

# VELFAC GENERAL CONDITIONS OF SALE

These terms and conditions (**Conditions**) set out the basis on which VELFAC Limited, registered in England and Wales with company number 02332292 whose registered office address is The Old Livery, Hildersham, Cambridge, Cambridgeshire, CB21 6DR (VELFAC), shall supply its Products to the Buyer.

## 1. Interpretation

### 1.1. Definitions

In these Conditions, the following words shall have the following meanings:

- (a) **Acceptance of Order form:** Form to be signed and returned to VELFAC, where no purchase order can be provided. The signed Acceptance of Order form will finalise the Buyer's Order for the Products;
- (b) **Brexit:** the withdrawal of the United Kingdom from the European Union;
- (c) **Buyer:** the person or company who purchases Products from VELFAC;
- (d) **Confirmation of Order:** the confirmation of the final quotation for the Order;
- (e) **Confirmation of Delivery:** the confirmation of fixed delivery dates for the Order; please note that the Order is no longer subject to change once this has been issued
- (f) **Contract:** the binding contract between VELFAC and the Buyer for the sale and purchase of the Products in accordance with, and which incorporates, these Conditions;
- (g) **Contract Price:** the fixed price for the Products as specified in the Confirmation of Order;
- (h) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the General Data Protection Regulation (EU) 2016/679 (GDPR); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
- (i) **DDP:** Delivered Duty Paid, as defined in Incoterms 2020;
- (j) **Design Programme:** VELFAC's 'Design Programme', details of which have been provided to the Buyer;
- (k) **Intellectual Property Rights:** all (including applications) patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for or renewals or extensions of such rights
- (l) **Order:** the Buyer's order for the Products, as set out in the Buyer's letter of intent, purchase Order or Acceptance of Order form;
- (m) **Order Confirmation/Schedule:** an itemised schedule of the Order as per the Confirmation of Order and Confirmation of Delivery documents issued by VELFAC in accordance with, and which incorporates, these Conditions;
- (n) **Products:** the goods (or any part of them) set out or referred to in the Order Confirmation/Schedule;
- (o) **Recognition of Order:** VELFAC's acknowledgement of any instruction to proceed from the Buyer; this seeks to clarify design, scope, price and programme
- (p) **VAT:** value-added tax or any equivalent tax chargeable in the United Kingdom;
- (q) **VELFAC Design:** designs, drawings, calculations, and/or ideas provided by VELFAC;
- (r) **Working Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

### 1.2. Interpretation

- (a) A reference in these Conditions to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to "writing" or "written" includes emails.

## 2. Basis of Contract

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms or conditions that the Buyer seeks to impose or incorporate whether on the Buyer's order/contract form or on any other document, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Buyer to purchase the Products in accordance with these Conditions. The Buyer is responsible for ensuring that any applicable specification submitted by the Buyer are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when VELFAC issues a Confirmation of Delivery, or a signed Acceptance of Order form has been received, whichever is sooner, at which point the Contract shall come into existence.
- 2.4. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.
- 2.5. Any samples, drawings, descriptive matter or advertising produced by VELFAC and any descriptions or illustrations contained in VELFAC's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6. VELFAC's employees, contractors and agents are not authorised to make representations concerning the Products, to vary these Conditions, or to commit VELFAC in regard to the Products (including in regard to dates or times for delivery) other than as set out in the Contract. The Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representation, which is not so confirmed.

