

GENERAL TERMS AND CONDITIONS OF SALE

These terms and conditions (**T&Cs**) are the terms on which we, KWC DVS Limited (company number 1945355), supply goods and services to business customers. **We do not sell to consumers and you will not benefit from consumer rights legislation.** Save where expressly stated otherwise, these T&Cs supersede all other terms and conditions and apply to the sale of goods and services to the exclusion of all other terms that you may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing. You hereby waive all rights you may have to rely on the same. In these T&Cs, we refer to the legal entity purchasing, or seeking to purchase, goods or services from us as **you, your or the Customer**. We refer to ourselves as **KWC DVS, we, us or our**. The word **"including"** is illustrative and shall not limit the sense of the words preceding it.

1 Goods and Services

1.1 Our website <https://dartvalley.co.uk> (our **Website**) sets out the goods we offer for sale (**Goods**). We also offer the following services in respect of our Goods: installation, commissioning (where we check that the Goods have been installed correctly) and maintenance (together the **Services**).

1.2 Any samples, specifications, illustrations, drawings, technical details, particulars of weights, dimensions, capacity, descriptions, advertising materials and other details provided by us (whether on our Website, in our catalogues or brochures or otherwise) are produced for the sole purpose of giving an approximate idea of the Goods or Services referred to in them. Whilst we make every effort to ensure the accuracy of such information, we accept no liability whatsoever for any errors or omissions. We reserve the right to make changes to, and to discontinue any of, our Goods and Services at any time without notice at our sole discretion. Save as expressly set out in these T&Cs, such literature shall not form part of any contract between KWC DVS and the Customer nor have any other contractual force. This is not a sale by sample.

1.3 In respect of third party goods, the manufacturer's description (available upon request) will be deemed to take precedence over any description issued by us.

1.4 Unless stated otherwise, electrical ratings represent safe working limits. Dimensions and other physical characteristics are subject to normal commercial tolerances.

1.5 Goods offered for sale may originate from a non-EC source. Unless otherwise confirmed by us in writing, we make no representations as to the source of origin of manufacture or production of the Goods or any part thereof.

1.6 From time to time, we accept Orders in respect of Goods that are to be manufactured in accordance with a specification supplied by you or otherwise made-to-order pursuant to your instructions (**Bespoke Goods**).

2 Quotations and Orders

2.1 If you would like to purchase Goods or Services, we shall issue a quotation detailing the price payable for the Goods and/or Services requested (**Quotation**). The Quotation does not constitute an offer to supply the Goods or Services and no contract exists unless and until we have accepted your order in writing. Quotations are only valid until the expiry date specified therein or (if no expiry date is specified) for a period of 90 days. In some cases, our pricing is available on our Website.

2.2 You may place an order for the Goods and/or Services (an **Order**) by contacting us in writing (at Kemmings Close, Long Road, Paignton, Devon, TQ4 7TW (Southern office) or 14 Napier Court, Barlborough, S43 4PZ (Northern office) or by email at dvssales@kwc.com). Orders can also be placed via our Website. Each Order constitutes an offer by you to purchase the Goods and/or Services in accordance with these T&Cs. You are responsible for: (a) ensuring the accuracy of the terms of each Order; (b) ensuring the Goods you wish to order are fit for your intended purpose; and (c) providing us with sufficient information to enable us to fulfil your Order in accordance with these T&Cs. Please reference your Quotation number (if any) when placing your Order.

2.3 We reserve the right to reject an Order in our sole discretion. Each Order shall only be deemed to be accepted by us once expressly confirmed in writing or, if earlier, upon us supplying the Goods or Services. Upon acceptance of an Order by us, we shall issue a written order confirmation (detailing the commercial terms agreed) (the **Order Confirmation**) for signing. Once signed by both parties, a contract shall be formed incorporating such Order Confirmation and these T&Cs (together a **Contract**). If you have placed your Order online, a Contract shall be formed once we have emailed you the Order Confirmation.

