMS OF PAYMENT
- a. Genius may Invoice the customer for the goods and/or services on or at any time after the completion of delivery ("the Payment Date") unless the customer has agreed credit terms with Genius and where there are agreed credit terms (subject to the customer making an application to Genius for credit and such application being successful ('Credit Application')), payment shall be made in accordance with the terms of the Credit Application.
 - b. The "Final Date for Payment" shall be 28 calendar days from date of Invoice.
 - c. Any payment overdue after the Final Date for Payment shall carry interest at the rate of 5% over Barclays Bank base lending rate for the time being in force with interest accruing on a daily basis.
 - d. The time of payment by the customer is of the essence.
 - e. Where a customer fails to make payment for any goods and/or services by the Final Date for Payment Genius at its option may-
 - i. Suspend delivery and or installation without liability under all or any contracts with the customer whilst the customer remains in arrears with payment; and/or
 - ii. Give notice in writing (including email) that if any such sum shall remain unpaid for 21 days after the same fell due for payment all or any Contracts may be cancelled and if such sums are not paid within the said period of 21 days, Genius may by further notice forthwith determine all such contracts without liability and claim damages for wrongful repudiation thereof by the customer; and/or
 - iii. Exercise a lien over all goods of the customer in the possession of Genius; and/or
 - iv. Remove any goods which have been installed by Genius at any location pursuant to the contract.
 - v. Charge the customer for reasonably and properly incurred remobilisation costs (including but not limited to all costs of reintroducing plant, equipment and employees to the relevant site for the purpose of completing the contract) following a suspension.
- 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 Genius in order to justify withholding payment of any such amount in whole or in part. Genius may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the customer against any amount payable by Genius to the customer.
- f. Subject to 5(d)(ii), termination of the contract shall not affect any of the parties' rights and remedies that have accrued as a result of termination, including the right to claim damages in respect of any breach of these terms and conditions that existed at or before the date of termination.
6. CANCELLATION
- a. Genius shall not be obliged to accept cancellation, and if the customer refuses to accept delivery he will remain liable to pay the full price of the goods and/or services ordered, together with any additional costs involved.
 - b. In the event that Genius, at its absolute discretion, agrees in writing to accept cancellation the customer shall pay Genius costs in respect of handling, re-stocking, loss of overhead and profit and administration.
7. SPECIFICATIONS
- a. Goods and/or services supplied shall conform to the tolerances and accuracies published in the relevant codes and for the avoidance of doubt the customer shall be responsible to Genius for providing the accuracy of any assumptions used by Genius under the contract and for giving Genius necessary information in relation to the use of the goods and/or the services required.
 - b. Goods and/or services are supplied subject to stopping, filling and repair as is generally accepted in the trade.
 - c. Any samples, drawings, descriptive matter or advertising issued by Genius and any descriptions or illustrations contained in Genius catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods and/or services described in them. They shall not form part of the contract or any other contract between Genius and the customer for the sale of goods and/or services.
8. SHORTAGES AND DEFECTS
- a. Genius will supply all goods and/or services under cover of an advice note. All faults or shortages in the goods and/or services shall be noted on the advice note failing which Genius shall have no liability for subsequent claims. In the event of the goods and/or services being signed for "unexamined" [or vernacular to such extent], Genius will only accept responsibility for claims relating to shortage or damaged goods when such shortages or damage is reported in writing to Genius within a period of three working days from the date of delivery of the goods and/or services. Following any such notification the goods and/or services referred to will be repaired or replaced or a credit given by Genius at its option, as soon as is practicable.
 - b. Where the customer has bought the goods and/or services for further constructions, fixing or sale, Genius will not be liable for any loss or damage suffered by any person which (i) would not have been suffered had the goods and/or services been examined by the customer prior to construction, fixing or sale by them as the case may be; or (ii) arises because the customer failed to follow Genius oral or written instructions as to the goods and/or services or (if there are none), good trade practice.
9. DELIVERY
- a. Except as otherwise agreed in writing at the time of contract delivery of goods and/or services shall be the location set out in the purchase order or at Genius sole discretion such location as near the site of delivery as a safe hard road permits and for unloading at ground level.
 - b. If there is no representative of the customer on site to receive delivery and sign the delivery note (and pay for the goods on a cash on delivery transaction) Genius may refuse to deliver and any abortive delivery and /or storage charges incurred by Genius will be paid by the customer.
 - c. If the customer fails to take or accept delivery of the goods within three business days of Genius notifying the customer that the goods are ready, then, except where such failure or delay is caused by a Force Majeure event delivery of the goods shall be deemed to have been completed at 9.00am on the third business day after the day on which Genius notified the customer that the goods were ready and Genius shall store the goods until delivery takes place and charge the customer for all related costs and expenses [including insurance, if it is taken out].
