

STANDARD TERMS & CONDITIONS

1. INTERPRETATION

1.1 In these Conditions:

"Additional Works"	means any goods or services which are not originally included in the Works but which are requested or required by the Customer
"Company"	means Mimram Special Works Limited
"Contract"	means an agreement between the Company and the Customer or Supplier for the supply of Goods and/or Services on these Conditions;
"Customer"	means the person, firm, company organisation or person whom the Goods and/or Services are supplied to or purchased from;
"Date for Completion"	means the date (if any) by which the Company agrees to complete the Works, as unless extended under these Conditions or otherwise by agreement of the parties;
"Design Services"	means the preparation by the Company of proposals, plans, drawings and designs on behalf of the Customer;
"Disruption"	means any disruption to the Company's performance of the Works caused by reasons outside the Company's reasonable control, including, but not limited to: (1) the requirements, acts or omissions of the Customer or its agents or contractors; (2) industrial disputes (whether or not involving the Company's employees); (3) any physical obstructions or conditions which could not reasonably have been foreseen by the Company; (4) any difficulty in the gaining, timing or duration or access to the Site; and/or (5) Force Majeure; (6) failure on the part of the Customer to give instructions or provide information in good time. (7) COVID 19 or any other recognised pandemic.
"Goods"	means the goods sold or to be sold by the Company to the Customer or the goods purchased by the Company;
"Installation Services"	Means the commissioning and installation of the Goods by the Company, or its agents or subcontractors;
"Order"	means the Customer's order as placed with the Company in accordance with Condition 2;
"Price"	means the amount agreed to be paid to the company for the execution of the Works, as varied under condition 6;
"Services"	means the Design Services and/or the Installation Services, as appropriate;
"Site"	means the premises where the Works are to be carried out; and
"Works"	means the Goods and/or Services, appropriate

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. APPLICATION OF CONDITIONS AND ADDITIONAL CONDITIONS

- 2.1 Orders will only be accepted and Goods and/or Services will only be supplied by the Company subject to these Conditions.
- 2.2 No other conditions (including any written terms and conditions of the Customer) will apply to any Contract unless expressly accepted by the Company in writing and engrossed by a Company director.
- 2.3 These Conditions shall apply notwithstanding any previous representation or warranty of whatsoever nature made by the Company, its directors, employees or agents.
- 2.4 Neither party shall be bound by any variation, waiver or addition to these Conditions unless agreed by both parties in writing.

3. CUSTOMER'S OBLIGATIONS

- 3.1 The Customer shall in reasonable time grant the Company access to and possession of the Site. The Customer shall ensure that such possession shall be uninterrupted and that any material impediment to the carrying out of the Works caused by the presence or activities of the Customer, its agents or other contracts shall be a Disruption for the purposes of Conditions 4 and 7.
- 3.2 Subject to Condition 3.1, the Customer shall without charge and for the duration of the Works provide the Company with sufficient and conveniently located secure area(s) at the Site of the provision of a site hut and for the storage of materials in connection with the Works.
- 3.3 The Customer shall allow the Company full use for the purposes of the completion of the Works of such supplies of electricity, water, gas and other services as may be available on the Site. Such supplies shall be free of charge unless otherwise agreed in writing.

4. COMPLETION

- 4.1 The Works shall be completed no later than the Agreed Date for Completion. Where no date is agreed then the completion date of the works shall be within a reasonable period from commencement
- 4.2 The Company may claim an extension of the Agreed Date for Completion (an **"Extension"**) if it is or will be delayed in completing the Works by any of the following causes:
- 4.2.1 Additional Works;
- 4.2.2 the Customer's instructions, otherwise than by reason of the Company's default; and/or
- 4.2.3 the failure of the Customer to fulfil any of its obligations under the Contract; and/or
- 4.2.4 any Disruption to the works or site.
- 4.3 The Company shall be entitled to claim an Extension if delay on the part of a sub-contractor of the Company is due to a cause mentioned in Condition 4.2, and such delay prevents the Company from meeting the Date for Completion.
- 4.4 The Company shall be entitled to an Extension whether the delay occurs before or after the Date for Completion. The length of any Extension shall be equivalent to the delay caused plus any reasonable re-deployment period.
- 4.5 The Company shall be entitled to recover all reasonable costs for any Extension, including but not limited to; head office overhead and profits; management costs; transport and travel costs; hire costs; and any other associated costs.