## 3. Budget Prices, Tender Quotations and Contract Price

- 3.1. If budget prices are given by VELFAC they are a general indication of the cost of the Products, are not binding on VELFAC and are subject to change by VELFAC.
- 3.2. Tender quotations are:
  - (a) given on the basis that no Contract will come into existence until VELFAC has issued its Confirmation of Delivery, or a signed Acceptance of Order form has been received, whichever is earliest, at which point the Contract shall come into existence;
  - (b) valid for 60 days from the date of issue (unless withdrawn before) and are based on the Buyer's requirements as made known to VELFAC and/or as specified by VELFAC in its tender quotation; and
  - (c) given on the assumption that delivery of Products will be made within six months of the date of the tender quotation.
- 3.3. The Contract Price is subject to change as a consequence of any variation of the Buyer's requirements from those specified in a tender which is accepted by VELFAC, including following the detailed design of the Products. VELFAC shall not be liable for any delay in the manufacturing and delivery of the Products until such change in the Contract Price (if any) has been agreed by the Buyer as set out in clause 6 and 7 of these Conditions.
- 3.4. If, in the event of Brexit and arising out of Brexit, there is an increased amount of customs handling and/or other border control requirements to fulfill which may in turn cause a delay to VELFAC's performance under the Contract, then VELFAC reserves the right to extend the time for performance of the Contract by an identical number of calendar days without incurring any liability. Additionally, if, as a result of Brexit, VELFAC incurs any increased costs (such as customs duties, import VAT and other charges or duties) in regard to VELFAC's performance of the Contract, then VELFAC shall have the right to increase the Contract Price by an amount equal to such substantiated increased costs. VELFAC shall inform the Buyer as soon as it becomes aware of the likelihood of any threatened delay or increased costs. The Buyer agrees that VELFAC shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performance or increased costs due to Brexit.

## 4. VELFAC Design

- 4.1. Where VELFAC is providing a VELFAC Design, the Contract is deemed to incorporate the Design Programme.
- 4.2. VELFAC's obligations to complete the VELFAC Design, and to meet dates for manufacture and delivery of the Products, are subject to the Buyer's full compliance with the Design Programme, including to provide information and procure the co-operation and approvals of any other person involved with the VELFAC Design.

## 5. Buyer's Responsibilities

- 5.1. The Buyer is responsible for, and acknowledges that VELFAC has no obligations and will not be subject to any liabilities in relation to:
  - (a) acceptance of, and the successful integration of, the VELFAC Design and/or the Buyer's specification, with the designs, specification and proposals of others and of other parts of the project for which the Products are intended; and
  - (b) ensuring that the Products are appropriate for any particular application, and comply with relevant local and national legislation, standards, codes of practice and other statutory requirements; and

- (c) ensuring VELFAC has the correct information including, but not limited to, drawings, specifications, quantities and dimensions of the Products required.
- 5.2. The Buyer acknowledges that any delays or failure by the Buyer to comply with the Design Programme requirements, to provide details of its requirements and/or specifications for Products, or to promptly provide VELFAC with all information and assistance requested from time to time to facilitate the proper and timely performance of the Contract may result in the Products missing their allotted or estimated manufacturing time.
- 5.3. VELFAC shall not be liable for any failure (by whatever margin) on its part to meet an agreed delivery date arising out of any delay or failure of the Buyer as referred to in clause 5.2 of these Conditions. The Buyer shall ensure the correctness of information provided, and that its requirements and specifications are sufficient for the Buyer's purposes. The Buyer shall indemnify VELFAC against all costs, claims, damages, expenses and losses incurred or awarded against VELFAC arising directly or indirectly or consequentially out of or in connection with a claim that any Products infringe or allegedly infringe any proprietary right, trade mark, copyright or other intellectual property right of any third party by reason of the manufacture, resale or use of the Products to the extent that any infringement arises as a result of designs, requirements or specifications submitted by the Buyer to VELFAC.

## 6. Confirmation of Order

- 6.1. At the stage in which VELFAC has completed the design phase; VELFAC will provide a Confirmation of Order to confirm details of:
  - (a) the proposed programme for delivery dates
  - (b) the final design of the Products;
  - (c) the Contract Price and any changes to the tender Price.
- 6.2. The Buyer must provide written acknowledgement including any required revisions, in the form of a final Order within five (5) Working Days of receiving the Confirmation of Order. Without this confirmation, VELFAC shall have no obligations or liability in regard to the manufacture and delivery of the Products.
- 6.3. Where VELFAC is required to undertake a process of detailed design of the Products, the Confirmation of Order will be provided once VELFAC has completed the detailed design and the Buyer has complied with its obligations under clause 4 and 5 of these Conditions.
- 6.4. Following the Buyer's acknowledgement; any changes or amendments to the Order will be subject to VELFAC's written acceptance only. The Buyer shall be liable for any consequential delay due to any requested changes or amendments and shall indemnify VELFAC in full against any and all costs (including costs of all labour and materials lost), loss (including loss of profit), damages, charges and expenses suffered or incurred by VELFAC as a result of the change

