

DKM Home Improvements Ltd - Trading as The Blind Mannie TERMS AND CONDITIONS**1.DEFINITIONS AND INTERPRETATION**

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

1.1 DEFINITIONS

Conditions: these terms and conditions as amended from time to time in accordance with Clause 13.6.

Contract: the contract between the **Supplier** and the **Customer** for the **supply** of **Goods** and/or **Services** in accordance with these **Conditions**.

Customer: the person or firm who places and **Order** for the **Goods** and/or **Services** from the **Supplier**.

Delivery Location: has the meaning given in Clause 4.2.

Force Majeure Event: events, circumstances or causes beyond a party's reasonable control.

Goods: the **goods** (or any part of them) set out in the **Order Form**.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed by the Customer and the Supplier.

Order: the **Customer's** order for the **supply** of **Goods** and/or **Services**, as set out the **Order Form**.

Order Form: the document which sets out the details of the **Order** (whether in paper or electronic form).

Regulations: the General Product Safety Regulations 2005.

Services: the services supplied by the **Supplier** to the **Customer** as set out in the **Order Form** (together with any other services that the Supplier agrees to provide to the Customer)

Supplier: **DKM Home Improvements LTD – Trading as The Blind Mannie** a company registered in Scotland with company number SC825441 whose address is First Floor, 5 Abercrombie Court Prospect Road, Arnhall Business Park, Westhill, Aberdeenshire, Scotland, AB32 6FE

1.2 Interpretation

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

(b) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

2.BASIS OF CONTRACT

2.1 The **Order** constitutes an offer by the **Customer** to purchase the **Goods** or **Goods** and **Services** set out in the **Order Form** in accordance with these **Conditions**.

2.2 The **Order** shall only be deemed to be accepted when the **Supplier** issues written acceptance of the **Order** at which point and on which date the **Contract** shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by the **Supplier** and any descriptions of the **Goods** or illustrations or descriptions of the **Services** contained in the **Supplier's** catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the **Services** and/or **Goods** described in them. They shall not form part of the **Contract** nor have any contractual force.

2.4 These **Conditions** apply to the **Contract** to the exclusion of any other terms that the **Customer** seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by the **Supplier** shall not constitute an offer, and is only valid for a period of [30] days from its date of issue.

2.6 All of these **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 **Order Form**.

3.2 To the extent that the **Goods** are to be manufactured in accordance with a **Goods Specification** supplied by the **Customer**, the **Customer** shall indemnify the **Supplier** against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the **Supplier** arising out of or in connection with any claim made against the **Supplier** for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the **Supplier's** use of the **Goods Specification**. This Clause 3.2 shall survive termination of the **Contract**.

3.3 The **Supplier** reserves the right to amend the **Goods** if required by any applicable statutory or regulatory requirement, and the **Supplier** shall notify the **Customer** in any such event.

4.DELIVERY OF GOODS

4.1 The **Supplier** shall ensure that each delivery of the **Goods** is accompanied by a delivery note which shows the date of the **Order**, and if the **Order** is being delivered by instalments, the outstanding balance of **Goods** remaining to be delivered.

4.2 The **Supplier** shall deliver the **Goods** to the location set out in the **Order Form** or such other location as the parties may agree (**Delivery Location**) at any time whether before or after the **Contract** is entered into between the parties.

4.3 Delivery of the **Goods** shall be completed on the completion of unloading of the **Goods** at the **Delivery Location**.

4.4 Any dates quoted for delivery of the **Goods** are approximate only, and the time of delivery is not of the essence. If no date for delivery is specified in the **Order Form** the **Supplier** shall deliver the **Goods** within a reasonable time frame. The **Supplier** shall not be liable for any delay in delivery of the **Goods** or **Services** that is caused by a **Force Majeure Event** or the **Customer's** failure to provide the **Supplier** with adequate delivery instructions or any other instructions that are relevant to the supply of the **Goods** or **Services**.

4.5 If the **Supplier** fails to deliver the **Goods**, its liability shall be limited to the costs and expenses incurred by the **Customer** in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the **Goods**. The **Supplier** shall have no liability for any failure to deliver the **Goods** to the extent that such failure is caused by a **Force Majeure Event**, the **Customer's** failure to provide the **Supplier** with adequate delivery instructions for the **Goods** or any relevant instruction related to the supply of the **Goods**.

