

COTTAM BRUSH LIMITED
TERMS AND CONDITIONS OF BUSINESS

The Client's attention is drawn to the fact that these Terms are divided into 4 parts. However, all parts of the Terms shall apply to all contracts. In summary, those parts are:

- Part A – General:** general terms that are relevant to all contracts.
Part B – Design Services: design & customisation services provided to a brief agreed with the Client.
Part C – Speculative Work & Concept Design: terms relevant to designs services provided speculatively.
Part D – Supply of Goods: terms relevant to the supply of goods by Cottam Brush, including samples.

The Client is referred to clauses A3/A5/A6/B1/B4/C4/D4 which define the Client's practical responsibilities and/or limit Cottam Brush's liability to the Client. Nothing in these Terms shall affect the statutory rights of a Client dealing with Cottam Brush as a consumer. Information on consumers' rights is available from the Office of Fair Trading.

PART A – GENERAL TERMS AND CONDITIONS

A1. Interpretation

A1.1 In the Terms, unless the context otherwise requires:-

Client means the person named on the Proposal who is the purchaser of the Services and/or Goods in accordance with the Terms;

Documents includes, in addition to any document in writing, any map, plan, graph, drawing or photograph, film, negative, tape or other device embodying visual images whether or not such item is provided in paper or electronic format and any disc, tape or other device embodying any other data;

Cottam Brush means Cottam Brush Limited (CRN: 00418167), whose registered office is at Unit 7, Monkton Business Park North, Hebburn, NE31 2JZ;

Goods means the goods, if any, (including instalment of the goods or any part for them) that Cottam Brush is to supply in accordance with the Terms and which are specified in the Proposal;

Input Material means any Documents or other materials and any data, specification or other information provided by the Client;

IPRs means all copyright, trade marks, trade names, patents, registered and unregistered design rights and all other intellectual property and proprietary rights, powers and benefits, including the right to register, transfer, licence and assign;

Output Material means any Documents or other materials and any data, ideas, concepts, designs, images, manufacturing or other techniques or other information provided to the Client and/or developed by Cottam Brush;

Proposal means the Cottam Brush proposal setting out the specifics of the Services and Goods to be supplied or any subsequent documentation generated by Cottam Brush referencing that proposal, as applicable;

Services means the services to be provided by Cottam Brush for the Client in accordance with the Terms and which are specified in the Proposal; and

Terms means these terms and conditions and the additional terms and conditions contained in the Proposal;

A1.2 The headings in the Terms are for convenience only and shall not affect their interpretation. Any

reference to any enactment includes reference to that enactment as amended from time to time and to any subordinate legislation made under that enactment.

A2. Application of the Terms

A2.1 The Terms constitute the entire agreement between the parties, supersede any previous agreements, representations, statements or understandings, may not be varied except in writing between the parties (signed by a Director of Cottam Brush) and set out the full extent of Cottam Brush's obligations and liabilities. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Cottam Brush which is not set out in the Terms. Nothing in the Terms shall be construed so as to exclude or limit Cottam Brush's liability for fraudulent misrepresentation.

A2.2 The supply of all Goods and Services shall be on and in accordance with the Terms. All other terms, conditions, collateral contracts, undertakings and warranties, whether express or implied by statute or otherwise, in respect of the Goods or Services, are excluded to the fullest extent permitted by law (including any terms and conditions that the Client purports to apply under any purchase order or correspondence or otherwise).

A3. Quotations and Proposals

A3.1 Quotations are not binding on Cottam Brush and do not constitute an offer. Cottam Brush reserves the right to withdraw or revise any quotations.

A3.2 The Client shall be responsible to Cottam Brush for ensuring the accuracy of the terms of any Proposal and for giving Cottam Brush any necessary information relating to the Goods or Services within a sufficient time to enable Cottam Brush to provide the Goods and/or Services in accordance with the Terms.

A3.3 Cottam Brush may at any time without notifying the Client make any changes to the Goods or Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Goods or Services.

