

## GENERAL TERMS AND CONDITIONS

### ACCEPTANCE

These Terms and Conditions apply when the Client engages Oakway to provide Goods and Services as specified in the Quotation.

By signing below, you accept and agree that you:

- (i) confirm the Client's acceptance of the Quotation and the Terms and Conditions;
- (ii) confirm that the signatory has the authority to sign these Terms and Conditions on behalf of the Client; and
- (iii) agree to engage Oakway to deliver, assemble and install Goods and/or provide Services in accordance with the Terms and Conditions and the Quotation (or in the case of a Phased Project, agree to engage Oakway in accordance with the Terms and Conditions to provide the initial Phase or Phases as set out in the Quotation).

Your acceptance and agreement to the matters above will also be inferred where, by your conduct, you show your intention to engage Oakway to deliver, assemble and install the Goods and/or provide the Services. This includes but is not limited to making payment in respect of the Goods and Services.

No terms other than the Terms and Conditions and any special terms set out in a Quotation apply to the provision of Goods and/or Services.

**Name:** ..... **Client Name:** .....

**Signature:** ..... **Job Title:** .....

**Date:** .....

### 1. INTERPRETATION

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

#### 1.1. DEFINITIONS

- 1.1.1. **Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.1.2. **Client** means the person or firm who purchases the Goods and/or Services from Oakway.
- 1.1.3. **Commencement Date** has the meaning given in clause 2.2.
- 1.1.4. **Contract** means the contract between Oakway and the Client for the supply of Goods and/or Services in accordance with the Quotation these Terms and Conditions.
- 1.1.5. **Deliverables** means the deliverables set out in the Quotation and/or Order and produced by Oakway for the Client.
- 1.1.6. **Drawing** has the meaning given in clause 7.1
- 1.1.7. **Force Majeure Event** has the meaning given in clause 21.1.
- 1.1.8. **Goods** means the goods (or any part of them) set out in the Quotation.
- 1.1.9. **Installation** means the installation of the Goods by Oakway at the Installation Area.
- 1.1.10. **Installation Area** has the meaning given in clause 8.2.1.
- 1.1.11. **Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim

priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 1.1.12. **Losses** means fines, fees, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses).
- 1.1.13. **Mezzanine** means any mezzanine structure to be installed by Oakway as set out in a Quotation.
- 1.1.14. **Normal Working Hours** means 8.00 am to 6.00 pm local UK time, each Business Day.
- 1.1.15. **Oakway** means Pointer Group Ltd trading as Oakway, a company registered in England and Wales with company number 08022088 with its registered office at Adwalton House, Bruntcliffe Avenue, Morley, Leeds, England, LS27 0LL.
- 1.1.16. **Oakway Materials** has the meaning given in clause 8.1.1 e).
- 1.1.17. **Order** means the Client's order for the supply of Goods and/or Services as set out by the Client's written acceptance of these Terms and Conditions, by the Client signing these Terms and Conditions, or by the Client otherwise instructing Oakway to proceed or conducting itself in such a way that instructions to proceed can be inferred from such conduct. In the case of a Phased Project, Orders are to be by way of a written confirmation or purchase order from the Client for each Phase (subject to clause 2.3).
- 1.1.18. **Phased Project** means a project to be delivered in different phases with each such phase being a **Phase**.
- 1.1.19. **Price** means the price for the Goods and/or Services as set out in the Quotation (subject to change for later Phases as set out in clause 2.3, as set out in clause 14.4 and as set out in clause 21.1).
- 1.1.20. **Quotation** means the quotation issued by Oakway to the Client specifying, as relevant, the Goods to be supplied, the Services to be performed, the Price, the lead time associated with the design, manufacture, supply and/or installation of the Goods and the Phases.
- 1.1.21. **Services** means any services, including the provision of the Deliverables, and Installation, supplied or to be supplied by Oakway to the Client as set out in the Quotation.
- 1.1.22. **Site** means the site of the Client as notified to Oakway by the Client in writing or as otherwise agreed between the parties in writing.
- 1.1.23. **Specification** means the description or specification for the Goods and/or Services provided in writing by Oakway to the Client with the Quotation.
- 1.1.24. **Surfaces** means the floor slab and any other surfaces impacted by or used during the Services and the Installation.
- 1.1.25. **Terms and Conditions** means these terms and conditions as amended from time to time in accordance with clause 21.7.
- 1.1.26. **Work Area** has the meaning given in clause 8.2.2.

## 1.2. INTERPRETATION

- 1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its successors and permitted assigns.
- 1.2.3. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.4. Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5. A reference to writing or written includes email.

## 2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Client to purchase Goods and/or Services in accordance with these Terms and Conditions and the Quotation.
- 2.2. Subject to clause 2.3, the Order shall only be deemed to be accepted when Oakway issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3. Where the Quotation provides for the Goods and/or Services to be completed in Phases, the Contract for each Phase shall come into effect on acceptance of the Order for that phase and the Contract for each phase shall constitute a separate

Contract. In the case of Phased Projects, the prices given in the Quotation for later Phases are subject to change, and Oakway will confirm any revised price in advance of or on receipt of an Order, and that revised price shall apply to the Order in place of the price in the original Quotation. The Client will be asked to confirm that the revised price is agreed before the Order is accepted.