4.6 If the **Customer** fails to accept delivery of the **Goods** within [three] Business Days of the **Supplier** notifying the **Customer** that the **Goods** are ready, ~~then except by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:~~

(a) delivery of the **Goods** shall be deemed to have been completed at 9.00 am on the [third] day following the day on which the **Supplier** notified the **Customer** that the **Goods** were ready; and

(b) the **Supplier** shall store the **Goods** until delivery takes place, and charge the **Customer** for all related costs and expenses (including insurance).

4.7 In the event of a failed delivery of the **Goods** as a result of the **Customer** refusing to accept delivery of the same, the **Supplier** shall be entitled to charge the **Customer** for the additional cost incurred as a result of the failed delivery.

4.8 If [ten] Business Days after the day on which the **Supplier** notified the **Customer** that the **Goods** were ready for delivery the **Customer** has not accepted delivery of them, the **Supplier** may resell or otherwise dispose of part or all of the **Goods** and after deducting reasonable storage and costs of sale, charge the **Customer** for any shortfall below the price of the **Goods**.

4.9 The **Supplier** may deliver the **Goods** by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the **Customer** to cancel any other instalment.

5. QUALITY OF GOODS

5.1 The **Supplier** warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the **Goods** shall:

- (a) conform in all material respects with their description or **Goods Specification**;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to Clause 5.3, the **Supplier** shall, at its option, repair or replace the defective **Goods**, or refund the price of the defective **Goods** in full if:

- (a) the **Customer** gives notice in writing during the **Warranty Period** within a reasonable time of discovery that some or all of the **Goods** do not comply with the warranty set out in Clause 5.1;
- (b) the **Supplier** is given a reasonable opportunity of examining such **Goods**; and
- (c) the **Customer** (if asked to do so by the **Supplier**) returns such **Goods** to the **Supplier's** place of business at the **Supplier's** cost.

5.3 The **Supplier** shall not be liable for the **Goods'** failure to comply with the warranty in Clause 5.1 if:

- (a) the **Customer** makes any further use of such **Goods** after giving a notice in accordance with Clause 5.2(a);
- (b) the defect arises because the **Customer** failed to follow the **Supplier's** oral or written instructions as to the installation, commissioning, use or maintenance of the **Goods** or good trade practice;
- (c) the defect arises as a result of the **Supplier** following any drawing, design or **Goods Specification** supplied by the **Customer**;
- (d) the **Customer** alters or repairs such **Goods** without the written consent of the **Supplier**;
- (e) the defect arises as a result of fair wear and tear, wilful damage, or negligence; or
- (f) the **Goods** differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this Clause 5, the **Supplier** shall have no liability to the **Customer** in respect of the **Goods'** failure to comply with the warranty set out in Clause 5.1.

5.5 The terms of these **Conditions** shall apply to any repaired or replacement **Goods** supplied by the **Supplier**.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act are, to the fullest extent permitted by law, excluded from the **Contract**.

6. TITLE AND RISK

6.1 The risk in the **Goods** shall pass to the **Customer** on completion of delivery.

6.2 Title to the **Goods** shall not pass to the **Customer** until the earlier of:

(a) the **Supplier** receives payment in full (in cash or cleared funds) for the **Goods** and any other goods that the **Supplier** has supplied to the **Customer** in respect of which payment has become due, in which case title to the **Goods** shall pass at the time of payment of all such sums; or

(b) the **Customer** resells the **Goods** in the ordinary course of its business in which case title to the **Goods** shall pass to the **Customer** at the time specified in Clause 6.4.

6.3 Until title to the **Goods** has passed to the **Customer**, the **Customer** shall:

(a) store the **Goods** separately from all other goods held by the **Customer** so that they remain readily identifiable as the **Supplier's** property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the **Goods**;

(c) maintain the **Goods** in satisfactory condition and keep them insured against all risks for their full price on the **Supplier's** behalf from the date of delivery;

(d) notify the **Supplier** immediately if it becomes subject to any of the events listed in Clause 11.1; and

(e) give the **Supplier** such information relating to the **Goods** as the **Supplier** may require from time to time.

6.4 Subject to Clause 6.5, the **Customer** may resell or use the **Goods** in the ordinary course of its business (but not otherwise) before the **Supplier** receives payment for the **Goods**. However, if the **Customer** resells the **Goods** before the **Supplier** receives full payment:

(a) it does so as principal and not as the **Supplier's** agent; and

(b) title to the **Goods** shall pass from the **Supplier** to the **Customer** immediately before the time at which resale by the **Customer** occurs.

