

3J Services Limited - Terms and Conditions of Services - February 2021 Edition

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 DEFINITIONS:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"**Conditions**" means these terms and conditions as amended from time to time.

"**Contract**" means the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

"**Customer**" means the person or firm so described in the Order.

"**Deliverables**" means the deliverables set out in the Order produced by the Supplier for the Customer (which shall, for the avoidance of doubt, include any goods supplied to the Customer during performance of the Services).

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered which subsist or will subsist now or in the future.

"**Order**" means the Customer's order for the Services, as placed by email, telephone or other electronic means (such as Facebook Messenger), and as recorded/amended by the Order Acceptance (if applicable)

"**Order Acceptance**" means the Supplier's written acceptance in accordance with clause 2.2.

"**Services**" means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

"**Specification**" means the description or specification for the Services in the Order Acceptance.

"**Supplier**" means 3J Services Ltd, registered in England and Wales with company number 11614503.

1.2 INTERPRETATION

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

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted, and includes all subordinate legislation made under it.

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

1.2.5 A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

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

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract nor have any contractual force.

2.4 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 law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 7 days from its date of issue.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 For the avoidance of doubt, where the Services comprise or include painting or otherwise modifying one or more shipping containers, then:

3.4.1 the Supplier will not be responsible for removing or preserving any stickers, decals, CSC, SWL or other markings (together, "**Markings**"), nor will it be responsible for performing any tests or assessments on the shipping containers save as expressly set out in the Order Acceptance;

3.4.2 the Supplier makes no representation as to the continuing validity of any Markings after performance of the Services; and

3.4.3 the Customer expressly warrants that it will not place any reliance on any such Markings after performance of the Services, and will be responsible for any replacement re-certification or similar required by it.

3.5 Where so stated in the Order Acceptance, the Site Services Addendum shall also apply to the Services in addition to these Conditions.

3.6 The Supplier warrants to the Customer that the Services (included any parts or materials provided as part of performing the Services) will be provided using reasonable care and skill. In respect of this warranty:

3.6.1 the Customer must make any claim under this warranty by latest the date 5 Business Days after performance of the applicable Services by the Supplier;

3.6.2 the warranty shall not apply in respect of any parts or materials provided by the Customer, or any defects in the Services arising therefrom;

3.6.3 the Customer's sole and exclusive remedy shall be repair or reperformance of the applicable Services or refund of the applicable payment for the relevant Services (at the Supplier's option);

3.6.4 the Customer shall not be entitled to any remedy whatsoever where it, or any other person not authorised in writing by the Supplier, has attempted to repair or remedy the issue; and

3.6.5 this warranty shall be the sole and exclusive warranty or condition in respect of the Services' compliance with the Specification and/or freedom from defects or deficiencies, to the exclusion of any and all statutory or implied warranties or conditions that may otherwise have applied.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall at its own expense:

4.1.1 ensure that the terms of the Order Acceptance and Specification are complete and accurate;

4.1.2 co-operate with the Supplier in all matters relating to the Services;

4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

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

4.1.5 provide the Supplier with such equipment and machinery (such as scissor lifts) as the Supplier requests either in the Order Acceptance or subsequently, including full evidence of certification, specification and instruction manuals for such equipment and machinery;

4.1.6 prepare the premises (as requested by the Supplier in the Order Acceptance or subsequently) for the supply of the Services;

4.1.7 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;

4.1.8 comply with all applicable laws, including health and safety laws, and provide sufficient information about site procedures and policies to ensure the safety of Supplier personnel;

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

4.1.10 comply with any additional obligations as set out in the Order Acceptance.

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

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

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

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

5. CHARGES AND PAYMENT

5.1 The price of the Services shall be the price set out in the Order Acceptance.

5.2 The Supplier may, by giving notice to the Customer at any time before commencement of performance, increase the price of the Services to reflect any increase in the cost of providing the Services that is due to:

5.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

5.2.2 any request by the Customer to change the performance date(s), quantities or types of Services ordered, or the Specification;

5.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions; or

5.2.4 any Customer Default.

