



TRADE TERMS & CONDITIONS OF SALE AND SUPPLY

These terms and conditions apply only if you are purchasing goods from one of our branches (whether in-branch or online) as a trade customer (i.e., for purposes inside your business, craft or profession or otherwise via a MKM trade account). If you are purchasing goods from one of our branches (whether in-branch or online) as a consumer (i.e., for purposes outside your trade, business, craft or profession), our non-trade terms and condition apply to such purchases. Those non-trade terms and conditions can be accessed on our website or by requesting a copy from us or one of our branches.

1. ABOUT US

- 1.1 **Who we are.** We are M. K. M. Building Supplies Limited (**we, us, our**), a company registered in England and Wales under company number 03100815. Our registered office and main trading address is at Stoneferry Road, Hull, HU8 8DE. Our VAT number is GB 721453461. We are the UK's leading independent builder's merchant, with branches across England, Scotland and Wales.
- 1.2 **Our approach.** We have a different approach to business; each of our branches is run independently by its branch directors and their hand-picked teams, supported by us centrally. Our branches benefit from the local knowledge and expertise of their outstanding teams to provide excellent services. By building relationships with customers, they have a true understanding of individual customer needs, and the flexibility to meet these.
- 1.3 **Placing an order and the branch you contract with.** You can place an Order in one of our branches or online via our website at mkm.com. If ordering online, you will be prompted to select the branch you would like to place the Order with. The branch you select to place your Order with (whether in person at the physical branch or online) is who your Contract for the supply of the goods ordered by you is formed with (the **Selected Branch**). Details on our branches can be viewed on our [branch finder](#).
- 1.4 These Conditions are the terms and conditions on which your Selected Branch supply any goods to you.

2. APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions and any document expressly referred to in them constitutes the entire agreement between you and your Selected Branch and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between you and your Selected Branch, whether written or oral, relating to its subject matter. You acknowledge that in entering into this Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions or any document expressly referred to in them. Nothing in these Conditions purports to exclude or limit any liability for fraud.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in your purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that your Selected Branch otherwise agrees in writing.

3. OUR GOODS

- 3.1 Any samples, drawings, descriptive matter, or advertising produced by us or your Selected Branch and any descriptions or illustrations contained in our or their catalogues or brochures (collectively, **Promotional Material**) 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.
- 3.2 The packaging of goods may vary from that shown on Promotional Material.
- 3.3 Any promotional or offer prices made available for goods will apply only within the scope and period of the promotion or offer concerned and are subject to any applicable terms and conditions (and restrictions or limits) stated. To take advantage of promotional/offer prices, you may have to quote the relevant promotion code at the time of your Order.

- 3.4 All goods offered by your Selected Branch are subject to availability. They accept no responsibility for goods that are out of stock.
- 3.5 You are responsible for assessing and selecting the goods which are required, and for ensuring you fully understand the nature and performance of the goods, including any potentially harmful or hazardous effects of their use. If you require advice (including Health and Safety information) in relation to the goods, a specific request for written advice should be made to your Selected Branch. Your Selected Branch will be responsible for any advice given in response to your request only to the extent provided in clause 10.3.
- 3.6 Any estimate of quantities or advice given by your Selected Branch as to suitability of goods for a particular purpose, and any plan or measurements given by your Selected Branch is intended for guidance only (based upon information supplied by you) and are provided without liability on your Selected Branch's part. No allowances are usually made for wastage or installation, or any other materials required. You must satisfy yourself that all goods ordered are correct.
- 3.7 Where fine or special tolerances are required (exceeding those generally accepted in the building trade) for any goods, your Selected Branch will not be responsible for meeting these, or any failure to do so, unless the tolerances concerned were notified to your Selected Branch in writing at the time of Order and they confirmed their acceptance of these to you in writing.
- 3.8 Your Selected Branch reserve the right to supply any Goods ordered by you in imperial measurements in the nearest equivalent metric measurements (and the Goods may be charged for in metric measurements subject to your Selected Branch making the appropriate conversions).
- 3.9 To the extent that the Goods (including Special Goods) are manufactured, altered, processed or produced to your design, Specification or measurements, you agree to fully indemnify us, your Selected Branch and our other branches against all Losses suffered or incurred by us and/or them in connection with:
 - (a) any action, claim or demand made against us and/or them for actual or alleged infringement of any third party's Intellectual Property Rights or other rights arising out of or in connection with our and/or their use or possession of your design, Specification or measurements; and
 - (b) any other action, claim or demand arising from any manufacture, alteration, processing, production or supply including, but not limited to any defects in the Goods, arising out of or in connection with our and/or their use or possession of your design, Specification or measurements.
- 3.10 You will fully indemnify us, your Selected Branch and our other branches against all Losses suffered or incurred by us and/or them in connection with any claim by any third party arising from the supply or use of the Goods to you.
- 3.11 Clauses 3.9 and 3.10 shall survive termination or expiry of the Contract.