- A3.4 The Client may not cancel or terminate the contract without the consent in writing of Cottam Brush. If consent is given, the Client shall indemnify Cottam Brush against all loss (including loss of profit), damage, claims, costs (including the cost of all labour and materials used), expenses and actions arising out of such cancellation or termination unless otherwise agreed in writing.
- A3.5 Should the Client breach of any of these terms and conditions and the Client fail then to correct that breach within thirty (30) days following written notice from Cottam Brush specifying the said breach, Cottam Brush may terminate the agreement to which these Terms and the Proposal apply.
- A3.6 The Client's acceptance of the Proposal may take the form of its counter-signature on the Proposal or may take the form of correspondence confirming the same or may be implied in the form of the fulfilment by the Client of any of its obligations under these Terms, such as, without limitation, the payment of a deposit or the provision of Input Material.
- A3.7 In the event of any contradiction between these Terms and the Proposal (including any 'Special Conditions' set out in the Proposal), the terms of the Proposal shall take precedence.

A4. Charges and Payment

- A4.1 Save as provided for to the contrary under these Terms, the price of the Goods and/or charge for the Services shall be as set out in the Proposal and shall be exclusive of VAT and other applicable taxes and duties (which shall be paid by the Client in the manner and rate described by law) and any disbursements including the costs of materials and external services (which may be charged to the Client in addition unless the Proposal provides otherwise).
- A4.2 The Client shall pay such additional sums which, in Cottam Brush's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy or unfinished nature of, errors in or additions or amendments to any Input Material or any other cause or fault attributable to the Client.
- A4.3 All sums owed by the Client to Cottam Brush shall be paid by the Client together with any applicable VAT, and without any set off or other deduction, on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.
- A4.4 If the Client fails to make payment within 30 days Cottam Brush shall charge the Client interest on the unpaid amount (before and after judgment) at a daily rate equal to 8 per cent per annum above the base lending rate from time to time of HSBC Bank plc from the due date until payment is received. In the event that Cottam Brush issues legal proceedings in respect of any breach of these Terms by the Client, the Client will reimburse all costs and expenses incurred by Cottam Brush as a result of such action on demand and on an indemnity basis. Any termination by Cottam Brush of any contract with the Client on these terms shall be without prejudice to any sums

chargeable to and payable by the Client for Goods or Services provided to the Client up to and including the effective date of the said termination.

A5. Rights in Input Material

- A5.1 The Client warrants that it is the sole beneficial owner of any and all IPRs in the Input Material or is otherwise entitled to make use of and licence the same to Cottam Brush for the purposes of the provision by Cottam Brush of the Services, Goods and/or Output Material.
- A5.2 Cottam Brush acknowledges that any and all of the IPRs subsisting in the Input Material shall remain the sole property of the Client or its licensors and Cottam Brush shall:
- A5.2.1 only use the Input Material for the purposes of providing the Services or the creation of the Goods; and
- A5.2.2 upon completion of the Services or the provision of the Goods, return all original Input Material to the Client.
- A5.3 The Client shall indemnify Cottam Brush fully against all liabilities, costs and expenses that Cottam Brush may incur as a result of using the Input Material and/or preparing the Output Material in accordance with the Client's instructions, arising out of the infringement of any IPRs belonging to third parties.
- A5.4 If any Input Material contains or uses any IPRs owned by the Client or under its control, Cottam Brush shall have the right to use or allow use of any such IPRs for the purpose of fulfilling Cottam Brush's obligations under the Terms. Cottam Brush shall not gain any rights over such IPRs by virtue of its use, but shall be entitled to use the IPRs both during and after the production and supply of the Input Material to promote and advertise its own work.

A6. Liability

- A6.1 Cottam Brush shall have no liability to the Client for any loss, damages, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or format, or arising from their late arrival or non-arrival, or due to any fault of the Client or any delay in transit not caused by the fault of Cottam Brush.
- A6.2 Save as provided for in clause A6.6 below or otherwise in the Terms, Cottam Brush shall not be liable to the Client by reason of:
- A6.2.1 any misrepresentation (unless fraudulent);
- A6.2.2 the breach of any implied warranty, condition or other term;
- A6.2.3 the breach of any duty at common law; or
- A6.2.4 the breach of these Terms;
- for any loss of profit, reputation, opportunity, goodwill, business or anticipated savings or any indirect, special or consequential loss, damages, costs, expenses or other claims (whether caused by the negligence of Cottam Brush its servants or agents or otherwise) which arise out of or in connection with the provision or late provision of the Goods or Services, or the failure to provide the

Goods or Services or their use by the Client or any third party.