2.4 Goods may be ordered on a "call-off basis" if agreed by us in writing (meaning we shall commit to delivering an agreed quantity of Goods at such times as you may require). We shall invoice you for the amount of each instalment upon delivery of that instalment. You are required to take delivery of all Goods under Order within 12 months of the Contract date at the latest. We require at least four weeks' notice prior to delivery of an instalment.

2.5 Without limiting any other rights or remedies we may have, we may cancel a Contract with immediate effect by giving written notice if you: (a) commit a breach of these T&Cs and (if remediable) you fail to remedy such breach within ten days of being notified in writing to do so; or (b) become insolvent or bankrupt or enter into a receivership, administration, liquidation or a composition, compromise or an arrangement to reschedule or restructure your indebtedness; you suspend or cease, or threaten to suspend or cease, carrying on your business (or any part of it) or payment of your debts or are unable to pay your debts as they fall due; a resolution being made in connection with your winding up or dissolution; you obtain a moratorium; you have an administrator, receiver, liquidator or manager appointed over the whole or a substantial part, of your undertaking or assets; or any steps are taken in preparation for the foregoing (whether voluntary or otherwise); or any event occurs in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the above (together an **Insolvency Event**).

2.6 If you wish to cancel a Contract, you must notify us in writing as soon as possible following placement of your Order and prior to delivery. Cancellation is subject to our written agreement (which may be withheld at our sole discretion) and we reserve the right to make cancellation conditional upon payment of fair and reasonable compensation for our work to date. Contracts for Bespoke Goods cannot be cancelled.

3 Prices and payment

3.1 The price for the Goods or Services shall be set out in the Order Confirmation (the **Price**). Where no Price is included, the Price shall be that listed on our Website or on your valid Quotation, failing which the Price shall be as per our price list.

3.2 The Price is exclusive of VAT and all other applicable taxes, duties, levies and similar charges which shall be payable in addition at the prevailing rate as at the invoice date.

3.3 Unless stated otherwise in the Order Confirmation, standard delivery of Goods within the UK is included within the Price (see **section 4**).

3.4 For Orders placed via our Website, full payment is due at the time of placing the Order using a payment method prescribed on the Website. For Orders placed by email or by post, invoices shall be issued on or after delivery, save where we require payment in advance. For Bespoke Goods, the full amount shall be invoiced and payable once the Order has been accepted by us and prior to commencement of manufacture.

3.5 Invoices are payable in full, within 30 days of the invoice date, by cheque, credit transfer or BACS (as per the details on the invoice). Time for payment shall be of the essence.

3.6 Where we have agreed in writing to invoice you in euros or another currency (at our sole discretion), we shall specify a conversion rate and the estimated Price in euros (or such other currency) in the Order Confirmation. The conversion rate shall not be confirmed until the date of invoice.

3.7 Without limiting any other rights or remedies we may have, where you fail to make any payment in accordance with these T&Cs, we reserve the right to: (i) cancel a Contract; (ii) suspend further deliveries until full payment has been received; (iii) demand immediate payment of all outstanding amounts owed to us; (iv) apportion any payment made by you to any outstanding invoices or part thereof (whether under this Contract or any other) notwithstanding any purported apportionment by you; (v) charge interest payable by you (both before and after any judgment) on the overdue amount at the rate of 5% per annum above the Barclays Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. You shall be liable for all expenses including legal fees, relating to the collection of late payments.

3.8 You shall pay all amounts due in full without any set-off counterclaim, deduction or withholding unless any deduction or withholding of tax is required by law (in which case you shall ensure we

receive the full amount invoiced).