5. ADDITIONAL WORKS

- 5.1 The Company shall not commence any Additional Works without first being instructed to do so by the Customer. If the Company considers that it is being required to carry out Additional Works, it shall give to the Customer written notice and wherever possible, a written estimate of the costs to be incurred in providing the Additional Works and an estimate where possible of the time implications (if any) to the Works of carrying out any Additional Services.
6. **DELIVERY**
- 6.1 The Company shall use its reasonable endeavours to deliver the Goods and supply the Services at times reasonably requested by the Customer. However, delivery or supply dates are best estimates only, and in no case is delivery or performance of a Service on or by a fixed date a term of the Contract. Late delivery of any Goods or any part thereof and/or late supply of Services shall not be a ground for cancellation or refusal to take delivery or accept supply or withhold payment of any part of the Price, and the Company shall not be liable for any loss or damage resulting from any delays in delivery of Goods and/or supply of Services except and to the extent the Customer benefits from any rights it may have against its suppliers, subcontractors or agents.

6.1 The Customer shall:

- 6.2.1 examine the Goods at the time of delivery;
- 6.2.2 notify in writing to the Company within 3 days of delivery of the Goods to the Customer any claim for damage;
- 6.2.3 retain for return, any damaged Goods until inspected by the Company or its agent; and
- 6.2.4 notify in writing to the Company within 7 days of the invoice date any claim for non-delivery or damage

6.3 Save as otherwise expressly provided in these Conditions, the Company shall be under no liability whatsoever for any loss, damage, deterioration or delay to the Goods at any time after the risk has passed to the Customer.

6.4 Where the Goods are ready for delivery and delivery is postponed at the request of the Customer, or if the Customer is unable or unwilling to take delivery of the Goods, then the Customer shall make payment for the Goods as if the Goods were delivered and invoiced on the date of such request or attempted delivery, and the Company may store the Goods at its own premises or elsewhere at the Customer's sole risk and expense including costs of handling, storage, insurance and re-delivery etc..

7. THE PRICE

- 7.1 There shall be added to the Price any cost resulting from any:
- 7.1.1 Additional Works;
- 7.1.2 Extension;
- 7.1.3 Disruption; and/or
- 7.1.4 increase in the cost to the Company of completing the Works, which occurs due to causes beyond the Company's control between the date of the Contract and the date when the Works are completed, in relations to increased in materials, labour, and/or production costs, fluctuation in currency exchange rates, taxes or similar levies or duties.
- 7.2 Except as otherwise provided, the Price excludes.
- 7.2.1 Value Added Tax and delivery charges; and
- 7.2.2 any main contractor's discount

8. PAYMENT

- 8.1 **Interim payments**, where a contract is planned to exceed 45 days or where a contract subsequently exceeds 45 days then interim payments will be agreed;
- 8.1.1 Any interim payment schedule shall be agreed in writing before works commences.
- 8.1.2 In the event that a payment schedule is not agreed in writing, before works commences, or where a schedule is proposed and no agreement is reached, then payments shall be made in accordance with the scheme for construction contracts.
- 8.2 **Invoiced works**, the Customer shall pay the Price within 7 days from the date of receipt of the Company's invoice the **"Due Date"**. The Company may render separate invoices for the Goods, Design Services and/or Installation Services or any part thereof, as appropriate.
- 8.3 If the Customer fails to make any payment of an interim application due to the Company by the final date for payment, or in the case of an invoice by the Due Date: -
- 8.3.1 the Customer shall pay interest to the Company on any overdue amount at the rate of 8% over Bank Of England base rate, to run from the relevant date until receipt by the Company of the full amount, whether before or after judgment;
- 8.3.2 the entire balance outstanding on all invoices and or applications from the Company to the Customer shall become payable in full to the Company immediately without further demand, despite any provisions to the contrary in any invoice or otherwise; and
- 8.3.3 the Company may, without prejudice to any other right or remedy available to it: -
- (1) delay or withhold or suspend delivery under, or cancel, any or all Orders and/or Contracts;
- (2) retain any amount already paid to it by the Customer; and/or
- (3) inspect, repossess and/or sell the Goods or any of them at any time and the Customer shall permit the Company's employees and/or agents to enter upon any of all of the Customer's premises or vehicles for that purpose, with or without vehicles.
- These rights shall continue after and despite the termination for any reason of any Contract and is without prejudice to any accrued rights of the Company under such Contract.