- A6.3 The entire liability of Cottam Brush under or in connection with the Terms shall not exceed the amount of Cottam Brush's charges for the provision of the Goods and Services, except as expressly provided to the contrary in the Terms.
- A6.4 Unless otherwise stated in the Proposal, Cottam Brush does not warrant that the Output Material and Goods are suitable for use by all or any persons with disabilities and shall not be deemed to be in breach of its obligations to the Client or liable by reason of any such non-suitability.
- A6.5 The Client acknowledges that it is under an obligation to expressly specify that Goods or Output Material should be suitable for use by persons with disabilities and to specify its requirements in full in writing in those respects, such requirements to be acknowledged and agreed by Cottam Brush prior to work starting. The Client acknowledges that it is responsible for ensuring compliance under the Disability Discrimination Act 1995 and agrees to indemnify Cottam Brush against any loss, damages, costs, expenses or other claims arising from any such breach.
- A6.6 Nothing in the Terms shall operate to exclude or limit Cottam Brush's liability:
- A6.6.1 under Section 2 of the Consumer Protection Act 1987;
- A6.6.2 under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- A6.6.3 for any matter in respect of which it would be illegal for Cottam Brush to exclude or attempt to exclude its liability; and
- A6.6.4 for death or personal injury caused by Cottam Brush's negligence or breach of these Terms.
- A6.7 All indemnities given by Cottam Brush under these Terms or any Proposal are provided on the basis that:
- A6.7.1 the Client gives notice to Cottam Brush of any infringement upon becoming aware of the same;
- A6.7.2 the Client gives Cottam Brush the sole conduct of the defence to any claim or action in respect of any infringement and does not at any time admit liability or otherwise attempt to settle or compromise the claim or action except upon the express instructions of Cottam Brush;
- A6.7.3 the Client acts in accordance with the reasonable instructions of Cottam Brush including providing to Cottam Brush such assistance as it shall reasonably require in respect of the conduct of the defence of the claim including without prejudice to the generality of the foregoing filing of all pleadings and other court process and the provision of all relevant documents; and
- A6.7.4 the claim or action giving rise to the damages (including costs) awarded to or agreed with the third party in question does not arise from the Client's breach of any part of clause A5 above.

A7. Confidentiality

- A7.1 Except as otherwise provided in the Terms and subject to clause A7.3, Cottam Brush shall treat all Input Material as strictly confidential and shall not disclose the same to any third party, other than third party sub-contractors who shall be bound by an obligation of confidentiality and to whom it is necessary to provide the information in order for Cottam Brush to fulfil its obligations to the Client.
- A7.2 Except as otherwise provided in the Terms and subject to clause A7.3, the Client shall treat all prices and terms quoted as strictly confidential and shall not display, use or disclose the same to any third party for any reason whatsoever.
- A7.3 Clauses A7.1 and A7.2 shall not apply to any information:
- A7.3.1 already known to the other party or in its possession before the disclosure and free from the obligation to keep it confidential;
- A7.3.2 that is or becomes public knowledge through no wrongful act or default of the relevant party;
- A7.3.3 received from a third party without similar obligations of confidence and without breach of the Terms;
- A7.3.4 independently developed;
- A7.3.5 disclosed to a third party without similar restrictions on that third party's rights of disclosure; or
- A7.3.6 approved for release by written authorisation.

A8. General

- A8.1 Cottam Brush shall not be liable to the Client or deemed to be in breach of its obligations to the Client by reason of any delay in performing, or failure to perform, any of its obligations to the Client in accordance with the Terms, if the delay or failure was due to any cause beyond Cottam Brush's reasonable control, including without limitation:
- A8.1.1 act of God, explosion, flood, tempest, fire or accident;
- A8.1.2 war or threat of war, national emergency, acts of terrorism, sabotage, insurrection or civil disturbance;
- A8.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, regional or local authority;
- A8.1.4 strikes, lock-out or other industrial actions or trade disputes (whether involving employees of Cottam Brush or of a third party);
- A8.1.5 unavailability or shortages of goods, materials, fuel, part-machinery, or transportation;
- A8.1.6 power failure or breakdown in machinery; or
- A8.1.7 default of third party suppliers or subcontractors.
- A8.2 No failure or delay by either party in exercising any of its rights under the Terms shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Terms by the other shall be considered as a waiver of any other breach or default or any subsequent breach or