4 Delivery

4.1 Unless otherwise set out in the Order Confirmation, we shall deliver the Goods Carriage Paid To (CPT, Incoterms 2020) KWC DVS's place of business in Barlborough or Devon (our **Premises**) where the Goods will be handed over to our nominated carrier (the **Carrier**) who will deliver the Goods to an agreed location in the UK. Express delivery services may be available for an additional charge. We accept no liability whatsoever for any loss of or damage to Goods in transit or the late or non-delivery of the Goods by the Carrier which shall be entirely at your risk. Alternatively, if you wish to arrange collection, we shall make the Goods available Ex Works (EXW, Incoterms 2020) at our Premises (or at such other address in the UK as we may agree) upon production of a purchase order.

4.2 The dates for delivery (including time of delivery) shall be an estimate only and we shall not be liable for any delay in delivering the Goods or making them available for collection or for supplying the Services howsoever caused. Time of delivery shall not be of the essence.

4.3 We reserve the right to deliver the Goods or require EXW collection of the Goods in advance of any agreed delivery date. Our Carrier is unable to deliver the Goods to any location which requires a named person to sign for the delivery.

4.4 In the event of non-delivery, you must notify us and the Carrier within seven days of the despatch date providing a copy of the relevant despatch note. Queries regarding Goods invoiced but not delivered must be notified to us within 10 days of the date of the invoice referencing the invoice number.

4.5 If you fail to accept delivery of the Goods from the Carrier or arrange EXW collection on the date advised by us then, except where such failure is caused by our material breach of these T&Cs:

(a) delivery of the Goods shall be deemed to have completed at 9am on the day scheduled for delivery and the Price shall be due for payment; (b) we shall store the Goods until delivery takes place and charge you for all related costs and expenses (including insurance); and (iii) the Customer shall indemnify and keep KWC DVS indemnified on demand from and against all losses, liabilities, damages, costs, charges and expenses incurred by KWC DVS as a result of such failure to accept delivery. If the Goods have not been redelivered or collected within 10 business days of the original delivery date, we shall be entitled to resell or otherwise dispose of the Goods at our sole discretion.

4.6 We reserve the right to deliver the Goods in instalments, which may be invoiced and paid for separately. Any delay to the delivery or defect of an instalment shall not entitle you to cancel any other instalment.

4.7 It is entirely your responsibility to inspect the Goods as soon as reasonably practicable after delivery. If you fail to notify us in writing of any defect or other issue within seven days of delivery or collection of the Goods, you shall be deemed to have accepted the Goods which are conclusively presumed to be in accordance with the Contract in all respects and free from any defect which would be apparent on reasonable examination.

4.8 Any request by you to suspend deliveries is subject to our prior written consent (which may be withheld in our sole discretion). Any such suspension shall be limited to a maximum period of three months, after which time, we reserve the right to resume deliveries at a rate in accordance with the terms of the Contract prior to the suspension.

5 Title and Risk

5.1 Risk in the Goods shall transfer to the Customer once the Goods have been loaded onto the Carrier's vehicle or, if arranging Ex Works collection, once you or your carrier or representative commences loading the Goods onto their vehicle.

5.2 Notwithstanding delivery, title to the Goods shall not pass to the Customer until the earlier of: (a) receipt of payment in full in cleared funds for the Price and all other sums which are or which become due to KWC DVS from the Customer on any account, in which case title shall pass at the time of full payment; (b) resale of the Goods; (c) damage to the Goods after risk has passed to the Customer (such that the Goods are no longer in their original condition); or (d) the date notified to the Customer by KWC DVS in writing.

5.3 Until title to the Goods passes, you shall: (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as KWC DVS's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery or collection; (d) notify us immediately if you become subject to an Insolvency Event; (e) provide us with such information relating to the Goods as we may require from time to time; (f) at our request, deliver up all Goods in your possession that have not been resold, or irrevocably incorporated into another product; and (g) permit us, our agents and representatives to enter any premises where the Goods are stored (at any time and without notice) in order to inspect them and repossess them and you hereby grant (and shall procure that relevant third parties shall grant) us, our agents and representatives, an irrevocable licence to enter such premises for this purpose.