4. YOUR ORDER AND THE CONTRACT WITH YOUR SELECTED BRANCH

- 4.1 You can place an Order with your Selected Branch in-branch or on our website.
- 4.2 You are responsible for ensuring that the terms of the Order and any applicable Specification submitted by you are complete and accurate.
- 4.3 You confirm that you have authority to bind any business on whose behalf you Order the Goods.
- 4.4 Each Order by you to your Selected Branch shall be an offer to purchase the Goods subject to the Contract including these Conditions.
- 4.5 If your Selected Branch is unable to accept an Order, it shall notify you as soon as reasonably practicable.
- 4.6 Your Selected Branch may accept or reject an Order at its discretion.
- 4.7 Rejection by your Selected Branch of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by you.
- 4.8 A quotation for any Goods given by your Selected Branch shall not constitute an offer. Quotations are invitations to treat only. A quotation shall only be valid for a period of five Business Days from its date of issue unless your Selected Branch notifies you otherwise.

In-branch orders

- 4.9 The Contract for in-branch orders is formed when your Selected Branch informs you they accept your Order. At this point, a legally binding contract will be in place between you and them.

Website orders

- 4.10 Our website shopping pages will guide you through the steps you need to take to place an Order with your Selected Branch. The Order is placed once you have successfully followed the steps and clicked the “buy now” button or similar on the checkout page. Our order process allows you to check and amend any errors before submitting an Order to your Selected Branch. Please take the time to carefully read and check your Order at each page of the order process.
- 4.11 After placing an Order, you will receive an email from your Selected Branch acknowledging that they have received your Order. Your Selected Branch will then send you a separate email confirming an Order number has been generated for you (**Order Acknowledgement**). Please note that this Order Acknowledgement does not mean that your Order has been accepted. The Order number is only used to help your Selected Branch identify your Order and is not evidence of a binding contract.
- 4.12 The Contract for website orders between you and your Selected Branch will be formed when your Selected Branch has contacted you, either by email or telephone, and has agreed with you that it will fulfil your Order. At this point, a legally binding contract will be in place between you and them.

General Order information

- 4.13 If your Selected Branch are unable to supply you with some or all Goods in your Order, for example because some Goods are not in stock or no longer available or because of an error in the price, your Selected Branch will contact you and they will not process the impacted parts of your Order. If you have already paid for the Goods, your Selected Branch will refund you the full amount as soon as possible and at this point no contract will be deemed to have been formed in respect of the impacted parts of the Order.
- 4.14 The Contract will relate only to those Goods that your Selected Branch have confirmed to you they are able to supply. They will not be obliged to supply any other goods which may have been part of your Order, but they have informed you they are unable to fulfil.

5. PRICE, PAYMENT AND INTEREST

- 5.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in your Selected Branch’s published price list in force from time to time.
- 5.2 Your Selected Branch may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to but not limited to:
- (a) any factor beyond their control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour or overheads, materials and other manufacturing costs);
 - (b) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any of your instructions or your failure to give your Selected Branch adequate or accurate information or instructions.
- 5.3 Unless you are collecting the Goods or unless your Selected Branch notify you delivery charges are payable (see clause 6.2), the price of the Goods is inclusive of the costs and charges of delivery of the Goods to the Delivery Location. Where delivery costs and charges are payable, they shall be added to your invoice at your Selected Branch’s standard rates.
- 5.4 Our prices are displayed inclusive and exclusive of VAT. You will always be charged the price of the goods including any applicable VAT. If the rate of VAT changes between the date of your order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the goods in full before the change in VAT takes effect.
- 5.5 Your Selected Branch may invoice you for the Goods, partially or fully, at any time following acceptance of your Order.

