

## TERMS OF BUSINESS

These standard terms apply to all Contracts entered into between Arkay and the Customer.

### 1. INTERPRETATION/CONSTRUCTION OF THIS ORDER.

#### A: DEFINITIONS.

In these Conditions, the following definitions are used: -

<b>Arkay:</b>	Arkay Windows Limited a company incorporated in England and Wales under company number 01238359 and having its registered office at 573-575 Lordship Lane, London, N22 5LE; and
<b>Business Day:</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business; and
<b>Conditions:</b>	the terms and conditions set out in this agreement as amended from time to time in accordance with Clause 14.6;
	and
<b>Clause:</b>	means the clauses of these standard terms; and
<b>Contract:</b>	means the Order Confirmation and these Standard Terms together with any Specification; and
<b>Customer:</b>	the person who purchases the Goods and (if any) Services from Arkay full details of the Customer being set out in
	the Order Confirmation; and
<b>Delivery Location:</b>	is as specified in the Order Confirmation; and
<b>Deposit:</b>	the percentage of the Order Sum that is identified in the Order Confirmation as being the deposit payable by the
	Customer under this Contract; and
<b>End User:</b>	means the owner or occupier of the building where the Goods are installed; and
<b>Force Majeure Event:</b>	has the meaning given in Clause 14; and
<b>Goods:</b>	the goods (or any part of them) set out in the Order Confirmation; and
<b>Hazardous Environment:</b>	means within 2,000 metres of the UK coastline according to an ordnance survey map; in a room with an indoor
	swimming pool or in a location that is generally known to window manufacturers to be hostile to such installations as are contemplated by the Project; and
<b>Order Confirmation:</b>	means the document sent by Arkay to the Customer being described as such; and
<b>Parties:</b>	means Arkay and the Customer; and
<b>Project:</b>	means the site or works that are set out in the Order Confirmation; and
<b>Services:</b>	the installation services (if any) provided by Arkay under the Order as are detailed in the Order Confirmation; and
<b>Special Finish:</b>	means any marine or other special finish as identified in the Order Confirmation; and
<b>Specification:</b>	any specification for the Goods, including any related plans and drawings, forming part of the Contract and as
	are set out in the Order Confirmation; and
<b>Standard Terms:</b>	means these terms and conditions as may be updated from time to time; and
<b>Terms of Payment:</b>	the terms of payment as set out in the Order Confirmation.





## B: CONSTRUCTION.

In these Conditions, the following rules apply:

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

A reference to a party includes its personal representatives, successors or permitted assigns; and

A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a

statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and

Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

A reference to **writing** or **written** includes emails.

## 2. BASIS OF CONTRACT.

2.1. These Conditions apply to the Contract between Arkay and the Customer to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer waives any right and withdraws any terms of sale or contract or conditions it has or might have tried to rely or tries to rely upon on or any term or provision endorsed upon, delivered with or contained in any document emanating from the Customer that is inconsistent with these Conditions or any of the other provisions of the Order and these Standard Terms. In the event of any conflict within these Conditions or between these Conditions and any matter set out in the Order Confirmation Arkay shall acting reasonably decide how the conflict shall be overcome and such decision shall be treated as a variation to these conditions under Clause 14.6.

2.2. The Contract constitutes an agreement by Arkay to sell the Goods and supply the Services (if they are to be supplied as set out in the Order Confirmation) to the Customer only in accordance with the provisions of the Contract, any Specification and these Conditions. The Customer accepts all the Standard Terms and accepts responsibility for ensuring that all applicable Specification(s) are complete and accurate and to its satisfaction.

2.3. The Contract will only be effective when the Order Confirmation is issued by Arkay to the Customer.

2.4. The Contract constitutes the entire agreement between the Parties. The Customer acknowledges that it has not relied on and hereby irrevocably waives any right to rely on any statement, promise or representation made or given by or on behalf of Arkay which is not set out in this Order Confirmation.

2.5. Any samples, drawings, descriptive matter, or advertising produced by Arkay and any descriptions or illustrations contained in Arkay's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.





### 3. GOODS.

3.1. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer

shall indemnify Arkay against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Arkay in connection with any claim made against Arkay arising out of or in connection with Arkay's use of the Specification and the intellectual property rights associated therewith. This clause 3.1 shall survive termination of the Contract.

3.2. Arkay reserves the right to amend any Specification at any time if required by any applicable statutory or regulatory requirements

or in order to conform with any manufacturing, product improvement or development plans or any safety requirements and in such circumstances shall endeavour to provide the Customer with notice of such amendment as is reasonable in the circumstances. The Customer shall be responsible for any costs so incurred by Arkay.