## 7. Confirmation of Delivery

- 7.1. At the stage in which VELFAC has committed to the manufacture of the Products, VELFAC will provide the Buyer with a Confirmation of Delivery to confirm details of:
  - (a) the Products;
  - (b) the dates for delivery of the Products; and
  - (c) the Contract Price and any changes to the Contract Price.
- 7.2. The Buyer agrees that Products placed into manufacture can not be revised. In the event of any urgent amendment to the Order; the Buyer shall be liable for the price of the original Products in addition to any additional Product(s), consequential delay due to any requested changes or amendments and shall indemnify VELFAC in full against any and all costs (including costs of all labour and materials lost), loss (including loss of profit), damages, charges and expenses suffered or incurred by VELFAC as a result of the change.
- 7.3. In the event of any cancellation of the Contract by the Buyer, including as provided for under this clause, the Buyer shall indemnify VELFAC in full against any and all costs (including costs of all labour and materials lost), loss (including loss of profit), damages, charges and expenses suffered or incurred by VELFAC as a result of the cancellation.

## 8. Packaging

Unless otherwise agreed in writing, VELFAC shall package the Products at its sole discretion; with consideration given to the nature of the Products and method of transportation. Any additional packaging requested by the Buyer shall be at the Buyer's expense and may delay delivery of the Products.

## 9. Delivery and Transfer of Risk

- 9.1. Dates for delivery of the Products shall remain estimates until the fixed delivery dates are issued as per the Confirmation of Delivery.
- 9.2. Such date/s shall still be subject to change and at no stage shall time be of the essence under the Contract.
- 9.3. Unless otherwise agreed in writing between the parties, the Products shall be Delivered Duty Paid to the Buyer's designated place of delivery in the United Kingdom or Eire. At the point of delivery (which does not include off-loading) the responsibility and risk of the Products shall pass to the Buyer.
- 9.4. The Buyer shall inspect the Products on delivery and will mark the carrier's receipt note with details of any shortage or visible damage in transit. In addition, Buyer shall notify VELFAC in writing within three (3) calendar days of any shortage or damage in transit. The Products shall be at the Buyer's risk from the time that they are delivered, thereafter the Buyer shall be responsible for the full Contract Price in the event of loss or damage arising from any cause whatsoever. Damage caused during off-loading shall be the Buyer's responsibility.

## 10. Prices and Terms of Payment

- 10.1. The Buyer is responsible for full payment of the Contract Price, including any changes to the Contract Price as provided for under these Conditions. The Buyer shall also pay VAT and any applicable import and other duties, taxes and expenses. Quoted prices include carriage and insurance to the point of delivery unless otherwise stipulated in the Order Confirmation/Schedule.
- 10.2. VELFAC will carry out a credit check on the Buyer to ensure the Buyer's ability to meet its payment obligations to VELFAC in accordance with the Contract. VELFAC reserves the right to amend the payment terms contained in clause 10.4 of these Conditions (including requesting payment before commencement of manufacture and/or delivery) and/or cease to supply the Products to the Buyer in the event that the result of this check does not meet with the reasonable approval of VELFAC and its insurers.
- 10.3. Where, following its credit check, VELFAC is unable to secure adequate insurance on the Buyer, VELFAC shall issue an invoice for a non-refundable deposit of 25% of the Contract Price (or such other percentage as VELFAC in its sole discretion deems appropriate) payable by the Buyer prior to commencement of manufacture of the Products. VELFAC shall issue a further invoice for the balance of the Contract Price payable by the Buyer prior to despatch of the Products. The final date for payment shall be as per the due date stipulated on the invoice.
- 10.4. The final date for payment for issued invoice(s) shall be 30 days from the date of invoice. Payment terms are non-negotiable unless specified on the invoice or otherwise agreed in writing and subject always to the aforementioned credit check. Time for payment shall be of the essence and payment must be made free of all deductions, retention, withholdings, set off (legal or equitable) or abatement whatsoever.
- 10.5. If an invoice is not paid in full by the final date for payment, without prejudice to any other rights or remedies VELFAC may have, VELFAC may at its option and without incurring any liability, suspend performance of its obligations under the Contract until payment is made in full in cleared funds. VELFAC shall be entitled to charge the Buyer, and the Buyer shall pay, interest on any amounts due but unpaid at a rate of 5% per annum above the base rate from time to time of Barclay's Bank Plc to be calculated on a daily basis on the amount outstanding until payment in full is received. VELFAC may claim for payment notwithstanding that title in the Products remains with VELFAC.