- 5.6 Time for payment by you is of the essence. You must pay all amounts due under the Contract in full and cleared funds without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 5.7 Your Selected Branch may at any time, without limiting any other rights or remedies your Selected Branch may have, set off any amount owing to us, your Selected Branch or any of our other branches by you against any amount payable by us, your Selected Branch or any of our other branches to you.
- 5.8 [If you wish to make payment to your Selected Branch by credit card, they reserve the right to charge you a surcharge equivalent to 2.5% of your Order value. They may alter the amount of this surcharge at any time by announcement on our website, and the current rate will apply at the time you make payment to your Selected Branch.]
- 5.9 The Promotional Material contains many goods. It is always possible that, despite our and your Selected Branch's reasonable efforts, some of the goods on the Promotional Material may be incorrectly priced. If the Goods correct price is higher than the price stated on the Promotional Material, your Selected Branch will contact you as soon as possible to inform you of this error and they will give you the option of continuing to purchase the Goods at the correct price or cancelling your Order. Your Selected Branch will not process your Order until they have your instructions. If they are unable to contact you within a reasonable time using the contact details you provided during the order process or otherwise on your MKM account, they will treat the Order as cancelled.
- 5.10 If you fail to make any payment due to your Selected Branch under the Contract by the due date for payment, in addition to any unpaid amount that should properly have been paid and their rights under clause 15, you will, at their option:
- (a) pay interest on that amount (accruing daily from the due date for payment until the date of actual payment, whether before or after judgment). Such interest shall be calculated at a rate of 4% per year above Lloyds Bank plc's base rate which is current at the date the payment became overdue (or if Lloyds Bank plc's base rate drops below zero, then at 4 per cent a year); or
 - (b) pay interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) from the due date for payment until payment is made in full, whether before or after any judgment,
- In the event of discrepancies between these two rates, the higher rate shall prevail unless otherwise required by law and, at all times, you must pay the interest together with the overdue amount.
- 5.11 Your Selected Branch may offer you, at their discretion, a credit account with them.
- 5.12 If you have a credit account with your Selected Branch, you must pay each invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by your Selected Branch. If you do not have a credit account with your Selected Branch (or your credit limit has been exceeded), payment shall be made at the time of Order, or if your Selected Branch specify, at the time of delivery.
- 5.13 You are only entitled to a credit account at your Selected Branch's discretion, and subject to satisfactory references. They may specify a maximum amount of credit allowable upon your account. Your Selected Branch reserve the right to close a credit account you may hold with them or reduce the number of days you have to pay each invoice by giving you seven Business Days written notice, without explanation (although this is usually where you issue a profit warning, or any credit agency reduces your credit rating).
- 5.14 You should be aware that to fulfil your request for a credit account, your Selected Branch may undertake a credit check against you (and possibly also your directors) and a record of their searches may be visible on credit records searched for a period of time afterwards and could affect your (or your directors') credit score and ability to get further credit. Further terms and details will be provided to you as part of your credit account application.
- 5.15 To avoid any doubt, you will not be eligible to apply for any consumer finance payment options listed on our website from time to time.

6. PROVIDING THE GOODS TO YOU

- 6.1 Each Order shall specify whether the Goods are to be:

- (a) delivered by your Selected Branch, or by a carrier appointed by your Selected Branch to the Delivery Location; or
 - (b) made available for collection by you at your Selected Branch's, carrier's, other branches' or third-party premises set out in the Order (as the case may be) (**Collection Location**).
- 6.2 Your Selected Branch typically offers free local delivery on the majority of orders; however, this may not always be available. If you require your Selected Branch to deliver your Order, you may be charged an additional delivery charge by your Selected Branch at their standard rates.

Delivery by your Selected Branch

- 6.3 If your Selected Branch agree to deliver the Goods to you, they shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if they require you to return any packaging materials to them, that fact is clearly stated on the delivery note. You must make any such packaging materials available for collection at such times as your Selected Branch reasonably request. Returns of packaging materials in such circumstance shall be at your Selected Branch's expense. They will not be responsible for taking back any non-returnable packaging/pallets.
- 6.4 If your Selected Branch agree to deliver the Goods to you, they shall deliver the Goods to the location set out in the Order (subject to clause 6.5) or such other location as you and they may agree (**Delivery Location**) at any time after they notify you that the Goods are ready. The Goods shall be deemed delivered on the arrival of the Goods at the Delivery Location by your Selected Branch or its nominated carrier (as the case may be).
- 6.5 Where your Selected Branch are delivering the Goods to you, delivery shall be completed on the Goods' arrival at the Delivery Location (or, where appropriate in the driver's opinion, to the nearest suitable road to the Delivery Location at which the vehicle can safely and lawfully unload). You are responsible for all steps that need to be taken for the protection of persons and property where Goods (or any associated packaging or containers) are delivered and deposited, including on any public highway, and you will indemnify us, your Selected Branch and our other branches in respect of all Losses we or they may incur as a result of your failure to do so.
- 6.6 Unless your Selected Branch agree in writing to deliver and unload the Goods using a crane lorry/fork truck, you are responsible for promptly loading/unloading the Goods upon delivery, including providing all necessary equipment and personnel.

Collection by you

- 6.7 If you choose to collect your Order from the Collection Location, you must take your proof of purchase or Order Acknowledgement with you. Your Selected Branch is under no obligation to release the Goods to you if you fail to comply with this clause.
- 6.8 Your Selected Branch will contact you when your Order is ready to collect. Please do not attempt to collect your Order prior to being notified it is ready to collect. You can collect from them at any time during the working hours of your Selected Branch. Details on your Selected Branches opening hours can be viewed on our [branch finder](#).
- 6.9 If you choose to collect your Order from your Selected Branch, the Goods shall be deemed delivered when your Selected Branch make the Goods available for collection at the Collection Location.