3.3. If the Customer has given notice that the Goods are to be installed in a Hazardous Environment then Arkay shall use all reasonable

endeavours to supply goods that will not be affected by such Hazardous Environment using such Special Finish as the Parties shall agree. In the event that such notice is not given Arkay shall not be liable to the Customer for any damage caused to the Goods as a result of them being installed in such Hazardous Environment and shall keep Arkay fully indemnified in respect of any claim made against Arkay as a result of the Goods being installed in a Hazardous Environment without a Special Finish.

3.4. Where the Goods are installed in a Hazardous Environment then the Customer shall ensure that the Goods are maintained and

cleaned in accordance with good industry practice and as may be recommended by Arkay to the Customer from time to time. The Customer shall keep full and proper records of such cleaning and maintenance and provide copies of the same to Arkay upon reasonable written request. Arkay shall not be liable for any failure in the Goods where the damage results as a result of such failure to so maintain and clean nor where the Customer is unable to provide the records as are required by this Clause 3.4.

3.5. Arkay shall provide such warranties as to the Goods as are its normal business practice and as may be amended from time to time. All warranties are subject to Clause 3.4 and the Customer maintaining and cleaning the Goods in accordance with good industry practice and as may be recommended by Arkay to the Customer from time to time. The Customer shall keep full and proper records of such cleaning and maintenance and provide copies of the same to Arkay upon reasonable written request. Arkay shall not be liable for any failure in the Goods where the damage results as a result of such failure to so maintain and clean nor where the Customer is unable to provide the records as are required by this Clauses 3.4 and 3.5.

### 4. DELIVERY.

4.1. Arkay shall ensure that: -

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order Confirmation, all relevant Customer and Arkay 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 Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and





(b) if Arkay requires the Customer to return any packaging materials to Arkay, that fact is clearly stated on the delivery note.

The Customer shall make any such packaging materials available for collection at such times as Arkay shall reasonably request. Returns of packaging materials shall be at the Customer's expense.

4.2. Arkay shall deliver the Goods to the Delivery Location at any time after Arkay notifies the Customer that the Goods are ready. Arkay shall give the Customer not less than 2 days' notice that the Goods are ready and the proposed date of the delivery of the Goods.

4.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location (**Delivery Completion**). The Customer shall grant Arkay access to the Delivery Location in order to effect delivery of the Goods and the Customer shall be responsible for off-loading the Goods. Any dates quoted for delivery or in the Order Confirmation are approximate only, and the time of delivery is not of the essence.

4.4. If the Customer fails to take actual delivery of the Goods within 2 Business Days of Arkay notifying the Customer under Clause 4.2 that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Arkay's failure to comply with its obligations under the Order then: -

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

(b) Arkay shall store the Goods until delivery actually takes place and the Customer shall pay for all related costs and expenses incurred by Arkay (including without limitation storage, delivery and transportation costs and insurance).

4.5. If within 10 Business Days after the day on which Arkay notified the Customer that the Goods were ready for delivery the Customer

has not taken delivery of them, Arkay may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage, handling and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.6. Arkay may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. QUALITY OF GOODS.

5.1. Where the Contract includes a Specification then Arkay warrants that on delivery the Goods shall conform in all material respects to the Specification or where that is not possible then Arkay warrants that it will have used all reasonable endeavours to ensure that the Goods meet the Specification.

5.2. Where the Order does not include a Specification then Arkay warrants that on delivery the goods shall: -

- (a) generally, conform with their description; and
- (b) be free from material defects in design, material and workmanship; and





- (c) be reasonably fit for the purpose for which the Goods were intended for provided that such purpose has been generally made known to Arkay.

All other warranties or conditions (whether express or implied as to quality, condition, description compliance with sample or fitness for purpose whether statutory or otherwise are hereby excluded to the fullest extent permitted by law.

5.3. Subject to clause 5.4, if: -

- (a) the Customer gives notice in writing to Arkay within a reasonable time of discovery that some or all of the Goods do not comply with this Clause 5; and  
(b) Arkay is given a reasonable opportunity of examining such Goods; and  
(c) the Customer (if asked to do so by Arkay at the Customer's cost) returns such Goods to Arkay's place of business,

then Arkay shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full and (in each case) Arkay shall be deemed not to be in breach or have any further liability to the Customer for the defective Goods.