8.4	If the Customer delays or requests a delay of 14 days or more in the fulfillment of the Contract by the Company for whatever reason, or in any way defaults in its obligations to the Company, or the Company has any reason to believe the Goods are in jeopardy, or that the Customer is unable to pay for the Goods and/or Services, then the Company may:
8.4.1	recover the Goods;
8.4.2	terminate the Contract;
8.4.3	Immediately claim payment in respect of the Goods and/or Services already supplied in accordance with the Contract and any other contracts between the parties.
8.4	Cancellation of the Contract by the Customer for whatever cause and at whatever stage can be made only with the Company's prior written consent and on payment of all costs and expenses incurred or which may be incurred.
9	RISK IN GOODS
	Risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer, its site, its agent or any contractor operating on behalf of the client.
10	PASSING OF TITLE
10.1	Despite risk in the Goods passing in accordance with Condition 9 above, title in the Goods shall not pass to the Customer until payment in full is received by the Company of the entire Price (together with any interest or additional charge, cost or expense payable in respect thereof) for the Works and for any other amounts then being outstanding from the Customer to the Company in respect of other goods or services supplied to the Customer by the Company.
10.2	Before title has passed to the Customer under the terms of Condition 10.1 and without prejudice to any of its other rights, the Company shall have the right to recover or resell the Goods or any of them, and by its servants or agents may enter upon the Customer's premises for that purpose.
10.3	Until title in the Goods passes, the Customer shall:
10.3.1	hold the Goods as bailee for the Company, take proper care of them and take all reasonable steps to prevent any damage to or deterioration of them;
10.3.2	store or keep the Goods separately, so as to show clearly that they belong to the Company;
10.3.3	insure the Goods with reputable insurers against all relevant risks for an amount that is not less than the Price of such Goods and shall, if required to do so by the Company, prove to the Company that such insurance has been effected;
10.3.4	if Goods are destroyed by an insured risk prior to title passing to the Customer, shall receive the proceeds of any such insurance as trustee for and on behalf of the Company;
10.3.5	not sell or part with possession of the Goods;
10.3.6	keep the Goods free from any mortgage, charge, lien or other encumbrance
10.3.7	notify the Company immediately if any of the events specified in Condition 11.1.1 to 11.1.5 inclusive occurs; and
10.3.8	not remove, alter, obscure, or otherwise interfere with any identifying marks or labels placed on the Goods or their packaging by the Company
10.4	Despite this Condition 10, the Company may:
10.4.1	bring action against the Customer for the Price of the Goods if the Customers fails to pay for them in full by the Due Date, even though property in the Goods has not passed to the Customer; and/or
10.4.2	by notice to the Customer at any time after delivery pass property in the Goods to the Customer as from the date of such notice.
11.	GUARANTEE
11.1	The Company warrants to the Customer that the Company has exercised and will continue to exercise in the performance of the Services all the skill and care to be expected of a competent professional experienced in providing services similar to the Services in respect of a contract similar in size scope nature and complexity to the Works.
11.2	Without prejudice to the generality of Clause 11.1, the Company warrants that it has exercised and will continue to exercise all the skill and care required under Clause 11.1 in the specification of materials, plants and goods (including the Goods) for the Works for which it is responsible under the scope of any Contract and that all materials specified, recommended or approved conform to any applicable British Standard Specifications and Codes of Practice then in force.
11.3	Insofar as any Additional Works comprise Services, the Company warrants the same standard of care set out in Condition 11.1.
11.4	The Customer will, to such extent as is possible but not so as to jeopardise or affect the Company's benefit of these, be entitled to the benefit of any warranty or guarantee given to the Company by the manufacturer of the Goods at the passing of title.
11.5	Subject to Condition 10, the Company will (at its option) replace, repair or refund or credit the value of the Works or any part thereof which are defective by reason of faulty workmanship and/or the use of defective materials, provided that:
11.5.1	the Customer gives the Company written notice detailing the alleged defect within seven days of the Customer becoming aware of the same and in any event within six months from the date of completion of the Works;
11.5.2	any repairs to the Goods have been carried out by the Company or persons duly approved by the Company;
11.5.3	the Company or its representative or agent shall have first had the opportunity to inspect the Works and to satisfy itself (if it so wishes) that:
(1)	there has been no misuse, neglect or accident after the passing of risk to the Customer giving rise to the defect or damage; and
(2)	that there is in fact a defect; and
11.5.4	Any defective or damaged Goods are promptly returned by the Customer at the Company's options to the address designated by the Company (carriage and insurance paid, such reasonable carriage expenses to be refunded by the Company if it is held liable for the defect). IF the Goods have been installed they shall not, without the prior written approval of the Company, be dismantled or removed by the Customer from the Works, if such action will or is likely to damage or further damage the Goods or Works.
11.6	Unless otherwise agreed with the Company in writing, if only some of the Goods are defective, the Customer shall accept the remainder of the Goods and be liable to pay the Price reduced by reference to the appropriate part of the Company's quotation.
12.	LIMITATIONS OF LIABILITY
12.1	The Company is a reseller of goods manufactured by third parties. This Condition limits the scope of the Company's liability to the Customer in relation to the quality, nature and/or condition of Goods: -
12.1.1	the Company's sole responsibility shall be given to the Customer the same warranty as given to it in respect of the relevant Goods by the person, firm or company which supplied those Goods to the Company (the "Company's Supplier");
12.1.2	the Company shall not be liable for any defect or fault in any Goods for any sum greater than the amount recovered in respect of the relevant Goods from the Company's Supplier; and
12.1.3	for the avoidance of doubt, the warranties in Condition 11 are the only warranties given by the company in relation to the Works and all other conditions or warranties as to description, suitability, quality or state, whether expressed or implied, whether statutory or otherwise, are expressly excluded.