Other information

- 6.10 You are not entitled to reject the Goods if your Selected Branch deliver or make available for collection up to and including 5% more or less than the quantity of each type of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on notice from them or receipt of notice from you that the wrong quantity of Goods was delivered or made available for collection (as applicable).
- 6.11 Your Selected Branch shall not be liable for any delay in or failure of delivery caused by:

- (a) your failure to make the Delivery Location available;
 - (b) your failure to prepare the Delivery Location as required for delivery of the Goods;
 - (c) your failure to provide your Selected Branch with adequate instructions for delivery;
 - (d) your failure to collect the Goods from the Collection Location; or
 - (e) a Force Majeure Event.
- 6.12 Your Selected Branch may deliver or make the Goods available for collection by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery/making available for collection or defect in an instalment shall not entitle you to cancel any other instalment.
- 6.13 The quantity of any consignment of Goods as recorded by your Selected Branch upon dispatch or collection shall be conclusive evidence of the quantity received by you on delivery or collection (as applicable) unless you can provide reasonable evidence showing otherwise.
- 6.14 Any dates and times quoted for delivery or when the Goods will be available for collection are approximate only, and the time is not and will not be made of the essence by notice. You acknowledge that in any Contract for Goods which are Special Goods the time of delivery/collection is subject to performance of third-party suppliers, which is outside your Selected Branch's control. They will not be liable to you for failure to deliver on any date or time. Without limiting the generality of the foregoing, your Selected Branch will under no circumstances be liable to you, whether in contract, tort (including negligence) or otherwise, for any loss or damage you incur whether direct or indirect (including any liability you incur with any third party) resulting from any delay in delivery of the Goods, or failure to deliver the Goods within a reasonable time.
- 6.15 Your Selected Branch shall not be liable for shortages in the quantity of Goods (even if caused by their negligence) unless written notice is given to them within three Business Days of the date of delivery and otherwise immediately where you are collecting the Goods.
- 6.16 Your Selected Branch's liability for non-delivery of Goods or shortages in the quantity of any Goods shall be limited to replacing any relevant Goods within a reasonable time, or (at their option) issuing a credit note or refund at the pro-rata Contract price against any invoice raised for such Goods.
- 6.17 If three Business Days following the due date for delivery or collection of the Goods, you have not taken delivery of or collected them, then:
- (a) your Selected Branch may store the Goods until delivery or collection takes place and charge you for all related costs and expenses (including storage charges and insurance); and/or
 - (b) your Selected Branch may resell or otherwise dispose of the Goods without any obligation or liability to you. Your Selected Branch shall deduct all costs and expenses referenced in clause 6.17(a) and account to you for any excess of the resale price over or invoice you for any shortfall of the resale price below the price paid by you for the Goods.

7. THIRD PARTY SUPPLIED GOODS

- 7.1 Your Selected Branch offer a range of goods delivered direct from our suppliers. As these goods are supplier direct orders you will not be able to collect them or take them away from our branches on the same day. Once you have placed your Order for the selected goods, the Goods are supplied direct to you by the third-party supplier of the product. The third-party supplier may contact you directly regarding the delivery of the Goods. These goods can be identified as such in the product description information on the Promotional Material, or if you have been informed this is the case in your Selected Branch.
- 7.2 Your Selected Branch use third-party logistics providers to ship and deliver goods supplied by a third party in accordance with this clause 7. While your Selected Branch facilitates the purchase, your Selected Branch does not assume liability for defects or non-conformance of such goods. Shipping and delivery times may vary depending on the location and shipping method selected.
- 7.3 Please note that if an item you receive is damaged or you wish to return a third party supplied product you will not be able to return it in any of our branches. Please contact your Selected Branch in the first instance to arrange the replacement/return as the item will need to be collected from you by the third-party supplier.