5.4. If the Customer fails to give notice as specified in Clause 5.3 within 2 Business Days from Delivery Completion then except in respect of any defect which is not one which would be apparent (on reasonable inspection) the Goods shall conclusively be presumed to comply with the warranty set out in either Clauses 5.1 and 5.2 and accordingly Arkay shall have no liability to the Customer in respect of such Goods (except in relation to liability for any latent defects which are notified in writing to Arkay within five (5) Business Days of discovery in which case the provisions of clause 5.2 shall apply).

5.5. Arkay shall not be liable for Goods' failure to comply with the warranty set out in Clause 5.1 or 5.2 in any of the following events:

- (a) the Customer makes any further use of or continues to use such defective Goods after giving notice in accordance with Clause 5.3; or  
(b) the defect arises because the Customer failed to follow Arkay's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods (including failure to follow the installation instructions provided on delivery of the Goods showing the correct installation method and usage); or  
(c) the defect arises as a result of Arkay following any drawing, design or Specification supplied by the Customer; or  
(d) the Customer alters or repairs such Goods without the written consent of Arkay; or  
(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or  
(f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or  
(g) the defect arises as a result of condensation; or  
(h) the Goods are to be installed in the Hazardous Environment and this has not been advised to Arkay; or  
(i) the defect arises as a result of the Goods being installed in a Hazardous Environment without a Special Finish and the appropriate hard-wearing components.



- 5.6. For the avoidance of doubt, Arkay makes no warranty or representation that condensation will not occur or will be eliminated by the Goods and Arkay shall not be liable for any condensation associated with the installation or use of the Goods.
- 5.7. The Customer acknowledges that whilst every attempt is made to match paint colours on the Goods, slight variations may occur, and such paint finishes may dull due to weathering. Arkay shall not be responsible or liable for any such dulling to the paint finishes on the Goods.
- 5.8. Unless Arkay has supplied the glass forming part of the Goods (which has been expressly stated in the Order Confirmation), glass shall not be included as part of the Goods and Arkay shall not have liability to the Customer in respect of any glass fitted or installed in the Goods.
- 5.9. Except as provided in this Clause 5, Arkay shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 5.1 and 5.2.
- 5.10. These Conditions shall apply to any repaired or replacement Goods supplied by Arkay.
- 5.11. For the avoidance of doubt Arkay shall be under no obligation to, remove or re-install any defective Goods which have been installed or incorporated into any property or premises or any part thereof.

## **6. THIRD PARTY INSTALLER.**

The Customer may (with the prior written consent of Arkay) delegate its “*Arkay Approved Installer Status*” to a third-party installer (Third Party Installer) provided that the Third Party Installer ensures that all its staff who install the Goods complete the relevant training as agreed with Arkay in writing.

## **7. END USER.**

Arkay may in its sole discretion offer an extended warranty on the Goods to an End User on terms that it shall decide and only on Goods that are clearly marked as Arkay Goods and carry an Arkay serial number. A hazardous environment maintenance guide will be supplied by Arkay with the Goods which the Customer must pass to the End User of the Goods. It is the responsibility of the Customer to ensure receipt by the End User of this operational guide and hazardous environment maintenance guide together with any extended warranty offered. The provisions of Clauses 3.4 and 3.5 shall apply mutatis mutandis to the End User and the warranty shall be subject to the same.

## **8. TITLE AND RISK.**

Risk in the Goods shall pass to the Customer on Delivery Completion and from that date the Customer shall be responsible for insuring and protecting the same. Title to the Goods shall pass from Arkay to the Customer upon payment in full (in cash or cleared funds) for the Goods and any other goods or Services that Arkay has supplied to the Customer under this Order and any other order between the Parties including any Interest payable under Clause 9.8. In the event that payment is not received in full by Arkay then Arkay shall have the right to enter upon the site of the Project in order to collect the unpaid Goods.



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## 9. PRICE AND PAYMENT.