- 2.4. Any samples, drawings, descriptive matter or advertising issued by Oakway and any descriptions of the Goods or illustrations or descriptions of the Services contained in Oakway's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6. Any Quotation given by Oakway shall not constitute an offer, and unless expressly stated otherwise is only valid for a period of 30 days from its date of issue and is subject to a full Site survey being undertaken by Oakway.
- 2.7. All of these Terms and Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. GOODS

- 3.1. The Goods are described in the Quotation and, if applicable, the Specification.
- 3.2. To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Client, the Client shall defend, indemnify and hold Oakway harmless against all Losses suffered or incurred by Oakway arising out of or in connection with any claim made against Oakway for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Oakway's use of the specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. Oakway reserves the right to make changes to the Goods and/or amend the Quotation and/or the Specification if required by any applicable statutory or regulatory requirement, or due to unavailability of Goods or materials or where the change is minor and/or does not have a material adverse effect, and Oakway shall notify the Client in any such event.

### 4. DELIVERY OF GOODS, MATERIALS AND EQUIPMENT

- 4.1. Goods, materials and equipment used in the course of providing the Goods and/or Services may be delivered in advance of the Commencement Date and it is the Client's obligation to ensure that it is able to accept delivery of and properly store those Goods, materials and equipment from the actual date of delivery.
- 4.2. Oakway shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, 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.
- 4.3. Oakway shall deliver the Goods to the Site or such other location as the parties may agree at any time after Oakway notifies the Client that the Goods are ready for delivery.
- 4.4. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Site (except as set out in clause 4.7.1). Unless otherwise provided for in the Quotation, it is the Client's responsibility to unload the Goods and store the Goods in the Work Area.
- 4.5. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Oakway shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide Oakway with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Where delivery of the Goods is delayed by a Force Majeure Event, the estimated delivery date or lead time shall be automatically extended by a period equal to the duration of the Force Majeure Event and any resulting increase in the cost of the Goods shall be recoverable by Oakway in accordance with clause 21.1.
- 4.6. If Oakway fails to deliver any Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Oakway shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide Oakway with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7. If the Client fails to accept delivery of the Goods within three Business Days of Oakway notifying the Client that the Goods are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by Oakway's failure to comply with its obligations under the Contract in respect of the Goods:
  - 4.7.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Oakway notified the Client that the Goods were ready; and

- 4.7.2. if Oakway is unable to deliver the Goods to the Site, Oakway shall store the Goods until actual delivery takes place and charge the Client for all related costs and expenses (including insurance).
- 4.8. If ten Business Days after the day on which Oakway notified the Client that the Goods were ready for delivery the Client has not accepted actual delivery of those Goods, Oakway may resell or otherwise dispose of part or all of those Goods and, after deducting reasonable storage and selling costs, charge the Client for any shortfall below the price of the Goods set out in the Quotation or otherwise agreed with the Client.
- 4.9. Oakway 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 Client to cancel any other instalment.

## 5. TITLE AND RISK

- 5.1. The risk in Goods shall pass to the Client on completion of delivery.
- 5.2. Title to the Goods shall not pass to the Client until Oakway receives payment in full (in cash or cleared funds) for the Goods and any other sums the Client has agreed to pay to Oakway, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3. Until title to any Goods has passed to the Client, the Client shall:
  - 5.3.1. store those Goods separately from all other goods held by the Client so that they remain readily identifiable as Oakway's property;
  - 5.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to those Goods;
  - 5.3.3. maintain those Goods in satisfactory condition and keep them insured against all risks for their full price on Oakway's behalf from the date of delivery;
  - 5.3.4. notify Oakway immediately if it becomes subject to any of the events listed in clause 19.1.2 to clause 19.1.4; and
  - 5.3.5. give Oakway such information as Oakway may reasonably require from time to time relating to: (i) any Goods held by the Client in which title has not yet passed; and (ii) the ongoing financial position of the Client.
  - 5.3.6. At any time before title to any Goods passes to the Client, Oakway may require the Client to deliver up all such Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Client fails to do so promptly, the Client grants Oakway the right to enter the Site or any other premises of the Client or of any third party where such Goods are stored in order to recover them.
- 5.4. Without prejudice to any other right or remedy available to it, Oakway shall be entitled to exercise a general lien over all Goods, materials, equipment and other property of the Client in Oakway's possession or control (whether or not relating to the Contract) until all sums due from the Client to Oakway under the Contract or any other contract between the parties have been paid in full.

## 6. SUPPLY OF SERVICES

- 6.1. Oakway shall supply the Services to the Client in accordance with the Quotation and any relevant Specification in all material respects.
- 6.2. Oakway shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation, but any such dates shall be estimates only, and time shall not be of the essence for the performance of the Services.
- 6.3. Oakway reserves the right to change the Services and/or amend the Quotation and/or the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Oakway shall notify the Client in any such event.
- 6.4. Oakway warrants to the Client that the Services will be provided using reasonable care and skill.

## 7. APPROVAL

- 7.1. Oakway will where required as part of the Quotation provide the Client with a drawing and / or description (the **Drawing**) of the Installation, detailing the design, configuration and layout thereof.
- 7.2. The Client shall approve the Drawing by:
  - 7.2.1. returning a copy of the title block with the Client's signature; or
  - 7.2.2. signing the approval form.
- 7.3. By approving the Drawing the Client warrants that it has considered and is fully satisfied with the Goods being supplied and the design, configuration and layout of the Installation and they are instructing Oakway to commence provision of the Services.