8. RISK AND TITLE

- 8.1 The risk in the Goods will pass to you at the time of delivery/collection (or deemed delivery or collection).
- 8.2 Ownership of the Goods shall not pass to you until your Selected Branch receive payment in full (in cash or cleared funds) for the Goods and any other goods that they have supplied to you in respect of which payment has become due or (if later) at the time of delivery.
- 8.3 Until title to the Goods has passed to you, you must:
- (a) hold the Goods as bailee for your Selected Branch;
 - (b) store the Goods separately from all other goods held by you so that they remain readily identifiable as the property of your Selected Branch;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in the condition in which they were delivered/collected and keep them insured against all risks for their full price from the date of delivery/collection;
 - (e) notify your Selected Branch immediately if you become subject to an Insolvency Event; and
 - (f) inform your Selected Branch of the location of the Goods (or such other information relating to the Goods as they may require) upon request from time to time.
- 8.4 Subject to clause 8.5, you may resell at full market value (but not otherwise) or use the Goods in the ordinary course of your business before your Selected Branch receives payment for the Goods. If you resell the Goods in accordance with this clause 8.4, you do so as principal and not as an agent of MKM and title to the Goods shall pass from your Selected Branch to you immediately before the time at which resale by you occurs.
- 8.5 If before title to the Goods passes to you, you inform your Selected Branch, or your Selected Branch reasonably believes, that you have or are likely to become subject to an Insolvency Event, then, without limiting any other right or remedy your Selected Branch may have:
- (a) the right to resell the Goods or use them in the ordinary course of your business pursuant to clause 8.4 ceases immediately; and
 - (b) your Selected Branch may at any time:
 - (i) require you to deliver up (at your expense) all Goods in your possession which have not been resold, or irrevocably incorporated into another product; and/or
 - (ii) enter any of your premises (or of any third party) where the Goods are stored, with or without vehicles, to inspect and recover them. For these purposes, you grant your Selected Branch and their agents an irrevocable licence to enter such premises for such purposes.

9. QUALITY

- 9.1 Your Selected Branch warrant that (subject to the other provisions of this clause 9) upon delivery or collection (as applicable) the Goods shall conform in all material respects with their description and any applicable Specification, and shall be free from material defects in design, material and workmanship.
- 9.2 Subject to clause 9.3 if:
- (a) you give notice in writing to your Selected Branch of any defect within three Business Days of discovering that some or all of the Goods do not comply with the warranty set out in clause 9.1 (and in respect of defects which are obvious upon a reasonable inspection at the time of delivery or collection, you advise your Selected Branch, where you are collecting the Goods, immediately on collection or, where the Goods are being delivered to you, by telephone immediately and give notice in writing to them within three Business Days of delivery); and
 - (b) your Selected Branch are then given a reasonable opportunity to examine those Goods, where required, by the appropriate manufacturer, before they are used, further damaged or otherwise interfered with, and (if asked to do so by them) you return them to the Selected Branch or other location as specified by them (at your cost), or allow them to collect the Goods concerned,

then your Selected Branch shall, as your sole and exclusive remedy and at your Selected Branch's option, repair or replace the defective Goods, or refund the price of the defective Goods in full. These Conditions shall apply to any repaired or replacement Goods supplied by your Selected Branch.

- 9.3 Your Selected Branch shall not be liable for Goods' failure to comply with the warranty set out in clause 9.1 in any of the following events:
- (a) if you make any further use of such Goods after giving notice in accordance with clause 9.2;
 - (b) if the defect arose because you failed to follow your Selected Branch's or the manufacturer's instructions as to the appropriate storage, movement, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) if the defect arose as a result of your Selected Branch following any drawing, design or Specification supplied by you;
 - (d) if you alter or repair the Goods without your Selected Branch's written consent beforehand;
 - (e) if the defect arose because of fair wear and tear, wilful damage or negligence (other than by your Selected Branch) or acts or omissions by you, your employees, agents or sub-contractors; or
 - (f) if the Goods differ from their description or any Specification because of changes made to ensure they comply with applicable laws or regulatory requirements. Your Selected Branch may amend the description or any Specification related to the Goods at any time to comply with applicable laws or regulatory requirements.
- 9.4 Except as provided in this clause 9, your Selected Branch give no warranties and makes no representations in relation to the Goods and shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 9.1, and all warranties and conditions, whether express or implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 9.5 Your Selected Branch will not be responsible for either the cost of removing the Goods from any location where they are installed or fixed (or making good the location after removal) or for the cost of installing or fixing any repaired or replacement Goods supplied.
- 9.6 You acknowledge that where your Selected Branch supply Special Goods, these are not MKM stock items, and will usually have been specially manufactured or purchased from a third-party supplier, and, notwithstanding clause 9.1, the warranty which your Selected Branch are able to provide to you in respect of any defects will be limited to that which the third-party supplier provides to your Selected Branch. This may be different to (and more limited than) the warranty contained in clause 9.1. Details of the applicable warranty on such items is available from your Selected Branch upon request (and they will usually confirm details to you when they supply the Special Goods).
- 9.7 Upon request, your Selected Branch will provide you with information about any relevant manufacturer's guarantee offered and available to you in respect of Goods and use reasonable endeavours to make this available for you in appropriate circumstances. Please note however that they are not legally responsible for any obligation under manufacturer's guarantees.

10. LIMITATION OF LIABILITY

- 10.1 The extent of your Selected Branch's liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 10.
- 10.2 Nothing in these Conditions shall limit or exclude your Selected Branch's liability for:
- (a) death or personal injury caused by their negligence, or the negligence of their employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other losses which cannot be excluded or limited by applicable law.