- 9.1. The price for the Goods and (if any) the Services shall be the price set out in the Order Confirmation.
- 9.2. Arkay may, by giving notice to the Customer at any time before delivery, increase the price of the Goods and/or Services (if any) to reflect any increase in the cost that is due to:
- (a) any factor beyond Arkay's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
  - (b) any request by the Customer to change the delivery date(s), locations for delivery or installation, quantities or types of Goods or Services ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Origin adequate or accurate information or instructions; or
  - (d) any modification to the Goods required as a result of Arkay being advised that the Goods are due to be installed in a Hazardous Environment; or
  - (e) except where otherwise set out in the Order Confirmation the price of the Goods is inclusive of the costs and charges of packaging, insurance and (if the Delivery Location is within a 50-mile radius of Arkay's place of business in Watford) transport of the Goods; or
- 9.3. Where the Order Confirmation stipulates that a Deposit is required the Customer shall pay such Deposit forthwith.
- 9.4. Where the Order Confirmation stipulates a Deposit is required commencement of manufacture of the Goods and agreement of a delivery date will not occur until Arkay is in receipt of the Deposit in full.
- 9.5. The Deposit shall be non-refundable to the Customer except in the event that Arkay advises the Customer in writing that it is unable to supply the Goods in which case it shall refund the Deposit to the Customer after deducting any reasonable costs incurred in fulfilling the Contract.
- 9.6. The price of the Goods and Services is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Arkay, pay to Arkay such additional amounts in respect of VAT as are chargeable on the supply of the Goods and Services.
- 9.7. Arkay shall invoice the Customer for the price of the Goods (less the Deposit) on or at any time prior to the delivery of the Goods and for the price of the Services on or at any time prior to providing them. The Customer shall pay the invoice within 5 Business Days or such other time as stipulated in the Order. The making of payments by the Customer is of the essence.
- 9.8. If the Customer fails to make any payment due to Arkay under the Order by the due date for payment (**due date**), then without prejudice to any other rights or remedies of Arkay the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Barclays Bank PLC's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.
- 9.9. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Arkay in order to justify withholding payment of any such amount in whole or in part. Arkay may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Arkay to the Customer.





## 10. CANCELLATION AND CUSTOMER'S INSOLVENCY OR INCAPACITY.

10.1. If the Customer becomes subject to any of the relevant events listed in clause 10.2, or Arkay reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Arkay, Arkay may terminate the Order by written notice to that effect and/or cancel or suspend all further deliveries of the Goods under the Order or under any other contract between the Customer and Arkay; and without Arkay incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

10.2. For the purposes of Clause 10.1, the relevant events are any of the following: -

- (a) the Customer makes any composition or voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or
- (b) the Customer is unable to pay its debts as they fall due; or
- (c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- (d) the Customer ceases, or threatens to cease, to carry on business; or
- (e) any Orders previously placed by the Customer have not been paid for at the date of the Order; or
- (f) Origin reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 11. INSTALLATION SERVICES.

11.1. If it is agreed on the Order Confirmation that Arkay is to provide the Services, the Customer shall: -

- (a) be liable for ensuring that Arkay, its employees, consultants and subcontractors, are provided with access to any property and other facilities as reasonably required by Arkay to provide the Services; and
- (b) co-operate with Arkay in all matters relating to the Services; and
- (c) provide Arkay with such information and materials as Arkay may reasonably require in order to provide the Services, and ensure that such information is complete and accurate in all material respects; and
- (d) obtain and maintain all necessary permissions and consents which may be required for installation before the date of provision of the Services; and
- (e) ensure that all of the Customer's equipment and any third-party products which are relevant to the supply of the Services are in good condition and working order and suitable for the purposes of providing the Services.

11.2. Where the Order includes Services to be provided by Arkay:

- (a) Arkay shall use all reasonable endeavours to meet any dates for provision of Services set out in the Contract, but any such





dates shall be estimates only and time shall not be of the essence of the Services; and

(b) Arkay will use reasonable skill and care in the provision of the Services.

11.3. Subject to Clause 11.5 if:

(a) the Customer gives notice in writing to Arkay within 5 (five) Business Days of the completion of supply of the Services that some or all of the Services do not comply with the warranty in Clause 11.2(b) (the “**Services Warranty**”); and

(b) Arkay is given a reasonable opportunity of examining such alleged non-compliance; and if the Services do not comply

with the Services Warranty; then Arkay shall (at its entire discretion) either supply replacement Services which comply with the Services Warranty; or notify the Customer that it is unable to supply replacement Services in which case Arkay shall grant to the Customer a credit equal to the value of the Services which do not comply with the Services Warranty and (in each case) Arkay shall be deemed not to be in breach or have any further liability to the Customer for the non-compliant Services.

11.4. If the Customer fails to give notice as specified in Clause 11.3 and except in respect of any defect which is not one which would

be apparent on reasonable inspection, the Services shall conclusively be presumed to comply with the Services Warranty and Origin shall have no liability to the Customer with respect to such supply. If a latent defect (being one that could not be discovered on reasonable inspection) is discovered then the Customer shall give notice of that fact within 5 Business Days of the discovery of the latent defect and Arkay shall attend to the defect that is complained of.

11.5. Arkay shall not be liable for the failure of any Services to comply with the Services Warranty in any of the following events:

- (a) the Customer makes use of the Goods after giving notice in accordance with clause 11.3 or (in the case of latent defects) clause 11.4; or
- (b) the non-compliance arises as a result of the Customer failing to comply with any of its obligations or responsibilities set out or referred to in clause 11.1; or
- (c) the non-compliance arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions.