5.3 The price of the Services:

5.3.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

5.3.2 is subject, where the Site Services Addendum is stated as applicable in the Order Acceptance, to any further sums set out therein.

5.4 The Supplier may invoice the Customer for the Services on or at any time after the date of acceptance of the Order (save to the extent other credit terms are agreed between the parties in writing).

5.5 The Customer shall pay each invoice submitted by the Supplier:

5.5.1 on the date or dates (or within the period or periods) set out in the Order Acceptance;

5.5.2 where the Order Acceptance is silent, within 5 Business Days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

5.5.3 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

5.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

7. CONFIDENTIALITY

7.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 7.2.

7.2 Each party may disclose the other party's confidential information:

7.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and

7.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

8. LIMITATION OF LIABILITY

8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in the Contract limits any liability which cannot legally be limited.

8.3 Subject to clause 8.2, the Supplier's total aggregate liability to the Customer arising out of or relating to the Contract shall not exceed the sum of the total price paid for Services supplied hereunder.

8.4 Subject to clause 8.2 the Supplier shall have no liability to the Customer arising out of or in relation to the Contract for any of the following (in each case save for clause 8.4.8, whether direct or indirect):

8.4.1 loss of profits or revenue;

8.4.2 loss of sales, business or opportunities;

8.4.3 loss of agreements or contracts;

8.4.4 loss of anticipated savings or increase in costs;

8.4.5 loss of use or corruption of software, data or information;

8.4.6 loss of or damage to goodwill or reputation;

8.4.7 losses under the Customer's third party contracts; and

8.4.8 indirect or consequential loss.

8.5 If the Customer is not the sole or ultimate recipient or end user of the Services (each other such person being an "End User"), the Customer shall indemnify and hold the Supplier harmless from and against any liability to such End User which is in excess of and/or duplication of liability owed to the Customer under the Contract.

8.6 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 5. In view of these commitments any statutory or implied warranties or conditions are, to the fullest extent permitted by law, excluded from the Contract.

8.7 The Services sold under this Contract have been priced by the Supplier on the basis of the limitations and exclusions of liability set out herein, and in the absence of some or all such limitations and exclusions would need to be increased substantially. The Customer expressly agrees that it is reasonable on that basis for the Supplier's liability to be so limited or excluded (as applicable).

8.8 This Clause 8 shall survive termination of the Contract.

9. TERMINATION

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

9.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment;

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

9.1.3 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;

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

9.1.5 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

9.3 The Customer shall have no right to cancel the Contract save on such terms as are expressly agreed in writing by the Supplier.

10. CONSEQUENCES OF TERMINATION

10.1 On termination of the Contract:

10.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

10.1.2 the Customer shall return to the Supplier all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then

the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

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

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

11. FORCE MAJEURE

The Supplier shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**), including without limitation pandemic or government act/omission/decision. In such circumstances the Supplier shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the Supplier may terminate this Contract by giving 14 days' written notice to the Customer.

12. GENERAL

12.1 Assignment and other dealings

12.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

12.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

12.2 Notices

12.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

12.2.1.1 delivered by pre-paid first-class post or other next working day delivery service at its registered office (if a company), its home address (if a consumer) or its principal place of business (in any other case); or

12.2.1.2 sent by email to the address specified in the Order, if any.

12.2.2 Any notice shall be deemed to have been received:

12.2.2.1 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and

12.2.2.2 if sent by email, at 9.00 am on the next Business day after transmission.

12.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.3 **Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 12.3 shall not affect the validity and enforceability of the rest of the Contract.

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

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

12.6 Entire agreement

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

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

12.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

12.7 **Third party rights** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999.

12.8 **Variation** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

12.9 Governing law & Jurisdiction

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

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