6.5 At any time before title to the **Goods** passes to the **Customer**, the **Supplier** may:

(a) by notice in writing, terminate the **Customer's** right under Clause 6.4 to resell the **Goods** or use them in the ordinary course of its business; and

(b) require the **Customer** to deliver up all **Goods** in its possession that have not been resold, or irrevocably incorporated into another product and if the **Customer** fails to do so promptly, enter any premises of the **Customer** or of any third party where the **Goods** are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 The **Supplier** shall supply the **Services** to the **Customer** in accordance with the **Order Form** in all material respects.

7.2 The **Supplier** shall use all reasonable endeavours to meet any performance dates for the **Services** specified in the **Order Form**, but any such dates shall be estimates only and time shall not be of the essence for the performance of the **Services**.

7.3 The **Supplier** reserves the right to amend the **Services** if necessary to comply with any applicable law or regulatory requirement, and in particular:

- (a) the parties note and agree that the **Supplier** must conform with the **Regulations**;
- (b) if the **Regulations** provide that the **Supplier** must fit an appropriate safety device when it is performing the **Services** to ensure compliance then this must be fitted;
- (c) in the event that the **Customer** should prevent or refuse to allow the **Supplier** to fit the required safety device, the **Supplier** shall be entitled to terminate the **Contract** for the provision of all or part of the **Services** without being liable to the **Customer** for the termination;
- (d) the **Customer** shall remain liable for payment in full to the **Supplier** for the price of the **Goods** and for the price for the **Services** (notwithstanding that the **Supplier** has been unable to complete the same); and
- (e) the parties acknowledge and agree that the provisions of this Clause 7.3 are reasonable given the **Supplier's** obligations under the **Regulations**.

7.4 The **Supplier** warrants to the **Customer** that the **Services** will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The **Customer** shall:

- (a) ensure that the **terms** of the **Order** are complete and accurate;
- (b) co-operate with the **Supplier** in all matters relating to the **Services**, including the provisions of Clause 7.3(b);
- (c) provide the **Supplier**, its employees, agents and subcontractors, with access to the **Customer's** premises as reasonably required by the **Supplier** to provide the **Services**;
- (d) provide the **Supplier** with such information and materials as the **Supplier** may reasonably require in order to **supply** the **Services**, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the **Customer's** premises for the **supply** of the **Services**;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the **Services** before the date on which the **Services** are to start;

(g) comply with all applicable laws, including health and safety laws; and

(h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the **Customer's** premises in safe custody at its own risk, maintain the **Supplier Materials** in good condition until returned to the **Supplier**, and not dispose of or use the **Supplier Materials** other than in accordance with the **Supplier's** written instructions or authorisation.

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

(a) without limiting or affecting any other right or remedy available to it, the **Supplier** shall have the right to suspend performance of the **Contract** until the **Customer** remedies the **Customer Default**, and to rely on the **Customer Default** to relieve it from the performance of any of its obligations in each case to the extent the **Customer Default** prevents or delays the **Supplier's** performance of any of its obligations;

(b) the **Supplier** shall not be liable for any costs or losses sustained or incurred by the **Customer** arising directly or indirectly from the **Supplier's** failure or delay to perform any of its obligations as set out in this Clause 8.2; and

(c) the **Customer** shall reimburse the **Supplier** on written demand for any costs or losses sustained or incurred by the **Supplier** arising directly or indirectly from the **Customer Default**.

9. CHARGES AND PAYMENT

9.1 The price for **Goods** and / or the **Services** is set out in the **Order Form**.

9.2 The **Supplier** makes every effort to ensure that any prices detailed in its sales literature or on its website are correct but in the event that it should find that they are not, and as a result that the price on the **Order Form** is incorrect, then notwithstanding that the **Contract** may have been entered into shall be entitled to terminate the same by notice to the **Customer** without being responsible for damages as a result of such termination provided the **Supplier** gives the **Customer** the option of re-confirming the **Contract** for the correct price.

9.3 The **Supplier** reserves the right to increase the price of the **Goods**, by giving notice to the **Customer** at any time before delivery, to reflect any increase in the cost of the **Goods** to the **Supplier** that is due to any request by the **Customer** to change the delivery date(s), quantities or types of **Goods** ordered, or the **Goods Specification** or any delay caused by any instructions of the **Customer** in respect of the **Goods** or failure of the **Customer** to give the **Supplier** adequate or accurate information or instructions in respect of the **Goods**.

9.4 In respect of **Goods**, the **Supplier** shall invoice the **Customer** on or at any time after completion of delivery. In respect of **Services**, the **Supplier** shall invoice the **Customer** on completion of the **Services**.