- 7.4. Oakway will not order any Goods or materials required to manufacture Goods until the Client has given its approval pursuant to clause 7.2 and upon signifying its approval the Client becomes liable to pay the Price of any Goods in accordance with the Contract.

## 8. CLIENT'S OBLIGATIONS

### 8.1. ORDER AND SERVICES

#### 8.1.1. The Client shall:

- a) ensure that the terms of the Order and any information it provides to Oakway whether in the Specification or otherwise are complete and accurate;
- b) co-operate with Oakway in all matters relating to the Goods and Services;
- c) provide Oakway, its employees, agents, consultants and subcontractors, with access to the Site and other facilities as reasonably required by Oakway to provide the Services and deliver and install the Goods;
- d) provide Oakway with such information and materials as Oakway may reasonably require in order to supply the Goods and Services, and ensure that such information is complete and accurate in all material respects;
- e) keep all materials, equipment, documents and other property of Oakway (**Oakway Materials**) at the Site or any other location controlled by the Client in safe custody at its own risk, maintain Oakway Materials in good condition until returned to Oakway, and not dispose of or use Oakway Materials other than in accordance with Oakway's written instructions or authorisation; and
- f) comply with any additional obligations as set out in the Quotation and/or the Specification.

8.1.2. If the Client fails to comply with clause 8.1.1 this may result in an increase in the Price.

### 8.2. INSTALLATION AREA AND WORK AREA

- 8.2.1. It is the Client's responsibility to ensure that both the space where the Goods are to be installed (the **Installation Area**) and its accesses are cleared and free from any obstacles and hazards before the Goods are delivered and the Services commence.
- 8.2.2. In addition to the Installation Area, the Client must also provide a suitable area where the Goods can be stored prior to and during the performance of the Services which is also large enough to all for assembly of the Goods prior to Installation (the **Work Area**).
- 8.2.3. It is the Client's responsibility to ensure that the Work Area remains free of obstructions and other impediments to Oakway's ability to safely carry out the Services during the performance of the Services.
- 8.2.4. Oakway reserves the right to suspend the Services if it, in its sole discretion, considers that it would be unsafe to proceed or continue due to any entry into or obstruction of the Installation Area or the Work Area by the Client or any of their employees or visitors and Oakway will not reconvene the Services until the impediment has been removed and it considered the Installation Area and/or the Work Area safe to proceed.
- 8.2.5. Any suspension of the Services and any time spent waiting for the Installation Area and/or Work Area to be cleared or otherwise be made safe for assembly and Installation as a result of entry into or obstruction of the Installation Area and/or the Work Area by the Client or any of their employees or visitors or for any other reason not resulting from the acts or omissions of Oakway will be charged for as an increase to the Price and will be payable by the Client in accordance with Oakway's pricing policies and rates as applicable from time to time and notified to the Client in writing.
- 8.2.6. Oakway will provide point loading information which may be necessary for the Client to satisfy itself that the floor capacity and load bearing strength of all Surfaces affected by the Installation are sufficient, however it is the Client's responsibility to ensure that the Surfaces impacted by the Installation are of sufficient strength so as to safely support the installation and to be in compliance with all applicable codes and regulations.
- 8.2.7. Unless provided otherwise in the Quotation, the Client must ensure that Oakway will have access to the Installation Area and the Work Area for the purposes of carrying out assembly and Installation of the Goods during Normal Working Hours or such longer period as agreed between the parties in writing.

### 8.3. PERMITS

- 8.3.1. The Client shall obtain and maintain all necessary permits, licenses and authorisations, whether required by any law, regulation, industry code or best practice, which Oakway considers necessary for it to perform the Installation and any other Services.
- 8.3.2. Oakway bears no liability for costs and expenses or resultant illegality of the Installation caused by the Client's failure to obtain all the necessary permits, licenses and authorisations required by any law or regulatory body.
- 8.3.3. The Client bears all risk and will be solely responsible for all costs and expenses incurred by Oakway (including the costs of any materials ordered) if it fails to obtain the necessary permits, licenses and authorisations after acceptance of the Quotation.

#### 8.4. UTILITIES

- 8.4.1. The Client must provide the following utilities for use by Oakway and its personnel at the Site:
  - a) electricity at 220/110V;
  - b) water;
  - c) night lighting (if deemed necessary by Oakway and set out in the Quotation or Specification);
  - d) lifting devices (such as scaffolding, fork-lift trucks, platforms, scissor lifts etc.), unless otherwise provided for in the Quotation;
  - e) means for disposal of all packaging, surplus materials and other waste generated by the assembly and Installation;
  - f) toilets and washing facilities for use by Oakway's personnel during all hours when they are on Site;
  - g) rest area with drinking water and facilities for heating food and water; and
  - h) changing areas.
- 8.4.2. Where the Services are of short duration (a week or less), then the facilities set out in clause 8.4.1 may be of a temporary nature provided that the Client has obtained prior written approval from Oakway prior to commencement of the Services by Oakway.