5.4 If before title to the Goods passes to the Customer, you become subject to an Insolvency Event, then, without limiting any other right or remedy we may have, your right to resell the Goods or use them in the ordinary course of business ceases immediately.

6 Supply of the Services

6.1 KWC DVS shall supply the Services at an agreed location in the UK using reasonable care and skill.

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

6.3 We reserve the right to amend the scope of the Services if necessary to comply with applicable laws and regulatory requirements, or if the amendment does not materially affect the nature or quality of the Services. We shall notify you in advance of any material change.

6.4 Where you have purchased Maintenance Services, the Price is inclusive of a maximum of two engineer call-outs in any 12 month period in respect of those Goods (that do not relate to non-compliance with the warranty at **section 8.1** – there is no limit on warranty-related call-outs).

6.5 We accept no liability whatsoever in respect of defective calibrations, programming, certifications, reports, analysis or for any losses resulting therefrom or from the failure to give advice or information or the giving of incorrect advice or information in connection with the provision of our Services.

6.6 If the Services are not provided in accordance with **section 6.1**, KWC DVS shall, at its sole option, re-perform the Services so that they are in accordance with **section 6.1** or refund of the Price paid for such Services (or offer a credit note against sums owing to us). This shall be your sole and exclusive remedy in respect of defective Services and KWC DVS shall have no further liability whatsoever in respect of any defects in the Services or for any injury, damage or loss resulting from such defects, or for any other failure to comply with these T&Cs. You must notify us in writing within seven days of the date of performance of the Services if you consider there to be a defect and allow us to inspect the installation of the relevant Goods. Otherwise, you shall be deemed to have accepted the Services which are conclusively presumed to be in accordance with the Contract in all respects and free from any defects.

7 Subscriptions

7.1 We offer a subscription element to some of our Goods (a **Subscription**) which provides access to real time information from the installed Goods (**Real-Time Data**) via an online portal (**Online Portal**). The Subscription is offered on an annual basis and the commencement date shall be from the date of activation of the first device within the related Order (**Start Date**).

7.2 The fee for the Subscription (the **Subscription Fee**) shall be included in the Price of the Goods for the first year. Thereafter, the annual Subscription Fee shall be as set out in the Order Confirmation. The Subscription Fee shall automatically increase each year in line with the percentage increase of the Consumer Prices Index over the previous 12 months or 5%, whichever is higher. We shall notify you at least two months in advance if we wish to increase the Subscription Fee by more than this amount. The annual Subscription Fee shall be payable in full in advance on each anniversary of the Start Date. The provisions of **section 3** shall apply to payment of the Subscription Fee.

7.3 The Subscription shall automatically renew each year on the anniversary of the Start Date (the **Renewal Date**) unless the Customer provides written notice that it wishes to cancel at least one

month prior to the Renewal Date. Cancellation shall only be effective if the Subscription Fees are not in arrears. We do not permit cancellation of a Subscription part-way through a year as a general rule. If cancellation is permitted, we shall notify you of any refund of the Subscription Fee up to the date of cancellation (which shall be calculated by KWC DVS in its sole discretion and may take into account set-up fees, administrative charges and any modifications, upgrades and enhancements that the Customer has benefitted from during the Subscription period). You shall be entitled to cancel on written notice and without liability to us if we are in material breach of our obligation to provide the Online Portal and Real-Time Data under this **section 7** and such breach is irremediable or is not remedied within 30 days of the date of notification. You are responsible for downloading any historic Real-Time Data prior to the date of cancellation or termination of the Subscription. Such Real-Time Data shall not be available to you after the end of your Subscription. We may charge a reasonable sum for providing historic data downloads.

7.4 If you cancel your Subscription in accordance with **section 7.3** or fail to pay the relevant Subscription Fee, your access to the Online Portal shall be revoked. The Goods will still be operational without a Subscription and no refund or discount will be offered in respect of the Goods if your Subscription is cancelled (for any reason).