- default. If any provision of these Terms is or becomes invalid, illegal or void, that shall not affect the validity and legality of the other provisions.
- A8.3 Cottam Brush will process all personal data provided to it by the Client or otherwise received in consequence of providing the Goods and Services, in accordance with the Data Protection Act 1998 ("DPA") and any associated or subsequent legislation, codes of practice or statutory instruments. In particular Cottam Brush will act only on the instruction of the Client and will take reasonable precautions to keep such personal data secure, to prevent unauthorised disclosure and to ensure that appropriate steps are taken against the accidental loss, destruction or damage, or any unlawful processing of the data. At all times the Client will remain the data controller (as defined in the DPA) in respect of any personal data received by Cottam Brush in consequence of providing the Goods or Services.
- A8.4 Cottam Brush accepts no liability for any breach of the DPA by any sub-contractor to whom it may lawfully pass personal data. The Client gives consent to the holding, processing and accessing of personal data provided to Cottam Brush for the purposes relating to the performance of the Services including (but not limited to) transferring such personal data to a sub-contractor or an agent for the purposes of debt collection. Cottam Brush shall give the Client 7 days' notice before transferring personal data to a sub-contractor, to enable the Client to enter into a data processing agreement with the sub-contractor.
- A8.5 Nothing in the Terms shall confer on any third party any benefit whatsoever or the right to enforce any term of any contract to which the Terms relate and the Contract (Rights of Third Parties) Act 1999 shall not apply.
- A8.6 The Terms shall in all respects be determined and governed by English law. The parties submit to the exclusive jurisdiction of the English courts.
- A8.7 Without prejudice to any other right or remedy available to it, Cottam Brush may terminate the Contract or, notwithstanding any previous agreement or arrangement to the contrary, suspend any further deliveries without liability to the Client and where the Goods have been delivered but not paid for the price shall become immediately due and payable if either the Client makes any voluntary arrangement with its creditors, (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order (whether out of court or otherwise), goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession of or a receiver or administrator is appointed over any of the property or assets of the Client or the Client ceases to trade.
- A8.8 The Client agrees to refrain from directly or indirectly recruiting any person employed or engaged by Cottam Brush for the purpose of providing the Services (including any sub-contractor) for a period of six months following completion of the Services.
- A8.9 In the case of contracts for the sale of Goods from the Cottam Brush catalogue where the nett value is less than £250.00 the Buyer will pay carriage charges of £15.00 in addition to the Price if the goods are to be delivered by Cottam Brush to a destination in the United Kingdom mainland (excluding offshore islands). For non-catalogue goods or if the goods are to be delivered by Cottam Brush to any other destination (including offshore islands) the carriage charges will be specifically quoted by Cottam Brush. A minimum nett goods invoice value charge of £50.00 applies to all contracts for the sale of Goods.

PART B –DESIGN SERVICES

B1. Services

- B1.1 The Client acknowledges that its signature of the Proposal constitutes its agreement to the specification of the Services contained in the Proposal. If the Client requests changes to the Services following signature of the Proposal, such additional services or modifications shall be dealt with in accordance with Cottam Brush's normal hourly or daily rates as revised from time to time. Alternatively, Cottam Brush may at its sole discretion, or on request from the Client, submit a quotation for the cost of the modifications or additional services requested and an indication of the additional time required and/or an indication of any anticipated delay to the Services. The Client's instruction or confirmation to Cottam Brush that it should proceed with the modifications or additional services following submission of such a quotation will constitute acceptance of that quotation by the Client.
- B1.2 The Client accepts all responsibility for checking each and every draft or iteration of the Output Material provided by Cottam Brush.
- B1.3 Cottam Brush accepts no responsibility for any errors in the samples, drawings and other elements of the Output Material that have not been notified to Cottam Brush during the drafting process.
- B1.4 Where the Client is satisfied that the Output Material has been created in accordance with the specification set out in the Proposal and the final proofs of the Output Material are satisfactory, the Client shall inform Cottam Brush thereof in writing as soon as reasonably practical following such acceptance.
- B1.5 Samples will be manufactured by Cottam Brush or by a specialist third party manufacturer selected by Cottam Brush for the purpose.
- B1.6 The Client acknowledges that Cottam Brush's ability to provide the Services is dependent upon the full and timely co-operation of the Client, which the Client agrees to provide, as well as the accuracy and completeness of the Input Material and any other information the Client provides to Cottam Brush. Accordingly, the Client shall, in accordance with any timetable agreed between the parties:
- B1.6.1 provide Cottam Brush with the Input Material and access to, and use of, all information, data and documentation