#### 8.5. SUITABILITY OF INSTALLATION AREA

- 8.5.1. The Client warrants that the Surfaces are sufficient to withstand the loads placed on them, and shall be solely responsible for and defend and indemnify Oakway against any Losses (including all legal costs and expenses on a full indemnity basis) incurred or suffered by Oakway in relation to any breach of such warranty, including in respect of any claims brought against Oakway by third parties.
- 8.5.2. If Oakway is of the opinion that any Surface does not comply with any applicable regulations then it shall be entitled to require the Client, at its own expense, to carry out the necessary levelling of (or other stipulated works in relation to) the Surface to ensure that it will be brought into compliance with any applicable regulations.
- 8.5.3. Oakway reserves the right to refuse to commence or to suspend the Services until the Surface is deemed adequate by Oakway in its sole discretion.
- 8.5.4. Oakway shall not be responsible for any delay caused by the Surface being deemed inadequate by Oakway, and any Losses incurred by such delay or the required remediation works will be for the sole account of the Client.
- 8.5.5. Oakway shall not be liable for any failure of the Installation or any component part of the Installation arising in any way from any failure or insufficiency of the Surfaces.
- 8.5.6. Oakway will use standard access equipment and machinery at the Site, with standard tyres, unless specifically requested by the Client and subject to Oakway's prior written agreement and the payment of any additional fees by the Client to reflect the additional costs incurred by Oakway in using alternative equipment, machinery or tyres.
- 8.5.7. The Client shall inform Oakway or its subcontractors of the location of any and all services and utilities prior to the commencement of the Services and Oakway shall not be responsible for any damage caused to the Installation Area by anchoring the Installation in reliance on the information provided by the Client, or where the Client has failed to provide adequate and full information.

#### 8.6. WASTE DISPOSAL

- 8.6.1. Oakway will dispose of all waste material generated in the areas designated or containers provided by the Client.
- 8.6.2. If there is an environmental management system the details of which are provided by the Client to Oakway, the material will be put into the appropriate containers or left in a suitably designated area, separated into different materials, as appropriate.

#### 8.7. SECURITY

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8.7.1. Oakway bears no responsibility for loss or damage to any of the materials or equipment stored in the Installation Area and/or the Work Area pending assembly and Installation and the safe keeping and security of the Installation Area and/or the Work Area and all materials and equipment stored in the Installation Area and/or the Work Area is the sole responsibility of the Client.

8.7.2. The Client shall be responsible for the cost of replacing any materials or equipment which have not been stored in accordance with clause 8.7.1.

8.8. The Client shall, at its own cost, obtain and maintain in force at all times during the term of the Contract (and for a period of twelve (12) months thereafter) adequate insurance policies with a reputable insurer, including (without limitation) public liability insurance, property insurance covering the Site and all Goods and materials stored therein, and employer's liability insurance, in each case with coverage levels sufficient to cover the Client's potential liabilities arising out of or in connection with the Contract. The Client shall, on Oakway's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance policy.

## 9. PERFORMANCE OF THE SERVICES

9.1. In the event that Oakway considers necessary, Oakway and the Client shall agree an extension of Normal Working Hours to perform the Services, which might include working weekends, overnight and bank holidays, and the Client will allow Oakway to carry out the Services according to such agreement and any previously agreed programme, access times and working hours will be revised accordingly.

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

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

9.2.2. Oakway shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Oakway's failure or delay to perform any of its obligations as set out in this clause 9.2; and

9.2.3. the Client shall reimburse Oakway on written demand for any Losses sustained or incurred by Oakway arising directly or indirectly from the Client Default.

## 10. LIABILITY FOR MATERIALS MANUFACTURED

10.1. The Client acknowledges that Oakway may incur certain upfront costs including in relation to the custom manufacture of Goods to be supplied specifically for the purposes of providing the Goods and/or Services to the Client and the Client accepts full liability for those costs in the event of suspension or termination of the Contract for any reason whatsoever which does not result from an act or omission of Oakway. In the event that the Client cancels or purports to cancel an Order after acceptance by Oakway, the Client shall pay to Oakway (without prejudice to any other right or remedy available to Oakway): (a) all costs and expenses incurred by Oakway up to the date of cancellation (including the cost of any materials ordered or Goods manufactured or partly manufactured); (b) any restocking, storage or disposal costs; and (c) a sum equal to the profit that Oakway would have earned on the remainder of the Contract, calculated as 15% of the balance of the Price not yet invoiced at the date of cancellation.

## 11. INTEGRITY OF THE INSTALLATION

11.1. The configuration of the Services is calculated in accordance with the information provided by the Client to Oakway. If any information provided is incorrect then Oakway shall have no responsibility for any Losses suffered or incurred by the Client.

11.2. Oakway shall not be liable for any failings of the Goods or damage or injury caused to the Goods itself, the Site or persons or goods which result from any changes to the design, replacement or alteration in any way of any of its component parts or any repairs or modifications to the Services by the Client or any third party before or after the Services have been completed.

11.3. Prior to completion of the Services, any changes to the design or replacement, alteration or substitution of component parts by the Client or any third party shall only be permitted with the express written consent of Oakway.

## 12. THIRD PARTY ASSEMBLY AND INSTALLATION

12.1. In all instances where the Client elects to have a third party complete the assembly and installation of the Goods, the Client shall ensure that that such third party follows Oakway's instructions for assembly and installation exactly and Oakway shall have no liability for any loss, damage, costs, expenses or other liability that results from the third party's assembly and installation of the Goods whether Oakway's instructions are followed or not.

## 13. INTELLECTUAL PROPERTY

- 13.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Oakway or its licensors.
- 13.2. Oakway grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 13.3. The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 13.2.
- 13.4. The Client grants Oakway a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to Oakway for the term of the Contract for the purpose of providing the Services to the Client.