7.5 Access to the Online Portal shall be subject to compliance with the end user licence terms, available on the Online Portal (the **EULA**). If you fail to comply with the EULA or these T&Cs, you may not receive the full benefits of the Subscription and the Real-Time Data may be inaccurate, incomplete and/or incorrect and it may not be possible to correct the same. However, this shall not relieve you of your obligation to pay the Subscription Fee in full in accordance with the Contract and you shall not be entitled to any discounts, refunds or rebates from us as a result.

7.6 We shall not be liable to you for any service disruptions, interruptions, delays or failures of the Online Portal as a result of any breach of the EULA, and we reserve the right, without prejudice to any of our other rights or remedies, to disable your access and use of the Online Portal in the event of any such breach.

7.7 KWC DVS gives no warranty or representation that the Online Portal or Real-Time Data will be uninterrupted, available, free from viruses or error free. The Online Portal and Real-Time Data is provided "as is" and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract, including the implied conditions, warranties and other terms as to satisfactory quality and fitness for purpose. We further exclude all liability for any fault, failure, delay or unavailability of the Online Portal and/or Real-Time Data caused by your software or any third party software, or as a result of any failure, unavailability, speed or limitations of your internet and/or network communications equipment and/or web browser and/or any impaired performance or non-performance of the Online Portal arising from your failure to comply with any technical requirements or other instructions notified to you by us.

7.8 The Goods must be connected to the internet, utilities and power supply at all times in order to transmit Real-Time Data and that transmission of Real-Time Data from the Goods may result in excess data charges for which you shall be solely responsible.

7.9 You hereby authorise KWC DVS to receive information from and remotely connect to the Goods for the purpose of obtaining Real-Time Data and providing the Services (including the Online Portal). KWC DVS shall be entitled to re-use the Real-Time Data and to combine or aggregate such Real-Time Data with other data or information held by KWC DVS for the purpose of improving its Goods and Services offerings.

8 Goods Warranty

8.1 We warrant that on delivery, the Goods shall be free from material defects in workmanship, materials and design and shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and shall remain so for the duration of the period set out on our Website at (<https://dartvalley.co.uk/wp-content/uploads/2022/11/KWCDVS-2024-1-Product-warranty.pdf>) for the relevant Goods (the **Warranty Period**). KWC DVS gives no other warranty (and excludes any warranty, term or condition that would otherwise be implied by virtue of the Sale of Goods Act or otherwise) as to the quality of the Goods or fitness for purpose (unless a director of KWC DVS expressly warrants in writing that the Goods are fit for a particular purpose). This **section 8.1** also applies to replacement Goods.

8.2 Where you have purchased Installation or Commissioning Services from us, we offer an on-site warranty for the relevant Goods for a period of five years (meaning that we will endeavour to repair the Goods on-site at your UK premises) (the **On-Site Warranty**). The On-Site Warranty shall commence upon the completion of the relevant Installation or Commissioning Services (as applicable). Warranty-related call-outs shall be unlimited during the Warranty Period for the On-Site Warranty. However, we reserve the right to charge for any engineer call-outs which are as a result of any of the conditions set out in **section 8.6** and/or where there is no breach of warranty.

8.3 If you purchase Maintenance Services from us in respect of certain Goods, we shall offer an extended 12 month On-Site Warranty following completion of each annual service and sign off from our servicing engineer (the **Lifetime Warranty**). The validity of the Lifetime Warranty is dependent upon the Contract for Maintenance Services remaining in force and payment of all outstanding invoices. If the Goods are not in serviceable state of repair, we shall inform you of this and replace the Goods. Warranty-related call-outs shall be unlimited during the Warranty Period for the Lifetime Warranty. However, we reserve the right to charge for any engineer call-outs which are as a result of any of the conditions set out in **section 8.6** and/or where there is no breach of warranty.