- 10.3 In relation to any Goods (including Special Goods) which are specially manufactured, processed, altered or produced to your design, Specification or measurements then, your Selected Branch will not be liable to you except in the following circumstances (subject always to clause 10.2):
- (a) misrepresentation by them which was made (or confirmed) in writing;
 - (b) the Goods do not comply with such agreed design, Specification or measurements; or
 - (c) they provide you with a written warranty signed by them that the Goods are fit for your intended purpose, and they are not.
- 10.4 Subject always to clauses 10.2 and 10.3, your Selected Branch will not, to the fullest extent permitted by applicable law, be liable to you for any misrepresentation made by them, their employees or agents to you, your employees or agents regarding the condition of the Goods, their fitness for any purpose or as to quantity or measurements, unless the representation is made (or confirmed) by your Selected Branch in writing.
- 10.5 Subject to clause 10.2:
- (a) your Selected Branch shall not be liable for any consequential, indirect or special losses;
 - (b) your Selected Branch shall not be liable for any of the following (whether direct or indirect): loss of profit; loss of revenue; loss or corruption of data; loss or corruption of software or systems; loss or damage to equipment; loss of use; loss of production; loss of contract; loss of commercial opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill; and/or wasted expenditure; and
 - (c) your Selected Branch's total liability to you shall in no circumstances exceed the price of the Goods ordered under the Contract.
- 10.6 This clause 10 shall survive the expiry or termination of the Contract.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The supply of Goods by your Selected Branch shall not confer any right upon you to use any of our or any of our branches' trademarks or other Intellectual Property Rights. At all times such Intellectual Property Rights shall remain our and their absolute property (or our or their suppliers or licensors).
- 11.2 All our materials, equipment, documents and other property which are not sold to you are our exclusive property. All written information, drawings, artwork, images and diagrams (excluding the physical Goods themselves) prepared by your Selected Branch in relation to the supply of Goods and the copyright therein and all other items owned by us or any of our branches and used in the production of the Goods shall remain our or their property and shall be returned by you on demand. All such information shall be treated as Confidential Information and shall not be copied or reproduced or disclosed to any third party without your Selected Branch's prior written consent.

12. CONFIDENTIALITY

- 12.1 You shall keep all of our, your Selected Branch's and our other branches' Confidential Information confidential and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- (a) any information which was in the public domain at the date of the Contract;
 - (b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - (c) any information which is independently developed by you without using information supplied by us, your Selected Branch or our other branches; or
 - (d) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause 12 survive the expiry or termination of the Contract.

13. LOYALTY SCHEMES

- 13.1 From time to time, your Selected Branch may offer you the opportunity to participate in or enter specific incentive/loyalty schemes. The supply of those incentive/loyalty scheme shall be subject to separate terms and conditions.
- 13.2 For the avoidance of doubt, the benefits associated with such incentive/loyalty schemes which are earned by any business holding an MKM Account at your Selected Branch are intended solely for the benefit of the named MKM Account holder, and not any director or employee of that business or any other person.
- 13.3 You acknowledge and agree that by participating in or entering any incentive/loyalty scheme your Selected Branch operate or provide that:
- (a) it will be your responsibility as your Selected Branch's customer to determine who has access to any benefits associated with such incentive/loyalty schemes on your behalf, and any decision entitling individuals to be the recipients of incentives rests with you, not your Selected Branch; and
 - (b) benefits associated with incentive/loyalty schemes may be subject to tax and/or National Insurance contributions. You agree to be responsible for and fully indemnify us, your Selected Branch and our other branches to the fullest extent permitted by law against all Losses suffered or incurred by us, your Selected Branch and our other branches arising out of or in connection with receipt of such benefits, including any liability for VAT, corporation tax, income tax, National Insurance and other contributions and any other liability, deduction, contribution, assessment or claim.

14. FORCE MAJEURE

- 14.1 Your Selected Branch will not be liable or responsible for any failure to perform, or delay in performance of, any of their obligations under the Contract that is caused by a Force Majeure Event.
- 14.2 A Force Majeure Event means any event beyond your Selected Branch's reasonable control, including but not limited to:
- (a) Natural disasters (e.g. floods or earthquakes),
 - (b) Fire, explosion, or accident,
 - (c) Terrorist attacks, civil war, riots, or civil unrest,
 - (d) Government regulations or actions (including but not limited to trade restrictions, embargoes, public health emergencies such as pandemics),
 - (e) Strikes, industrial disputes, or other national emergencies.
- 14.3 If a Force Majeure Event takes place that affects the performance of your Selected Branch's obligations under the Contract:
- (a) they will contact you as soon as reasonably possible to notify you; and
 - (b) their obligations under the Contract will be suspended and the time for performance of their obligations will be extended for the duration of the Force Majeure Event.
- 14.4 Where the Force Majeure Event affects their delivery of Goods to you, your Selected Branch will arrange a new delivery date with you after the Force Majeure Event is over.