 - d. If Genius store goods for the customer, then Genius are entitled to payment for the goods as materials stored off-site.
 - e. If ten business days after the day on which Genius notified the customer that the goods were ready for delivery, but the customer has not taken or accepted delivery of them, Genius 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 the price of the goods.
 - f. Where the contract provides for delivery of the goods by installments, each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay of delivery of any one instalment shall not affect the balance of the contract or entitle the customer to cancel the same.
 - g. Delivery dates are given in good faith, are approximate only and time for delivery shall not be of the essence. Every effort will be made to ensure due performance, but Genius shall not be liable for damages or consequential loss arising from delays caused by strikes, lockouts, breakdowns, fires or any other circumstances beyond Genius reasonable control, for example Force Majeure Events. If the customer's instructions or lack of instructions causes delay in delivery Genius shall be entitled to an extension of the time originally agreed and to payment in respect of any additional costs incurred.
 - h. Delivery of the quantity of materials ordered discharges Genius responsibility. The customer shall not be entitled to reject the goods if Genius delivers up to and including 5% more or less than the quantity of goods ordered but a pro rata adjustment shall be made to the invoice on receipt of notice from the customer that the wrong quantity of goods was delivered.
 - i. Delivery of the goods and/or services is completed upon completion of:
 - i. the collection of the goods by the customer from Genius; or

- ii. Genius loading the goods onto a third-party carrier engaged by the customer for transportation to the customer to such place as specified in the order; or
 - iii. Genius delivering the goods to the customer at such place as specified in the order via a third-party carrier engaged by Genius; or
 - iv. Genius personally delivering the goods to the customer to such place as specified in the order and where goods are pursuant to an order relating to services, delivery of such services shall be deemed to have taken place upon installation of the same by Genius.
- j. If Genius 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. Genius 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 the supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the goods
- k. The risk in the goods shall pass to the customer on completion of delivery.
- l. The customer agrees with Genius that it shall provide as much information as Genius requires, (including without prejudice to the generality of the foregoing, the ability to access the site and undertake surveys and or liaise with relevant personnel) in order for Genius to fulfill its obligations under the contract. Any costs incurred for providing the information shall be borne by the customer.
- m. If Genius requires the customer to return any packaging materials the customer shall make any such packaging materials available for collection at such times as Genius shall reasonably request.
- n. The customer shall not be entitled to reject the goods if Genius delivers less or more than the quantity of goods ordered, but a pro-rata adjustment shall be made to the order to reflect the correct quantity of goods delivered.
- o. Genius may deliver the goods by installments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an installment shall not entitle the customer to cancel any other installment.
10. **PASSING OF PROPERTY AND RESALE**
- a. Until full payment has been received by Genius for goods supplied to customer under the contract or any other agreement between the customer and Genius the property in the goods shall remain in Genius.
 - b. Until title to the goods has passed to the customer, the customer shall, subject to (c) and (d) below, hold the goods on a fiduciary basis as Genius bailee.
 - c. Notwithstanding (b) above, the customer may resell the goods in the ordinary course of the business provided always that the proceeds of resale shall belong to Genius and the customer shall account to Genius for such proceeds on demand.
 - d. Genius may at any time at its option by notice in writing revoke the liberty of resale in (c) above.
 - e. The customer's liberty to resell, granted pursuant to (c) above shall be automatically determined if a receiver is appointed over any of the customer's assets or over the customer's undertaking, or a winding up order is made against the customer, or the customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or call a meeting of or make any arrangement or composition with creditors or commit any act of bankruptcy.
 - f. Upon determination of the customer's liberty to resell under (c) or (d) above the customer shall place the goods at Genius disposal and Genius shall be entitled to enter the customer's premises for the purpose of recovering and removing the goods.
 - g. The risk in the goods shall pass to the customer on completion of delivery [delivery in installments or delivery in full].