## 14. PRICE

- 14.1. The Price for the Goods and Services will be stated in the Quotation and shall be exclusive of any costs of packaging and carriage of any Deliverables, VAT and any other applicable sales tax or duty which will be added to the sum in question.
- 14.2. Oakway shall invoice the Client for the Services at the intervals specified, or on the achievement of the milestones indicated in the Quotation and unless otherwise agreed in the Quotation, the Client shall pay each invoice submitted by Oakway within five (5) days of the date of such invoice in full and in cleared funds to a bank account nominated in writing by Oakway.
- 14.3. If the Client wishes to change the scope of the Goods and/or Services prior to acceptance of the Quotation then it shall notify Oakway in writing and Oakway will issue a revised Quotation.
- 14.4. Oakway reserves the right to:
- 14.4.1. increase the Price by giving notice to the Client at any time before delivery of the Goods or completion of the Services (or, in the case of a Force Majeure Event, at any time), to reflect any increase in the cost of the Goods and/or Services to Oakway that is due to:
- any matter set out in these Terms or Conditions that specifically indicate a potential change to the Price including in clauses 2.3, 3.3, 6.3, 8.1.2 and 8.2.5;
  - any factor beyond the control of Oakway including any Force Majeure Event (and including, without limitation, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - any request by the Client to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
  - any delay caused by any instructions of the Client in respect of the Goods and/or Services or failure of the Client to give Oakway adequate or accurate information or instructions in respect of the Goods and/or Services.
- 14.5. If the Client fails to make a payment due to Oakway under the Contract by the due date, then, without limiting Oakway's remedies under clause 19, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 14.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 14.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 15. GUARANTEE

- 15.1. Oakway warrants that following completion of the Services, and for the period set out in as set out below or as specified in the Quotation (the **Guarantee Period**), the Goods shall:
- conform in all material respects with the Quotation;
  - be free from material defects in design, material and workmanship; and
  - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 15.2. In relation to any Goods relating to racking, unless otherwise specified in the Quotation:

- 15.2.1. where Oakway undertakes the Installation of such Goods and provides maintenance services for such Goods, the manufacturer of the Goods provides guarantees against any manufacturing or assembly fault for a Guarantee Period of one (1) year from Installation being completed provided always that the Installation and maintenance Services for the Goods are provided solely by Oakway during the entirety of that Guarantee Period.
- 15.2.2. In the event that the Installation of and provision of maintenance Services in relation to the Goods are not carried out by Oakway, the guarantee provided by the manufacturer will be valid for a Guarantee Period of one (1) year from delivery and will only cover manufacturing defects.
- 15.3. In relation to Goods which include any type of machine:
- 15.3.1. Oakway provides a guarantee for the correct functioning of such machine for a Guarantee Period of one (1) year from delivery. Where Goods include batteries, the batteries are guaranteed for a Guarantee Period of one (1) year from delivery, or one thousand (1,000) recharges, whichever occurs first, provided that the batteries are charged as specified in the user manual provided by Oakway to the Client.
- 15.3.2. In the event that Oakway is contracted to undertake the Installation, the Guarantee Period will begin on the date when the Installation is completed, unless another date is expressly agreed upon in writing by Oakway. The Guarantee Period will commence upon the completion of the Installation regardless of whether the Goods are in use or not.
- 15.3.3. If Oakway is not contracted to undertake Installation of the Goods, the Guarantee Period will begin upon delivery of the Goods to the Client.
- 15.4. Subject to clause 15.5, Oakway shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, if:
- 15.4.1. the Client gives notice in writing to Oakway during the Guarantee Period within ten (10) Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 15.1;
- 15.4.2. Oakway is given a reasonable opportunity of examining such Goods; and
- 15.4.3. the Client (if asked to do so by Oakway and where possible) returns such Goods to Oakway's place of business at the Client's cost.
- 15.5. Oakway shall not be liable for the Goods' failure to comply with the warranty set out in clause 15.1 if:
- 15.5.1. the Client makes any further use of such Goods after giving a notice in accordance with clause 15.4;
- 15.5.2. the defect arises because the Client failed to follow Oakway's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 15.5.3. the defect arises as a result of Oakway following any drawing, design or specification supplied by the Client;
- 15.5.4. the Client alters or repairs such Goods without the written consent of Oakway;
- 15.5.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 15.5.6. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 15.6. The Guarantee Period and scope of the guarantee can be changed or removed, at Oakway's discretion, in cases in which the period for the execution of the Services agreed in the Quotation has been suspended or interrupted for reasons beyond Oakway's control.
- 15.7. The guarantee referred to in this clause 15 covers manufacturing defects and assembly faults relating only to the Goods provided by Oakway under these Terms and Conditions and except as provided in this clause 15, Oakway shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 15.1.
- 15.8. These Terms and Conditions shall apply to any repaired or replacement Goods supplied by Oakway but the Guarantee Period shall not be lengthened by the provision of any repaired or replacement Goods.

## 16. ADDITIONAL CLAUSES FOR MEZZANINE INSTALLATION ONLY

16.1. This clause 16 is applicable only where the Goods and Services provided by Oakway include the delivery, assembly and installation of a Mezzanine level.

### 16.2. MANUFACTURE

- 16.2.1. A Mezzanine installation requires component parts to be specifically manufactured.
- 16.2.2. Manufacturing of the Goods required for a Mezzanine will only commence once the Client has:
- approved the Drawings as set out in clause 7; and
  - either confirmed building regulation approval or instructed Oakway to proceed with the manufacturing of the Goods required for the Mezzanine.