## 11. Retention of Title

- 11.1. Legal and beneficial title to the Products shall not pass to the Buyer until the earlier of:
  - (a) VELFAC receives payment in full (in cash or cleared funds) for the Products and any other goods that VELFAC has supplied to the Buyer in respect of which payment has become due (including all interest payable on overdue amounts), in which case title to the Products shall pass at the time of payment of all such sums; or
  - (b) the Buyer incorporates the Products in or with any other product or products, in which case title to the Products shall pass to the Buyer at the time specified in clause 11.3 of these Conditions.
- 11.2. Until title to the Products has passed to the Buyer, the Buyer shall:
  - (a) store the Products and maintain records of the Products and any new product or products formed from the Products, in such a way that they remain clearly identifiable as VELFAC's property;
  - (b) keep the Products separate from all other products held by the Buyer and/or third parties on the Buyer's behalf;

# VELFAC GENERAL CONDITIONS OF SALE

- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full Contract Price from the date of delivery;
- (d) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (e) notify VELFAC immediately if it becomes subject to the any of the events listed in clause 11.4 of these Conditions; and
- (f) give VELFAC such information relating to the Products as VELFAC may require from time to time.
- 11.3. Subject to clause 11.4 of these Conditions, the Buyer can use the Products in the ordinary course of its business (but not otherwise) before VELFAC receives payment for the Products. However, if the Buyer resells the Products before that time; it does so as principal and not as VELFAC's agent.
- 11.4. The Buyer's right to possession of the Products shall immediately terminate (including a right to resell the Products or use them in the ordinary course of its business) if, before title to the Products passes to the Buyer, the Buyer becomes subject to any of the events listed in clauses 11.4(a) or 11.4(b) of these Conditions:
- (a) the Buyer fails to make any payment to any of its creditors when due, compounds with its creditors, convenes any meeting, passes any resolution or presents, or suffers any petition to be presented for voluntary or compulsory liquidation or has an administrator, receiver, administrative receiver or manager appointed over all or part of its assets, or takes or suffers any similar action in consequence or debts or becomes insolvent, or if any steps are taken to achieve any of the above consequences; or
- (b) the Buyer shall pledge or in any way charge by way of security for any indebtedness any of the Products or new product or products which remain the property of VELFAC,
- whereupon VELFAC shall have the right, without prejudice to any other rights or remedies VELFAC may have, to require the Buyer to deliver up all Products and/or any new product or products owned by it which have been formed from the Products in its possession that have not been resold, and/or enter without prior notice any premises of the Buyer or third party where the Products and/or any new product or products owned by it which have been formed from the Products are stored in order to recover them.
- 12. Assignment/Performance**
- VELFAC may assign any of its obligations to, or exercise any of its rights through, any associated company or sub-contractor. The Buyer shall not assign or transfer any benefit of the Contract without VELFAC's prior written consent.
- 13. Warranty and Liability**
- 13.1. Subject to full payment for the Products being made by the Buyer, and to the qualifications set out below, VELFAC warrants that the Products shall correspond with the Order Confirmation/Schedule and will be free from defects in materials and workmanship for a period of 12 years in the case of windows and patio and balcony doors; 5 years in the case of entrance doors; and 1 year in the case of electrical components, from the date of delivery, PROVIDED that:
- (a) the Products have been installed, transported, maintained and used in accordance with any instructions, recommendations or specifications of VELFAC, whether oral or in writing or best industry practice;
- (b) the Buyer has notified VELFAC of any defect in writing within seven (7) calendar days of the date of delivery or, (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect;
- (c) the defect was not caused by fair wear and tear, neglect, misuse or improper adjustment;
- (d) the defect does not result from compliance with any drawings or specification supplied to VELFAC by the Buyer; and
- (e) the Buyer has allowed VELFAC or its appointed agent a reasonable opportunity to inspect the Products and such inspection confirms that the Products are defective.