 - h. Until title to the goods has passed to the customer, the customer shall:
 - i. Store the goods separately from all other goods held by the customer so that they remain readily identifiable as Genius property,
 - ii. Not remove, deface or obscure any identifying mark or packaging on or relating to the goods
 - iii. Maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery,
 - iv. Give Genius such information relating to the goods as Genius may require from time to time,
11. **RESPONSIBILITIES OF THE CUSTOMER**
- The Customer shall:
- i. co-operate with Genius in all matters relating to the contract;
 - ii. provide, for Genius, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the customer's premises, office accommodation, data and other facilities as reasonably required by Genius including any such access as is specified in an Order. Where the customer requires Genius to use or comply with specific facilities and or procedures, then such facilities and or procedures (including but not limited to security clearance, security passes, site-specific training, and on-site car parking), should be made available to Genius its agents, subcontractors, consultants and employees free of charge;
 - iii. provide to Genius in a timely manner all documents, information, items and materials in any form (whether owned by the customer or a third party) required under an order or otherwise reasonably required by Genius in connection with the goods and/or services and ensure that they are accurate and complete in all material respects;
 - iv. Inform Genius of all health and safety and security requirements that apply at any of the customer's premises;
 - v. ensure that all the customer's equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
 - vi. obtain and maintain all necessary licenses and consents and comply with all relevant legislation as required to enable Genius to provide the goods and/or services including in relation to the installation of Genius equipment, the use of all customer's materials and the use of the customer's equipment insofar as such licences, consents and legislation relate to the customer's business, premises, staff and equipment, in all cases before the date on which the services and/or goods are to start and or the service and/or goods are to be delivered;
 - vii. keep, maintain and insure Genius equipment in good condition and in accordance with Genius instructions from time to time, where the customer has control and custody of Genius equipment on a site, and not dispose of or use Genius equipment other than in accordance with Genius written instructions or authorization;
 - viii. comply with any additional responsibilities of the customer as set out in the relevant order;
 - ix. notify Genius in writing immediately on the happening of a change of control of the customer;
 - x. provide Genius with access to the relevant sites, in order to carry out the contract, at such hours as specified in the relevant order, and in any event such further access as may be required by Genius from time to time;
 - xi. If Genius performance of its obligations under these terms and conditions is prevented or delayed by any act or omission of the customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Genius shall be allowed an extension of time to perform its obligations equal to the delay caused by the customer;
 - xii. keep the contents of these terms and conditions and the contract and any information relating to the business affairs, customers, clients and or suppliers of Genius and any member of their group confidential at all times.
12. **EXCLUSION OR LIMITATION OF LIABILITY IN CONSUMER SALES**
- a. Where the customer is a consumer and any transaction between the customer and Genius is or will be a consumer transaction any statement or term contained in the contract terms and conditions which would be void by virtue of section 6 or 20 of the Unfair Contract Terms Act 1977 (or by any statutory amendment or re-enactment) shall be excluded from the contract terms and conditions and nothing in these terms and conditions shall affect or be construed as affecting the statutory rights of a consumer.
 - b. Nothing in these terms and conditions shall limit or exclude Genius liability for:
 - i. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - ii. fraud or fraudulent misrepresentation;
 - iii. breach of the terms implied by section 12 of the Sale of Goods Act 1979
 - iv. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - v. defective products under the Consumer Protection Act 1987
 - c. Genius shall under no circumstances whatsoever 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 these terms and conditions; and
 - d. Notwithstanding any other term of these terms and conditions, Genius total liability to the customer in respect of all losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the price paid for the goods and/or services for which cleared payment is received.

- e. Genius shall under no circumstances whatsoever be liable to the customer against any claim or loss arising directly or indirectly out of or in any way involving the combustibility or fire performance of any cladding system.
13. VARIATIONS
If the final details of construction or the circumstances under which the work is to be carried out differ from the information given and upon which any tender or quotation is based or from any schedule or bill of quantities which Genius may have prepared at the time of its tender or quotation Genius reserves the right to amend both its quoted prices and its quoted programme. Extra work on variations to details given up to the time of tender or quotation required to be carried out by Genius will be paid for at a price to be agreed in writing before the commencement of the work and all such works shall be undertaken and provided pursuant to these terms and conditions.
14. DETAILS AND PROGRAMME
a. For fully finished work, adequate working details elevations and other relevant particulars shall be supplied to Genius promptly so that rainscreen drawings can be prepared by it and submitted for approval. Early approval of drawings produced by Genius is essential to enable rainscreen to be prepared in reasonable time. A site programme is to be prepared and agreed between the parties and the order of work to be established as a condition precedent to the commencement of production. In the event that any delay to or variation to the agreed programme is subsequently caused or required by the customer which results in loss or additional costs incurred by Genius, the amount of such loss or cost shall be paid by the customer.
b. Genius shall retain the property and copyright in all documents supplied to the customer in connection with the contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of Genius.