15. CANCELLATION AND SUSPENSION

- 15.1 Subject to clause 9, you can only cancel a Contract or return Goods to your Selected Branch which you do not require with their prior consent, which is at their sole discretion. Any such cancellation or returns allowed will be under the following conditions:
- (c) Goods must be returned within 14 days of delivery or collection,
 - (d) Goods must be in their original condition and packaging, and accompanied by proof of purchase,
 - (e) Your Selected Branch reserved the right to charge you a handling fee to cover restocking and administrative costs,

- (f) Special Goods (non-stock items or those manufactured to your specifications) are not eligible for return.
- 15.2 Your Selected Branch may terminate the Contract (whether in whole or part) or any other contract which it has with you at any time by giving you notice in writing if:
- (a) you commit a material breach of the Contract and such breach is not remediable;
 - (b) you commit a material breach of the Contract which is not remedied within 5 Business Days of receiving written notice of such breach;
 - (c) if you fail to pay any amount due under this Contract on the due date for payment; or
 - (d) if you suffer an Insolvency Event.
- 15.3 If you become aware that any event has occurred, or circumstances exist, which may entitle your Selected Branch to terminate the Contract under this clause 15, you shall immediately notify your Selected Branch in writing.
- 15.4 On termination of the Contract for any reason, you must immediately pay your Selected Branch all outstanding unpaid invoices and interest. Termination of the Contract, however arising, shall not affect your Selected Branch's rights, remedies and liabilities that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15.5 Without limiting your Selected Branch's other rights or remedies, they may suspend supplies of Goods under the Contract or any other contract which they have with you if they are otherwise permitted to terminate the Contract under this clause 15.
- 15.6 If as a result of your breach of this Contract (including if you fail to pay any amount due under this Contract on the due date for payment) your Selected Branch incur third party costs, such as tracing or debt collection agency costs, or if they take legal proceedings to enforce our rights under the Contract, you will fully indemnify your Selected Branch and us against all Losses which we or they incur, in addition to the amounts already due.

16. HEALTH AND SAFETY

Certain Goods supplied by your Selected Branch could, if incorrectly used, give rise to risks to health and safety. Information in respect of such Goods is available from your Selected Branch or may be provided with the relevant Goods. It is your responsibility to ensure compliance by your employees, agents, subcontractors and customers with any safety instructions given by your Selected Branch or the relevant manufacturer in relation to those Goods and to take other steps or precautions, having regard to the nature of the Goods, as necessary to preserve the health and safety of any person handling, using or disposing of them.

17. DISPOSAL OF WASTE AND WEEE COMPLIANCE

- 17.1 It is your responsibility to ensure the safe and lawful disposal of any waste arising from the Goods and to comply with all applicable laws, regulations and waste management licences relating to such waste. You agree to indemnify us, your Selected Branch and our other branches against all Losses arising from any failure by you to do so.
- 17.2 You agree that where any Goods supplied are electrical equipment, you will be responsible for ensuring (and bearing all costs relating to) the collection, treatment, recovery and environmentally sound disposal of the Goods when they become waste, in accordance with the Waste Electrical and Electronic Equipment Regulations 2013 (**WEEE Regulations**) and related regulations and laws. You also agree to be responsible for compliance with such requirements (and bearing all related costs) in respect of any electrical equipment which is being replaced by the Goods as a new equivalent product or as a new product fulfilling the same function. You will fully indemnify us, your Selected Branch, our other branches and any other person who is the producer of the Goods within the meaning of the WEEE Regulations from all Losses arising from any failure by you to do so.

18. ANTI-BRIBERY

- 18.1 For the purposes of this clause 18 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

- 18.2 You shall comply with applicable Bribery Laws including ensuring that you have in place adequate procedures to prevent bribery and ensure that:
- (a) all of your personnel;
 - (b) all others associated with you; and
 - (c) all of your subcontractors;
- involved in the performance of this Contract so comply.
- 18.3 Without limitation to clause 18.2, you shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on your behalf, either in the United Kingdom or elsewhere, and you shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on your behalf.
- 18.4 You shall immediately notify your Selected Branch as soon as you become aware of a breach or possible breach of any of the requirements in this clause 18.