## 16.3. DRAWING APPROVAL

- 16.3.1. By approving the Drawing the Client warrants that it has considered and is fully satisfied with the design of the Mezzanine including all of the points below:
- a) column positions;
  - b) Finished floor height and lowest underside height (please pay particular attention to over sail construction detail where shown);
  - c) loading specification;
  - d) position, type and extent of handrail;
  - e) position, type and width of all stairs including landings and the location of bracing within the landings;
  - f) colours of all elements of the structure;
  - g) baseplate size and fixing type (countersunk fixings, chamfered edges, etc);
  - h) number of, type and position of any ancillary item such as gates and load plates;
  - i) strut brace /cross brace positions;
  - j) decking material type (class O, moisture resistant etc) joist centres;
  - k) floor location on plan, overall size and extent of decking overhangs; and
  - l) deflection criteria (where specified).
- 16.3.2. Unless otherwise specified in the Quotation, the Client shall ensure that any items noted for removal/relocation have been removed or relocated accordingly before the delivery date of the Goods.

## 16.4. DESIGN

- 16.4.1. **Calculations/ Base-plates size**
- a) Unless the Client has provided Oakway with specific Surface details, the Client warrants that the Surface is capable of withstanding the intended column loads based on baseplate sizes shown on the Drawing.
  - b) To complete the calculations the Client must inform Oakway of the thicknesses of the Surface together with the load capacity of the ground below the Surface.
    - i. If no such information can be provided by the Client, the Client must arrange for a core sample to be carried out .
    - ii. If no core sample is carried out and if the manufacture/installation of the Mezzanine proceeds this is solely at the Client's risk.
  - c) Regarding Surface verification, even if Oakway can complete their calculations showing the thickness of the Surface from the information provided they may still have to assume certain underlying conditions and can only give an indication of ground bearing pressures. The Client will be required to seek confirmation from the local authority or an approved inspector who will have to assess if this is suitable to local ground conditions.
- 16.4.2. **Column Casings – Fire Rating**
- a) Should the Client wish to purchase column casings via a third party and not through Oakway then the Client must approach Oakway directly in order to obtain the correct dimensions.
  - b) Oakway will be able to issue a list of column sections and lengths after Drawing approval if requested.
  - c) Oakway will not be liable for any incorrect materials supplied via a third party if the Client obtained the dimensions directly from the Drawing supplied and not via a separate enquiry to Oakway.
- 16.4.3. **Column loads greater than 130kn (Unfactored)**
- a) If there are highly loaded columns due to the Surface loading these will be marked with their load on the Drawing.
  - b) The Client should ensure that the Surface be verified by the original designers as the local authority will need to be satisfied that the Surface is adequate.
  - c) If Oakway has no information on the Surface or underlying ground conditions Oakway will be unable to comment on adequacy of the Surface to take these high loads.
- 16.4.4. **Columns near Surface joints**
- a) Oakway will have noted Surface joints, if existing, from their Site survey and indicated these on the Drawing.
  - b) If columns are close to (within 500mm) or over joints (see Drawing) the effect this has on the Surface load carrying capacity should be checked by a Surface engineer as in some Surface designs the closeness to joints is critical.

#### 16.4.5. Long span beams and joists (over 7.5m)

- a) The Quotation has only provided for normal deflection criteria i.e. span /200 or 360 (see Quotation/Drawing).
- b) With large spans this could result in an excessive deflection under the design loads. The Client should therefore satisfy themselves that this will be acceptable.
- c) If the Client is not satisfied then this should be indicated to Oakway prior to Drawing approval and Oakway can increase the beam section to reduce deflections as required by the Client. The Client would be liable for the extra costs.

#### 16.4.6. Floors abutting existing floors

- a) Oakway will need to measure the existing floor height accurately where it is to join the new floor.
- b) If there is a separating wall the Client will have to ensure that a hole will need to be drilled through the adjoining wall to allow a measurement to be made prior to manufacture.
- c) This will be necessary at installation in any case to enable Oakway to pack up columns to the correct level.
- d) Oakway will allow for packing columns adjacent to existing floors to try and match Installation where possible but can only pack to +/-2mm of existing level.
- e) Oakway will as far as possible match installation at column points but due to joist deflection Oakway makes no guarantee that the floor will match along its entire length.
- f) Oakway will only adjust those columns adjacent to the adjoining floor. The remaining columns on the Mezzanine floor are all set to the same length and the Mezzanine floor will follow the installation of the ground Surface.

#### 16.4.7. Stairs

- a) Part M of the building regulations are applicable in this regard. Whilst Oakway's project design team will advise the Client as to which stair type is required according to use type & accessibility of the floor (utility or Part M), this will have to have this independently verified by the local authority or approved inspector as part of the building regulations approval process.
- b) Any changes required as a result of the building regulations applications process will be communicated to the Client. The designs will be changed as necessary and the Client will be responsible for the costs of these changes.

### 16.5. SITE

#### 16.5.1. Access

- a) It is assumed that there will be a clear and level (+/- 10mm) site at the start of Installation, with free access adjacent to, and at the same level as, the Mezzanine location via a roller shutter door (or similar) with minimum 3.5m x 3.5m opening, allowing unloading and handling with a single 1.5 tonne counterbalanced forklift truck.