15. TERMINATION
a. Without limiting its other rights or remedies, Genius may terminate these terms and conditions with immediate effect by giving written notice to the customer if:
i. the customer commits a material breach of any term and/or conditions of these terms and conditions and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
ii. the customer 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
iii. the customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
iv. the customer's financial position deteriorates to such an extent that in Genius opinion the customer's capability to adequately fulfil its obligations under these terms and conditions has been placed in jeopardy.
b. Without limiting its other rights or remedies, Genius may suspend provision of the goods and/or services under these terms and conditions or any other contract between the customer and Genius if the customer becomes subject to any of the events listed in Clause 15.a.i to Clause 15.a.iv, or Genius reasonably opine that the customer is about to become subject to any of them, or if the customer fails to pay any amount due under the contract on the due date for payment.
c. Without limiting its other rights or remedies, Genius may terminate the contract and these terms and conditions 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.
d. On termination of the contract under these terms and conditions, for any reason, the customer shall immediately pay to Genius all of Genius outstanding unpaid invoices and interest.
e. Termination of the contract and these terms and conditions shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the contract and these terms and conditions that existed at or before the date of termination.
f. Any provision of the contract and these terms and conditions that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
16. DATA PROTECTION
a. Genius and the customer acknowledge that for the purposes of the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK ("Data Protection Legislation"), the Customer is the Data Controller and Genius is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation) in respect of any personal data.
b. Genius 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 authorized by the customer.
c. Genius may authorize a third party (subcontractor) to process the personal data provided that the subcontractor's contract:
i. is on terms which are substantially the same as those set out in these terms and conditions; and
ii. terminates automatically on termination of these terms and conditions for any reason.
17. GENERAL
a. No failure or delay on the part of Genius to exercise any of its rights under the contract or these terms and conditions shall operate as a waiver or nor shall any waiver by Genius of any breach by the customer of any of its obligations under the contract and these terms and conditions affect the rights of Genius in the event of any further continuing breach.
b. Each and every obligation contained in these terms and conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any such obligation.
c. If any of the provisions of these terms and conditions shall be held to be invalid or unenforceable, such invalidity and unenforceability shall not affect the remaining provisions.
d. In the case of any partial inability to comply with its obligations under the contract and these terms and conditions, Genius reserves the right to supply the customer on a pro-rata basis proportionate to supplies to the customer and Genius other customers. Time for delivery shall be extended by a period corresponding to the period of such inability provided that either party may give notice to the other cancelling deliveries which should have been made during a period of a Force Majeure Event in the event that such period extends beyond 30 consecutive days.
e. The contract is personal to the customer, who shall not assign or in anyway part with the benefit without Genius prior written consent.
f. Genius may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract.
g. Any notice or legal process given under the contract or these terms and conditions shall be in writing and shall be given to Genius or the customer as the case may be at their respective addresses. Any notice or process sent by post shall be deemed to have been delivered or served 24 hours after the same shall have been posted in a properly addressed pre-paid envelope and proof of posting shall be sufficient proof of service.
h. These terms and conditions shall be construed and governed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.
i. Nothing in these terms and conditions shall confer on any third party any benefit of the right to enforce any of these terms and conditions and does not give any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of these terms and conditions.
j. These terms and conditions and the contract constitute the entire agreement between the parties and supercedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Genius which is not set out in the contract.
k. No variation of these terms and conditions shall be effective unless it is in writing and signed by the parties (or their authorized representatives).
l. A waiver of any right or remedy under the contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
18. CUSTOMERS INSOLVENCY OR INCAPACITY
a. If the customer becomes subject to any of the events listed in clause 18b, or Genius reasonably opines that the customer is about to become the subject to any of them and notifies the customer accordingly, then, without limiting any other right or remedy available to Genius, Genius may cancel or suspend all further deliveries under the contract or under any other contract between the customer and Genius, and all outstanding sums in respect of goods delivered to the customer shall become immediately due.
b. For the purposes of clause 18a, the relevant events are:
i. 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 in a partnership) has any partner to whom any of the foregoing apply,
- ii. The customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the customer with one or more other companies or the solvent reconstruction of the customer,
 - iii. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the customer, other than for the sole purpose of a scheme for a solvent amalgamation of the customer with one or more companies or the solvent reconstruction of the customer,
 - iv. (being an individual) the customer is the subject of a bankruptcy petition or order,
 - v. A creditor or encumbrancer of the customer attaches or taken 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,
 - vi. (being a company) 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 appointed over the customer,
 - vii. (being a company) the holder of a qualifying charge over the customers assets has become entitled to appoint or has appointed an administrative receiver,
 - viii. A person becomes entitled to appoint a receiver over the customers assets or a receiver is appointed over the customers assets,
 - ix. 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 18.b(i) to clause 18.b(viii) (inclusive),
 - x. The customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business,
 - xi. The customers financial position deteriorates to such an extent that in Genius opinion the customers capability to adequately fulfil its obligations under the contract has been placed in jeopardy, and
 - xii. (being an individual) the customer 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.
- c. Termination of the contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the contract shall continue in full force and effect.