12.2	Does not exclude or restrict it's liability for death or personally injury arising from the negligent acts or omissions of the Company, its employees or agents.
12.3	Subject to Conditions 12.1 and 12.2, the total liability of the Company to the Customer in respect of any claim for breach of contract, negligence, breach of statutory duty or otherwise shall be limited in respect of claims for damage to or loss of property, to £1 million per claim or series of claims arising from one incident.
12.4	The Company's liability to the Customer shall be limited to that proportion of the Customer's loss by reason of the breach which it would be just and equitable to require the Company to pay on the following basis:
12.4.1	having regard to the extent of the Company's responsibility for the same;
12.4.2	that any other responsible party shall be deemed to have provided contractual undertaking on terms no less onerous than these Conditions to the Customer; and
12.4.3	that any other responsible party shall be deemed to have paid to the Customer such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.
12.5	Subject to the limitations in these Conditions, and to the extent that any applicable statutory provisions shall not make it unlawful so to do, the obligations undertaken by the Company under these Conditions constitute the sole liability of the Company in respect of the Works and accordingly:
12.5.1	save as otherwise provided, all other conditions, warranties, statements, representations in relation to Services and, as to description, satisfactoriness, quality, fitness or performance in relation to the Goods expressed and implied by statute or common law and, without limitation to the foregoing, the implied terms conditions and warranties of the Sale of Goods Act (the " 1979 Act ") and the supply of Goods and Services Act 1982 (the " 1982 Act ") are excluded with the same affect as if the same were severally expressly set out and excluded;
12.5.2	the Company shall be under no liability in contract or in tort for any loss, damage, death or injury arising directly or indirectly by or resulting from the Goods or Services or their use by the Customer or any third party;
12.5.3	the Company shall have no liability for any indirect or consequential losses or expenses suffered by the Customer, however caused, and including (but not limited to) loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims; and
12.5.4	the exclusion set out above apply whether or not the purpose(s) for which the Goods are purchased has been made known to the Company and accordingly, the Customers is responsible to ensure that the Goods purchased meet the Customer's requirements and are fit for the Customer's purpose(s).
12.6	Notwithstanding the exclusions contained in this Condition 11, the Customer is entitled in all cases to the Customer's statutory rights under Section 12 of the 1979 Act or Section 2 of the 1982 Act.
13.	INDEMNITIES, TRADEMARKS AND COPYRIGHT
13.1	All Drawings, designs, sketches, reports and plans submitted by the Company to the Customer, whether as the Design Services or otherwise, are accepted in confidence and, unless otherwise agreed in writing, they and the copyright in them remain the Company's property.
13.2	The Company gives no warranty or indemnity in respect of any action of alleged infringement of patents, trademarks, trade names, design rights, copyright or any other industrial property right relating to the Goods and/or Services.
13.3	To the extent permissible under law, the Customers will indemnify the Company against all liability for damages, penalties, claims, costs and expenses to which the Company may become liable in respect of:
13.3.1	claims by any third party arising directly or indirectly out of the Customer's use of the Goods; and
13.3.2	claims by any third party in respect of any words, descriptions, copyright, trade marks or other intellectual property rights and infringements or actions of any kind relating to the Customer's specifications for the Goods or their manufacture.
13.4	The Customer warrants that where it requires the Company to arrange manufacture, production, or supply of the Goods to the Customer's specification or requirements, such manufacture, production of supply will not constitute infringement of any copyright, patent, registered design, trademark, intellectual or industrial property right of any third party, nor be in breach of any statute regulation or by-law. In any event, the Customer shall indemnify the Company against all or any liabilities, costs, fines, expenses (including legal expenses on a full indemnity basis), claims, actions or damages from any civil or criminal proceedings (whether if not actually instituted) which the Company may suffer as a result as a result of breach of the warranty hereunder.
14.	FORCE MAJEURE
14.1	The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of Goods by the Company being prevented, hindered, delayed, cancelled or rendered uneconomic by reason of Force Majeure.
14.2	In these Conditions, "Force Majeure" means circumstances or events beyond the Company's reasonable control including (but not limited to): acts of God; war; riot; strike; lock-out, trade dispute of labour disturbance; accident; break-down of plant or machinery; fire; flood; storm; difficulty or increased expense in obtaining workmen, materials or transport; or other circumstances affecting the supply of the Goods by the Company's normal source of supply, or the delivery of the Goods by the Company's normal route or means of delivery.
15.	TERMINATION
15.1	The Company may (without prejudice to any of its other rights) suspend further deliveries to the Customer and/or (by notice in writing to the Customer) terminate any Contract if:
15.1.1	the Customer defaults in or commits any breach of any of its obligations to the Company (under a Contract or otherwise), or ceases or threatens to cease to carry on its business or a substantial part of it;
15.1.2	any distress or execution is levied on any of the Customer's property;
15.1.3	in respect of the Customer (being an individual) an application is made for an individual voluntary arrangement, or the Customer otherwise makes or offers to make any arrangement or composition with its creditors, or a bankruptcy petition is presented;
15.1.4	if in respect of the Customer (being a company) a proposal is made for a company voluntary arrangement, or any resolution or petition to wind up the Customer is passed or presented, or a receiver or administrative receiver is appointed over the Customer's undertaking, property or assets or any material part of them, or a petition is presented to the court for an administration order in respect of the Customer
15.1.5	the Customer takes or suffers any similar or analogous action due to debt; or
15.1.6	if on more than one occasion any cheque from the Customer in favour of the Company is not honoured on first presentation
15.2	Upon termination of any Contracts under this Condition 14, any indebtedness of the Customer to the Company shall become due and payable immediately and the Company shall be relieved of any further obligation to supply any Goods to the Customer under such Contracts.