#### 16.5.2. Build

- a) Unless otherwise specified in the Quotation, if the Mezzanine floor is to be erected over a toilet block or similar internal building the Client will be responsible for forming any holes necessary in the ceiling to allow column installation.
- b) Finishes will be the responsibility of the Client.
- c) Prior to commencing the Services, the Client must confirm that the structure is load bearing and safe for Oakway's employees to walk on to connect joists to beams.
- d) If necessary, the Client must supply suitable spreader boards to safely allow access to Oakway's personnel.
- e) If the Client fails to provide confirmation of safe access and no suitable spreader boards are supplied and Oakway's personnel have any doubt as to the safety of the Services, they are instructed not to build over the area in question.
- f) Any delays in completing the Services or costs associated with Oakway having to supplying its own safety equipment to continue will be chargeable to the Client.

#### 16.5.3. Plant

- a) Unless otherwise specified in the Quotation, the Client must provide a forklift for the duration of the Installation, which must be capable of lifting 1.75 tonnes to a height of finished floor level plus 200mm. The forklift should also be able to travel below the floor when the mast is down and fit through the access route from the build area to the outside unloading area.
- b) The forklift needs to be available during Normal Working Hours and any further period agreed between the parties for the duration of the Services.

- c) The forklift needs to be a counterbalance type with side-shift facility and be suited for internal use on warehouse Surfaces (i.e. not rough terrain teleporter type).

#### 16.5.4. **Baseplates set into slab**

- a) If columns are to be set into pockets in the Surface prepared by third parties the Client must ensure that the pockets are 100 mm larger in plan than baseplate size to allow tolerance on base plate positions. The pockets in the Surface must be even and level relative to one another.
- b) Oakway are not responsible for any discrepancy in Installation of the new floor if the pockets are not levelled relative to each other as Oakway do not pack or grout bases unless specified.

#### 16.5.5. **Safety**

- a) The area of the Mezzanine is to be cordoned off and all personnel will be prevented from entering the Installation Area for safety reasons.
- b) It is the responsibility of the Client to advise on-site operatives that the only persons to have access to the Installation Area are the Mezzanine floor installers for health & safety reasons.

#### 16.5.6. **Clear Site**

- a) The Client is to ensure the Installation Area is clear prior to the installation of the floor.
- b) Oakway have allowed for a clear Installation Area in the Quotation (except those items shown on Drawing) and any deviation therefrom may cause a delay, the additional costs of which will be charged to the Client at a rate to be advised.

#### 16.5.7. **Build method**

- a) The Quotation provided is based on Oakway's normal installation method as per Oakway's standard method statements. Any specific methods outside of the stated procedures will be subject to additional costs.

#### 16.5.8. **Working at height regulations**

- a) Where the Quotation does not include the supply of a handrail it is the Client's responsibility to ensure that this is correct for their requirements and that none is needed to the floor edges anywhere on the floor.
- b) If no handrail has been quoted for then the Client will need to provide some form of temporary edge protection that can be put in place by Oakway as they deck the floor.
- c) Oakway can provide temporary plastic barriers stood on deck 2m back from edge at a cost of £6/m run of exposed edge per week of hire.

#### 16.5.9. **General Installation**

- a) Oakway has not allowed for packing columns and will be supplying the floor based on a level ground Surface. Any undulations in the Surface will be replicated in the Mezzanine level.

#### 16.5.10. **Off plan manufacture**

- a) For any floors manufactured off architects/engineers plan where for whatever reason Oakway are unable to survey the Site prior to manufacture Oakway cannot be held responsible for any discrepancies or obstructions found on Site not shown on the Drawings worked upon. Any associated costs for overcoming such discrepancies will be passed on.

#### 16.5.11. **Safety Netting**

- a) Underfloor safety netting may be installed by Oakway if underfloor safety netting is required due to the size of the floor or alternatively, if it is requested by the Client, provided that the Client will be responsible for any additional costs incurred as a result of the installation of the underfloor safety netting.

#### 16.5.12. **Site electrical connection**

- a) Where an electrical truck is required, it is the Client's responsibility to ensure that an authorised representative of the Client will be on Site to provide connection and disconnection for the battery charger.

## 16.6. **Indemnity**

- 16.6.1. Whilst Oakway shall use its reasonable endeavours to ensure that a Mezzanine is compliant with any applicable building regulations, building warranty requirements and relevant British Standards, each local authority may interpret design requirements differently and neither Oakway, nor any of its employees are able to provide specialist advice on any other aspects related to the Mezzanine or Installation (for example: suitability of building or Surface, means of escape, fire rating etc.). Accordingly, the Client shall ensure that the appropriate representations have been made to the relevant Local Authority about the proposed Installation, prior to approval of the manufacturing phase for the Mezzanine.
- 16.6.2. The Client shall defend and indemnify Oakway against all Losses suffered or incurred in connection with any claim that a Mezzanine does not comply with applicable building regulations and/or building warrant requirements and shall be responsible for paying for any revisions required to the Mezzanine or supporting structure at the request of any Local Authority.
- 16.6.3. The Mezzanine has been Installed prior to the relevant Local Authority approval at the request of the Client, and thereby does not affect the payment terms, which are based on completion of the Services, unless agreed otherwise in writing.