19. NOTICES

- 19.1 Any notice or other communication given by you to your Selected Branch, or by them to you, under or in connection with the Contract shall be in writing and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service or e-mail. Notices to you from your Selected Branch may also be posted on our website. Any "day to day" queries may be dealt with over the telephone.
- 19.2 A notice or other communication shall be deemed to have been received:
- (a) if delivered personally, at the time of delivery;
 - (b) 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;
 - (c) if sent by e-mail, one Business Day after transmission; or
 - (d) if posted on our website, immediately.
- 19.3 Notice shall be sent by:
- (a) your Selected Branch to you to the address and/or email address recorded by your Selected Branch on your MKM account or otherwise posted on the website; and
 - (b) you to your Selected Branch to their address and email address set out in our [branch finder](#).
- 19.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20. GENERAL

- 20.1 The rights and remedies provided in the Contract for your Selected Branch only are cumulative and not exclusive of any right and remedies provided by law.
- 20.2 You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all or any of your rights or obligations under the Contract without your Selected Branch's prior written consent.
- 20.3 Your Selected Branch may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of their rights or obligations under the Contract.
- 20.4 You and your Selected Branch are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between you and them, other than the contractual relationship expressly provided for in it.
- 20.5 You recognise that any breach or threatened breach of the Contract may cause your Selected Branch irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to your Selected Branch, you acknowledge and agree that they are

entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

- 20.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract. If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, you and your Selected Branch shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.7 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 your Selected Branch 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.
- 20.8 Except as expressly provided for in clause 20.9, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 20.9 We and our other branches shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. Our and their consent is not required to rescind or vary the Contract or any provision of it.
- 20.10 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, you and your Selected Branch. However, you acknowledge and accept we may amend these Conditions from time to time at our discretion (provided such changes will not apply to any current Contracts). Every time you order Goods from your Selected Branch, the Conditions in force at that time will apply to the Contract between you and them.
- 20.11 This Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 20.12 You and your Selected Branch irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Contract, its subject matter or formation (including non-contractual disputes or claims).

21. DEFINED TERMS

- 21.1 In these Conditions the following definitions apply:

Bribery Laws: the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;

Business Day: the opening times of your Selected Branch as set out in our [branch finder](#).

Collection Location: has the meaning given to it in clause 6.1;

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 20.10;

Confidential Information: any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by us or your Selected Branch in performing your Selected Branch's obligations under, or otherwise pursuant to the Contract;

Contract: the agreement between your Selected Branch and you for the sale and purchase of the Goods in accordance with these Conditions;

Delivery Location: has the meaning given to it in clause 6.4;

Force Majeure Event: any event beyond your Selected Branch's reasonable control, preventing or delaying it from performing its obligations under the Contract;

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

Insolvency Event: means:

- (a) you suspend, or threaten to suspend payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (being a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply;
- (b) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors;
- (c) being a company:
 - (i) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up, other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or your solvent reconstruction;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you;
 - (iii) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;
- (d) being an individual:
 - (i) you are the subject of a bankruptcy petition or order;
 - (ii) you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or become a patient under any mental health legislation;
- (e) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
- (f) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
- (g) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to an Insolvency Event;
- (h) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
- (i) your financial position deteriorates to such an extent that in your Selected Branch's opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy;

Intellectual Property Rights: copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case: whether registered or not; including any applications to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; and in whichever part of the world existing;

Losses: all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis);

Order: your order for the Goods placed with your Selected Branch;

Order Acknowledgement: has the meaning given to it in clause 4.11;

Promotional Material: has the meaning given to it in clause 3.1;

Selected Branch: has the meaning given to it in clause 1.3;

Special Goods: any Goods which are non-stock items at your Selected Branch and which are either:

- (a) not manufactured by your Selected Branch or us; or
- (b) specially manufactured, processed or produced to your design, Specification, measurements or requirements (whether or not at your request);

Specification: any specification for the Goods that is agreed in writing by you and your Selected Branch, or where such specification is not agreed, as detailed in any descriptions, instructions, manuals, literature, technical details or other related materials supplied by your Selected Branch in connection with the Goods;

VAT: value added tax, as defined by the Value Added Tax Act 1994; and

WEEE Regulations: has the meaning given to it in clause 17.2; and

you, your: means the person or firm who purchases the Goods from the Selected Branch.

21.2 In these Conditions, unless the context requires otherwise:

- (a) a reference to the Contract includes these Conditions and the Order;
- (b) any clause or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- (c) a reference to a party includes that party's personal representatives, successors and permitted assigns;
- (d) a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- (e) a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (f) words in the singular include the plural and vice versa;
- (g) any words that follow 'including' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- (h) a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- (i) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of your Selected Branch under the Contract;
- (j) a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- (k) an obligation of yours to indemnify us, your Selected Branch, any other of our other branches or any other person against any Losses is to be construed as including an obligation to indemnify and hold harmless and keep them indemnified on demand and in full from and against each such Losses and against each liability incurred in defending or settling a claim alleging each such liability.