11.6. Except as provided in this Clause 12, Arkay shall have no liability to the Customer in respect of the Services for the failure to comply with the Services Warranty.

11.7. These Conditions shall apply to any replacement Services supplied by Arkay.

11.8. The location for the supply of the Services shall be as set out in the Order Confirmation or shall be such other place agreed in writing by Parties (Services Supply Location).

11.9. Arkay shall not be responsible or in any way liable for any delay in supply of the Services that is caused by a Force Majeure Event

or the Customer’s failure to provide Arkay with access to the site, adequate instructions or other information that is relevant to the supply of the Services notwithstanding that Arkay may not have provided the Services on the date quoted in the Order Confirmation.



11.10. The Customer acknowledges and agrees that it shall be liable to Arkay for any costs incurred by Arkay if Arkay or its employees, agents or subcontractors are unable to gain access to the Services Supply Location or any or other property at the time agreed between the parties for the purpose of discharging its obligations under the Contract

## 12. LIMITATION OF LIABILITY.

12.1. Nothing in these Conditions shall limit or exclude Arkay's liability for: -

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
- (b) fraud or fraudulent misrepresentation; or
- (c) any other matter in respect of which it would be unlawful for Arkay to exclude or restrict liability

12.2. Subject to Clause 12.1: -

- (a) Arkay shall under no circumstances whatever be liable to the Customer under or in connection with the Contract or in connection with the sale of the Goods and/or supply of the Services, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of actual or anticipated profit, economic loss or damage, loss of revenue, loss of opportunity or any indirect special or consequential loss or damage howsoever arising whether under or in connection with the Contract or otherwise; and
- (b) Arkay's total aggregate liability to the Customer in respect of all other losses or damages arising under or in connection with the Contract or in connection with the sale of the Goods and/or supply of the Services, whether in contract, tort (including negligence and gross negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the actual loss suffered by the Customer rectifying defects in the Goods or putting right the Services so supplied and in no circumstances shall exceed 10% of the aggregate amount paid by the Customer respectively for each of the Goods and (if any) the Services under the Order.

12.3. The Order constitutes the entire agreement between the parties for the sale and supply of the Goods and the Services and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them whether written or oral relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, condition, assurance or warranty (whether express or implied or made innocently or negligently) that is not set out expressly in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on anything contained in the Contract.

12.4. If Arkay's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or End User, or there is a failure by the Customer or End User to perform any relevant obligation (Default) without limiting or affecting any other right or remedy available to it, Arkay shall have the right to suspend delivery or installation until the Customer or End User remedies the Default; and to rely on the Default to relieve it from the performance of any of its obligations in each case to the extent



the Default prevents or delays Arkay's performance of its obligations hereunder.

12.5. Arkay shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Arkay's failure or delay performing any of its obligations following a Default and the Customer shall reimburse Arkay on written demand for any costs or losses sustained or incurred by Arkay arising directly or indirectly from the Default.

### 13. FORCE MAJEURE.

Neither party shall be liable for any failure or delay in performing its obligations under this Order to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, Covid-19 or any similar or like virus, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

### 14. GENERAL.

#### 14.1. Assignment and Subcontracting.

Arkay may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Arkay.

#### 14.2. Notices.

Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, or email.

A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred

to in clause 13.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 14.3. Severance.





If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable,

that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the

other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### 14.4. Waiver.

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any

subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law

shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other

right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any

other right or remedy.

#### 14.5. Third Party Rights.

A person who is not a party to the Contract shall not have any rights under or in connection with it.

#### 14.6. Variation.

Except as set out in these Conditions and as provided in Clause 2.1, any variation to the Contract, including the introduction of

any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised representative of

Arkay.

#### 14.7. Consumer.

Where the Customer is a "Consumer" as defined in the Consumer Rights Act 2015 then the Standard Terms shall not affect any

statutory rights.

### 15. DISPUTES AND LAW.

#### 15.1. Governing Law and Jurisdiction.

The Contract shall be governed by and construed in accordance with English law.

#### 15.2. Mediation.

If any dispute arises between the Parties in relation to or in connection with any matter arising under this Order then the Parties will prior to the commencement of any legal proceedings under Clause 15.3 attempt to mediate that matter using the CEDR rules.

#### 15.3. Jurisdiction.

Each Party irrevocably submits to the exclusive jurisdiction of the English courts to settle any dispute which may arise under or in connection with this Order or the legal relationships established by it.





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