- Should VELFAC be responsible for a defect, VELFAC will at its option either refund an appropriate part of the Contract Price, repair the Products or provide replacement Products (or spare parts) free of charge. Where replacement Products (or spare parts) are provided by VELFAC, the Buyer's attention is drawn specifically to clause 13.1(b), as VELFAC accepts no responsibility for any associated costs of removing defective Products and reinstating replacement Products.
- 13.2. Where Products contain glass panes the warranty referred to in clause 13.1 of these Conditions shall only apply if the following requirements have been met:
- (a) the glass panes must have been fitted in the VELFAC factory or by a VELFAC approved installer or service engineer;
- (b) the glass panes in the spacer track must have been stamped with the date of production (year/month);
- (c) the glass panes must not have been damaged by external conditions, i.e. knocks or blows, or by movements of adjoining buildings;
- (d) the glass panes must not have been damaged by frost, thermal effect or any chemicals;
- (e) the glass panes must not have been exposed to any processing after delivery, i.e. grinding, sand blasting, etching, painting, sticking on, or any other surface treatment; and
- (f) the drain path on the window system must not have been blocked, it being agreed by VELFAC that glass panes with "added/built in features" i.e. lead glass windows, alarm systems, blinds etc, are covered by a 5-year warranty from date of purchase.
- 13.3. Except for the warranties contained in clauses 13.1 and 13.2 of these Conditions, all other warranties, conditions and other terms, whether express or implied by statute, under common law or otherwise in relation to the Products and this Contract (apart from terms implied as to title under the Sale of Goods Act 1979) are expressly excluded. This exclusion includes, but is not limited to, an exclusion of any condition or warranty of fitness for particular purpose, satisfactory quality, usefulness or timeliness.
- 13.4. VELFAC shall be under no liability to the Buyer for any loss of profit, loss of business, loss of revenue, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, depletion of goodwill or any costs, expenses (including legal expenses) or for any indirect or consequential loss or damage whatsoever (howsoever caused) resulting from defective material, faulty workmanship, late delivery, withdrawal of credit approval or otherwise and whether caused or not by the negligence of VELFAC, its employees, contractors or agents, provided always that VELFAC accepts liability for fraud, fraudulent misrepresentation, and death or personal injury caused by its negligence. In no circumstances shall VELFAC's liability to the Buyer for any breach of the Contract exceed the price paid for the Products with respect to which the claim is made.
- 14. Notices**
- All communications between the parties about the Contract must be in writing delivered by hand, sent by pre-paid first-class post to the other party's registered office in the United Kingdom, or sent to the party at the email address listed in the Confirmation of Order or to such other email address as that party may notify VELFAC. Notices shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post, two Working Days after posting (exclusive of the day of posting); and if delivered by email, at the time of transmission. This clause 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.
- 15. Termination, Suspension and Security**
- VELFAC may, without prejudice to any other right or remedy available to VELFAC, immediately terminate the Contract, suspend contractual performance or require any payment in advance or satisfactory security for further deliveries under the Contract by written notice to the Buyer in the event that the Buyer: (a) defaults in making any payment due to VELFAC under the Contract; (b) remains in breach of its obligations to VELFAC under the Contract or under any other contract with VELFAC having been given 14 calendar days' notice of the breach in writing (including for non-compliance with Design Programme obligations); or (c) any of the insolvency events specified in clause 11 of these Conditions occurs in relation to the Buyer. Without prejudice to any other rights or remedies available, VELFAC may demand immediate payment of outstanding amounts which shall then become due and payable.
- 16. Governing Law and Jurisdiction**
- The Contract, and 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, shall be governed by and construed in accordance with the laws of England and Wales. If any dispute arises out of or in relation to the Contract, the parties will use their reasonable endeavours to resolve that dispute amicably by discussion. Either party may at any time refer such a dispute to adjudication. Any adjudication shall be carried out pursuant to Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998. The Adjudicator shall be nominated at the request of either party pursuant to the Royal Institute of Chartered Surveyors.