8.4 Subject to **section 8.6**, if the Goods do not comply with the warranty in **section 8.1** on delivery or during the applicable Warranty Period, we shall offer, at our option, to repair or replace the defective Goods or to refund you the Price paid for the applicable Goods (or offer a credit note against sums owing to us), provided: (a) you notify us in writing within seven days of delivery of the Goods (where the defect should have been apparent on inspection of the Goods) or within seven days of discovery of a latent defect (subject to such notification being received within the applicable Warranty Period); (b) you allow us to inspect the Goods and their storage conditions; and (c) if requested, you return the Goods to us in accordance with **section 9** (save in respect of the On-Site Warranty or Lifetime Warranty where we shall endeavour to repair the Goods at your UK premises).

8.5 The remedy in **section 8.4** shall be your sole and exclusive remedy and KWC DVS shall have no further liability whatsoever in respect of any defects in the Goods, or failure to correspond to a specification or sample, or for any injury, damage or loss resulting from such defects, or for any other failure to comply with these T&Cs.

8.6 KWC DVS shall not be liable for any failure to comply with the warranty set out in **section 8.1** if: (a) you make any further use of such Goods after noticing the defect; (b) the defect arises because you failed to follow our written instructions as to the storage, commissioning, installation, use or maintenance of the Goods; (c) the defect arises as a result of KWC DVS following any specification, design or instructions supplied by you; (d) you alter or repair the Goods without our prior written consent; (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal storage or working conditions or the application of unauthorised pastes or substances; or (f) the defect arises because you have added additional items onto or incorporated additional items within the Goods; (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

8.7 Unless expressly warranted in the Order Confirmation by KWC DVS, any performance figures, tolerances or characteristics relating to the Goods shall not be guaranteed and we shall have no liability whatsoever for any failure to attain such figures howsoever caused.

8.8 We shall not be liable for any advice or recommendations given by or on behalf of KWC DVS or our representatives or agents as to the storage, application or use of the Goods, which shall be followed or acted upon entirely at your own risk, unless the same has been confirmed in writing by one of KWC DVS's directors.

9 Returns

9.1 We do not accept returns following delivery of the Goods as a general rule. Any returns, otherwise than in accordance with **section 8.1**, are subject to our prior written consent and at our sole discretion. All Goods must be returned to us with a valid Return Merchandise Authorisation number and completed Return of Goods form (both of which can be requested from our customer services team).

9.2 Any returns must be delivered to our Premises suitably packaged at your cost and risk. You must comply with the relevant British Standard precautions for the return of Goods classified as 'a

static sensitive device'.

9.3 Following a thorough investigation and testing process, we will determine whether to accept the return. We do not accept returns of Bespoke Goods or of damaged or altered Goods or Goods which are not in a resaleable condition (subject to **section 8.1**).

9.4 Any items you have added or incorporated into the Goods must be removed by you prior to return. Otherwise, we may reject the return and/or remove such items from the Goods without any liability whatsoever in respect of any damage caused.

9.5 A minimum charge of the greater of 35% of the invoice value or £10 will be levied for non-faulty returns. Certain items may incur additional charges or be rejected entirely. All returns must be received by KWC DVS within 30 days of the original invoice date. If payment for the Goods has already been received, we may offer you a credit note against future purchases valid for six months.

10 Force Majeure

We shall not be in breach of the Contract or otherwise liable for any delay in performing or failure to perform any of our obligations due to any event beyond our reasonable control including interruption or failure of a utility service or transport network (including international shipping routes); act of God, flood, drought, earthquake, storm or other adverse weather conditions or natural disaster; epidemic or pandemic; war or armed conflict; terrorist attack, riot or civil unrest; nuclear, chemical or biological contamination; sonic boom; malicious damage; governmental action or intervention; Royal demise; change in applicable law or compliance with law; failure of plant, machinery, computers or vehicles; collapse of buildings, fire, explosion or accident; labour or trade disputes, strikes, industrial action or lockout; and/or non-performance by suppliers or subcontractors.