16.

CREDIT REFERENCE

The Company shall be entitled at any time to cancel any order of the Customer by 7 days' written notice to the Customer if the Customer's credit worthiness or standing is not in the Company's absolute opinion satisfactory. Notwithstanding such termination, the Customer shall be liable to pay all costs and expenses incurred to the time of expiry of notice.
17.

THE HOUSING GRANTS CONSTRUCTION AND REGENERATIONS ACT 1996 ("THECONSTRUCTION ACT")

17.1

In the event that the works constitute "construction operations" within the meaning of Section 105 of the Construction Act and/or "construction contract" within the meaning of Section 104 of the Construction Act then the provision of the Scheme for Construction Contracts (England and Wales) Regulations 1998 ("the Scheme") shall apply to the Works and to these conditions.

17.2

Insofar as these conditions do not comply with the Scheme, then if clause 17.1 applies, the provisions of the Scheme shall apply.

17.3

Clause 17.1 above includes "all" contracts entered in to by the company whether entered into verbally or otherwise
18.

GENERAL

18.1

Notices or other communications required to be given by either party under these Conditions shall be in writing and (a) delivered personally; or (b) sent by pre-paid recorded delivery post (airmail if sent abroad) or by emailtogether with a confirmation copy by pre-paid first class post (airmail if sent abroad) to the intended recipient at its last know address or fax number.

18.2

No forbearance or indulgence on the Company's part in enforcing these Conditions shall prejudice the Company's strict rights under these Conditions nor shall it be construed as a waiver or such rights.

18.3

If any of these Conditions is rendered or held to be void or unenforceable in whole or in part, then it shall be unenforceable only to the extent that it is shown that it would not be lawful, fair or reasonable to allow reliance upon it and no further and the remaining Conditions shall remain in full force and effect.

18.4

No remedy given under these Conditions shall be exclusive of any other remedy given under these Conditions, at common law or otherwise. Each and every remedy shall be cumulative.

18.5

The Customer shall not sub-contract, assign or otherwise transfer any or all of its rights and/or obligations under any Contract without prior written consent of the Company.

18.6

Each Contract and these Conditions shall be governed by English law.
19.

Entire Agreement. This Agreement and the terms referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein or as otherwise agreed and engrossed by a Director of the Company.