## 17. Intellectual Property Rights

All Intellectual Property Rights in and to the Products, and in a VELFAC Design or any drawings, technical data, reports, documents, designs and information whatsoever which VELFAC submits to the Buyer in connection with the Contract, shall belong to VELFAC and must not be copied or shown to any third party without the prior written consent of VELFAC.

## 18. Confidentiality

- 18.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2 of these Conditions.
- 18.2. Each party may disclose the other party's confidential information:
- (a) to its employees, contractors, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure its employees, contractors, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 18; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 19. Data Protection

- 19.1. In this clause 19, Controller, Processor, Data Subject, Personal Data, Personal Data Breach, process, processing, and appropriate technical and organisational measures: have the meanings given in the Data Protection Legislation. Applicable Laws means the Data Protection Legislation and any other law that applies in the United Kingdom, and Buyer's Personal Data means any Personal Data provided by the Buyer to VELFAC.
- 19.2. The subject-matter, nature and purpose of the processing, the type of Personal Data and the categories of Data Subject shall be limited to that or those required for the proper performance of the Contract. VELFAC shall only process the Buyer's Personal Data on behalf of the Buyer for the duration of the Contract.
- 19.3. Without prejudice to the generality of clause 19.2 of these Conditions, VELFAC shall, in relation to any Buyer's Personal Data processed in connection with the performance by VELFAC of its obligations under the Contract:
- (a) process that Buyer's Personal Data only on the documented written instructions of the Buyer unless VELFAC is required by Applicable Laws to otherwise process that Buyer's Personal Data. Where VELFAC is relying on Applicable Laws as the basis for processing any Buyer's Personal Data, VELFAC shall promptly notify the Buyer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit VELFAC from so notifying the Buyer;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Buyer's Personal Data and against accidental loss or destruction of, or damage to, the Buyer's Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel who have access to and/or process the Buyer's Personal Data are obliged to keep the Buyer's Personal Data confidential;
- (d) reasonably assist the Buyer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Buyer without undue delay on becoming aware of a Personal Data Breach in relation to any Buyer's Personal Data;
- (f) at the written direction of the Buyer, delete or return the Buyer's Personal Data and copies thereof to the Buyer on termination of the Contract unless required by Applicable Law to store or retain any of the Buyer's Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate VELFAC's compliance with Article 28 of the GDPR and allow for audits by the Buyer or the Buyer's designated auditor at reasonable notice.
- 19.4. The Buyer consents to VELFAC transferring the Buyer's Personal Data outside of the United Kingdom and/or the European Economic Area (EEA) for the purposes of VELFAC performing its obligations under the Contract. VELFAC confirms that it shall only transfer the Buyer's Personal Data outside of the United Kingdom or the EEA where it is lawful to do so in accordance with Chapter V of the GDPR.
- 19.5. The Buyer consents to VELFAC appointing third party processors of the Buyer's Personal Data to allow VELFAC to perform its obligations under the Contract. VELFAC shall inform the Buyer of any intended changes concerning the addition or replacement of other processors, thereby giving the Buyer the opportunity to object to such changes on reasonable grounds relating to data protection. VELFAC confirms that it has entered into, or (as the case may be) will enter into, with each third-party processor a written agreement which is substantially similar to those set out in this clause 19. As between the Buyer and VELFAC, VELFAC shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 19.

## 20. Force Majeure

Without prejudice to any other provision of these Conditions, VELFAC shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performance or any failure to perform any of the obligations of VELFAC under the Contract due to circumstances beyond its reasonable control, including without limitation, war, governmental restrictions, fire, flood or storm, explosion, accident, civil disturbance, shortage or unavailability of stock or manpower, industrial action and transportation delays.

## 21. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 22. Severability

If any of the terms and conditions of the Contract (or part thereof) or these Conditions shall be found to be illegal, invalid or unenforceable, all other terms and conditions of the Contract or these Conditions not affected by the same shall remain in full force and effect.

## 23. No Partnership or Agency

23.1. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 24. Contracts (Rights of Third Parties) Act 1999.

The parties hereby confirm that no term of the Contract and these Conditions is intended to confer on any third party any right or benefit and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.

## 25. Entire Agreement

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.