9.5 The **Customer** shall pay each invoice submitted by the **Supplier**:

(a) within [30] days of the date of the invoice or in accordance with any credit terms agreed by the **Supplier** and confirmed in writing to the **Customer**; and

(b) in full and in cleared funds to a bank account nominated in writing by the **Supplier**.

9.6 At all times the time for payment shall be of the essence of the **Contract**.

9.7 All amounts payable by the **Customer** under the **Contract** are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for **VAT** purposes is made under the **Contract** by the **Supplier** to the **Customer**, the **Customer** shall, on receipt of a valid **VAT** invoice from the **Supplier**, pay to the **Supplier** such additional amounts in respect of **VAT** as are chargeable on the supply of the **Services** or **Goods** at the same time as payment is due for the supply of the **Services** or **Goods**.

9.8 If the **Customer** fails to make a payment due to the **Supplier** under the **Contract** by the due date, then, without limiting the **Supplier's** remedies under Clause 11 (Termination), the **Customer** 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 9.8 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%.

9.9 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).

10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

10.1 The restrictions on liability in this Clause 10 apply to every liability arising under or in connection with the **Contract** including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

10.3 Nothing in the **Contract** limits any liability which cannot legally be limited, including liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) 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); and

(d) defective products under the Consumer Protection Act 1987.

10.4 Subject to Clause 10.3, the **Supplier's** total liability to the **Customer** shall not exceed 110% OF THE CONTRACT PRICE.

10.5 Subject to Clause 10.3, the following types of loss are wholly excluded from the **Contract**:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill; and
- (f) indirect or consequential loss.

10.6 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 a **Force Majeure Event**. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 6 months, the party not affected may terminate the **Contract** by giving written notice to the affected party.

10.7 The **Supplier** has given commitments as to compliance of the **Goods and Services** with relevant specifications in Clause 5 and Clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the **Contract**.

10.8 This Clause 10 shall survive termination of the **Contract**.

11. TERMINATION

11.1 Without affecting any other right or remedy available to it, either party may terminate the **Contract** with immediate effect by giving notice to the other party if:

- (a) the other party commits a material breach of its obligations under the **Contract**;
- (b) the other party 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), 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
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- (d) the party, being an individual, has a petition for his or her bankruptcy presented to the court; or
- (e) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the **Contract** is in jeopardy.

11.2 Without affecting any other right or remedy available to it, the **Supplier** may terminate the **Contract** with immediate effect by giving written notice to the **Customer** if the **Customer** fails to pay any amount due under the **Contract** on the due date for payment.

12. CONSEQUENCES OF TERMINATION

12.1 On termination of the **Contract**:

(a) the **Customer** shall immediately pay to the **Supplier** all of the **Supplier's** outstanding unpaid invoices and interest and, in respect of **Services** and **Goods** supplied but for which no invoice has been submitted, the **Supplier** shall submit an invoice, which shall be payable by the **Customer** immediately on receipt;

(b) the **Customer** shall return all of the **Supplier Materials** and any **Goods** which have not been fully paid for. If the **Customer** fails to do so, then the **Supplier** may enter the **Customer's** premises and take possession of them. Until they have been returned, the **Customer** shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this **Contract**.

12.2 Termination of the **Contract** shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the **Contract** which existed at or before the date of termination.

12.3 Any provision of the **Contract** that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

13. GENERAL

13.1 Assignment and other dealings

(a) The **Supplier** may at any time assign or subcontract any or all of its rights and obligations under the **Contract**.

(b) The **Customer** shall not assign or deal in any other manner with any of its rights and obligations under the **Contract**.

13.2 Severance. If any provision or part-provision of the **Contract** or these **Conditions** is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 13.2 shall not affect the validity and enforceability of the rest of the **Contract**.

13.3 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. A failure or delay by a party to exercise any right or remedy provided under the **Contract** or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that

or any other right or remedy. No single or partial exercise of any right or remedy provided under the **Contract** or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.4 Entire agreement.

(a) The **Contract** constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the **Contract** it does not rely on, and shall have no remedies in respect of 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 based on any statement in the **Contract**.

13.5 Third party rights.

Unless it expressly states otherwise, 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**.

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

13.7 Governing law. 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 law of [England and Wales][Scotland][Northern Ireland].

13.8 Jurisdiction. Each party irrevocably agrees that the courts of [England and Wales][Scotland][Northern Ireland] 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.