11 Limitation of liability

11.1 Nothing in these T&Cs shall limit or exclude liability which is not permitted by law.

11.2 Subject to **section 11.1**: (a) KWC DVS shall under no circumstances whatsoever be liable, whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether negligent or innocent), restitution or otherwise, for any loss of profit, loss of opportunity, loss of business or contract; loss of reputation or goodwill; any loss or damage resulting from the transfer of data over communications networks and facilities, including the internet; reduction in the value of investments; loss or corruption of data, information or software; loss or damage to property, hardware or software; or for pure economic loss; or for any special, indirect or consequential loss, or incidental or punitive damages, however arising in connection with the Contract; and (b) KWC DVS's total liability to the Customer in aggregate for all claims arising out of or in connection with a Contract whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation, restitution or otherwise shall be limited to the Price paid under the relevant Contract.

12 Confidentiality and Intellectual Property

12.1 You shall keep all information which you obtain from us or about our business in connection with the Contract confidential (including Prices, credit terms and other commercially sensitive information). This clause shall not apply to information which: (i) is required to be disclosed by law, court order or any governmental or regulatory authority; (ii) is already known to you at the time of disclosure on a non-confidential basis; or (iii) is or becomes generally available to the public other than through any breach of this clause by you. We shall hold you liable for all losses we incur if you breach this clause.

12.2 All intellectual property rights subsisting in and/or relating to the Goods, Services (including the Online Portal) and/or to KWC DVS's business vest in and shall remain at all times absolutely and unconditionally owned by KWC DVS. Any use of our intellectual property rights shall be subject to our prior written consent.

12.3 Whilst all reasonable steps have been taken, we give no warranties, representations or undertakings that our Goods (including Bespoke Goods) do not infringe the intellectual property or other proprietary rights of any third party anywhere in the world. Any installations, exports, imports, storage, modifications, repairs, resales (and offers for sale) and other uses of the Goods are entirely at your own risk.

12.4 In respect of Bespoke Goods ordered by the Customer, the Customer hereby indemnifies and shall keep KWC DVS, our personnel, officers and sub-contractors indemnified on demand from and 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 professional costs and expenses on a full indemnity basis) suffered or incurred by or awarded against KWC DVS, our personnel, officers and/or sub-contractors in connection with any actual or alleged infringement of intellectual property rights or other third party proprietary rights arising out of or in connection with the use of a specification supplied by or on behalf of the Customer, compliance with the Customer's instructions and/or manufacture of Bespoke Goods in accordance with the same.

13 General

13.1 Any Customer wishing to set up a credit account with us must provide two trade references and a banker's reference, the acceptance of which is at our absolute discretion. Any credit limit granted to you shall at all times be discretionary and we reserve the right to reduce, suspend or withdraw access to credit at any time without reason or prior notice.

13.2 If any provision or part-provision of a 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 shall not affect the validity or enforceability of the rest of the Contract.

13.3 We may at any time assign, transfer, subcontract or otherwise deal in any manner with all or any of its rights or obligations under a Contract. You shall not be entitled to do so without our prior written consent.

13.4 No failure or delay in exercising (or exercising in full) any right or remedy shall constitute a waiver or abandonment 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.

13.5 No variation to these T&Cs or a Contract shall be binding unless agreed in writing and signed by an authorised representative of the Customer and a director of KWC DVS.

13.6 These T&Cs and any Contract do not give rise to any rights of enforcement under the Contract (Rights of Third Parties) Act 1999.

13.7 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with English law. 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, its subject matter or formation. Notwithstanding the foregoing, KWC DVS shall be entitled to bring proceedings against the Customer in any jurisdiction in which the Customer is established or has assets.

October 2024