## 17. LIMITATION OF LIABILITY

- 17.1. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
  - 17.1.1. death or personal injury caused by negligence;
  - 17.1.2. fraud or fraudulent misrepresentation; and
  - 17.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 17.2. Subject to clause 17.1, the aggregate liability of Oakway, whether based on an action or claim in contract, tort (including negligence), breach of statutory duty or otherwise arising out of, or in relation to the Contract shall be limited to an amount equivalent to 50% of the value of the Price paid or payable in relation to the Contract.
- 17.3. Subject to clause 17.1, Oakway shall not be liable to the Client for the following types of loss, howsoever arising: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; and (vii) indirect or consequential loss.
- 17.4. This clause 17 shall survive termination of the Contract.

## 18. DATA PROTECTION

- 18.1. Each party shall act as separate data controllers of any personal data processed under the Contract.
- 18.2. Each party shall ensure that any personal information that is processed under the Contract is processed in accordance with all applicable data protection and privacy legislation in force from time to time in the UK.
- 18.3. Oakway's privacy policy is at <https://oakwaystorage.co.uk/privacy-policy/>.

## 19. TERMINATION

- 19.1. Without affecting any other right or remedy available to it, Oakway may terminate the Contract with immediate effect by giving written notice to the Client if:
  - 19.1.1. the Client commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
  - 19.1.2. the Client takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 19.1.3. the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 19.1.4. the Client's financial position deteriorates to such an extent that in Oakway's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 19.2. Without affecting any other right or remedy available to it, Oakway may suspend the supply of Services under the Contract or any other contract between the Client and Oakway if:
- 19.2.1. the Client fails to pay any amount due under the Contract on the due date for payment;
  - 19.2.2. the Client commits a material breach of any of its obligations under the Contract; or
  - 19.2.3. the Client becomes subject to any of the events listed in clause 19.1.2 to clause 19.1.4, or Oakway reasonably believes that the Client is about to become subject to any of them.
- 19.3. On termination or expiry of the Contract the Client shall immediately pay to Oakway all of Oakway's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Oakway shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 19.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of either the Client or Oakway that have accrued up to the date of termination or expiry.
- 19.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 20. DISPUTE RESOLUTION PROCEDURE

- 20.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (the **Dispute**) then, except as expressly provided in this Agreement, the parties shall follow the dispute resolution procedure set out in this clause 20:
- 20.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (the **Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice, the Client and Oakway's authorised representatives shall attempt in good faith to resolve the Dispute;
  - 20.1.2. if the Client's and Oakway's authorised representatives are for any reason unable to resolve the Dispute within 30 calendar days of service of the Dispute Notice, the Dispute shall be referred to a senior manager of the Client and a senior officer of Oakway who shall attempt in good faith to resolve it; and
  - 20.1.3. if the Client's senior manager and Oakway's senior manager are for any reason unable to resolve the Dispute within 30 calendar days of it being referred to them, either party may take such further steps as it considers appropriate to resolve the Dispute, including the initiation of court proceedings.
- 20.2. Notwithstanding this clause 20 the parties shall not be precluded from proceeding directly to court to obtain injunctive or other equitable relief.

## 21. GENERAL

### 21.1. Force majeure:

- 21.1.1. Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a Force Majeure Event). Without limitation, each of the following shall constitute a Force Majeure Event: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination; any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; interruption or failure of utility service; and disruption to or delays in transportation or supply chains.
- 21.1.2. Where a Force Majeure Event causes delay in the delivery of the Goods or the performance of the Services, any applicable lead times, delivery dates and performance dates shall be automatically extended by a period at least equal to the duration of the Force Majeure Event, together with such additional period as is reasonably necessary to enable Oakway to recommence performance of its obligations.
- 21.1.3. Where a Force Majeure Event results in an increase in the cost to Oakway of supplying the Goods and/or performing the Services (including, without limitation, increases in the costs of raw materials, components, labour, energy, transportation or storage), Oakway shall be entitled to increase the Price by an amount that reflects such increased costs by giving written notice to the Client, and the Client shall pay such increased Price in accordance with the payment terms of the Contract.
- 21.1.4. The party affected by a Force Majeure Event shall promptly notify the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance.

## 21.2. **Assignment and other dealings:**

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

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

21.3. **Entire agreement:** The Contract constitutes the entire agreement between the Oakway and the Client. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.4. **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 21.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

21.5. **Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. No failure or delay by Oakway to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

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

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

## 21.8. **Confidentiality:**

21.8.1. Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, clients or customers of the other party, except as permitted by clause 21.8.2.

21.8.2. Each party may disclose the other party's confidential information:

- a) to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors, or advisers to whom it discloses the other party's confidential information comply with this clause 21.8; and
- b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

21.8.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 21.9. **Notices:**

21.9.1. Any notice given under or in connection with the Contract shall be in writing and shall be delivered by hand, or first class or special delivery post at its registered office (if a Oakway) or its principal place of business (in any other case) or sent by email to the address notified by the parties from time to time.

21.9.2. Any notice shall be deemed to have been received:

- a) if delivered by hand, at the time the notice is left at the proper address;
- b) if sent by pre-paid, first-class post or special delivery post, 48 hours after being posted; or
- c) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 21.9 business hours means 9.00am to 5.00pm on a Business Day.

21.9.3. This clause 21.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

21.10. **Governing law and jurisdiction:** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## 22. **VAT TREATMENT**

### 22.1. **Domestic Reverse Charge**

22.1.1. We assume that, for the purposes of VAT reverse charge, your business is an 'end user' or 'intermediary supplier' of our products. If this is not the case, you are obliged to instruct us otherwise in writing.