reasonably required by Cottam Brush for the performance of the Services; and

B1.6.2 be responsible for checking the proofs and carrying out tests for the purpose of ensuring compliance of the Output Material with the Input Material and the specification set out in the Proposal.

B2. Rights in Output Material

B2.1 All IPRs in the Output Material shall belong to Cottam Brush, unless otherwise agreed in writing.

B2.2 Cottam Brush grants to the Client an exclusive licence to use and distribute the Output Material, to make further copies of the Output Material and to use and distribute those copies. Cottam Brush does not grant to the Client any licence (whether exclusive or otherwise) to modify, adapt, re-use or otherwise copy or incorporate all or part of the Output Material (including the layout and design thereof) for use in other materials or publications.

B2.3 In the event that new inventions, designs or processes evolve in the performance of or as a result of the provision of the Services, the Client acknowledges that the same shall be the property of Cottam Brush unless otherwise agreed in writing.

B2.4 Cottam Brush will retain the right to use any Output Material in its own marketing unless it agrees in writing to the contrary with the Client.

B2.9 Output Material delivered to the Client in electronic form may contain technical protection measures which will be used by Cottam Brush to ensure that the Output Material is used solely for the purposes stated in the Proposal.

B3. Warranties

B3.1 Cottam Brush warrants to the Client that the Services will be provided using reasonable skill and care and, as far as reasonably practicable, in accordance with the Proposal and within the times referred to in the Proposal. For the avoidance of doubt, time shall not be of the essence.

B3.2 Save for any infringement arising from the Client's breach of its obligations under any part of clause A5 above and subject to clause A6, Cottam Brush warrants that the Output Material and its use by the Client will not infringe the IPRs of any third party and, subject to clause A6.7, Cottam Brush shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.

B3.3 Save in respect of Input Material or third party software or materials that form part of the Output Material, Cottam Brush warrants that it has the title to and property in the Output Material which is free and unencumbered and/or that it has the right, power and authority to licence the same in accordance with the Terms.

B3.4 Cottam Brush does not warrant that samples will correspond to design drawings and drafts in every detail.

B4. Liability

B4.1 The liability of Cottam Brush to the Client shall not exceed the charges paid or payable (excluding any set up fees) in accordance with the Terms for

the provision of the Services in the 12 months preceding the event giving rise to the said liability.

B4.2 Except in relation to Clause A7, Cottam Brush's liability to the Client shall cease two months after the completion or termination of the Services noted in the Proposal.

B4.3 Cottam Brush accepts no liability for loss or damage to information or data stored on the Client's system arising from the use of design drawings and drafts provided electronically or otherwise. Cottam Brush makes use of virus-checkers and other security software and believes that as far as reasonably practicable, its systems are free from malware infection but the parties agree that the Client is the best judge of the value of its data. Accordingly the Client shall be responsible for ensuring that it has adequate security systems, back-up copies of all information, data and files at all times and for maintaining adequate insurance cover in respect of any loss or damage to data.

B4.4 Without prejudice to the generality of Clause B4.3, Cottam Brush accepts no liability for loss or damage caused by any error, fault or negligence of the Client.

B4.5 The Client indemnifies Cottam Brush against any loss, damages, costs, expenses or other claims arising from any other damage caused to property belonging to Cottam Brush by any fault or error of the Client, its employees, agents and servants.

B5. Charges and Payment

B5.1 Save where clause B5.5 applies or where payment by identified milestones has been specified in the Proposal or agreed in writing, the Client shall pay 50% of the charges for the Services after the Proposal has been accepted and before work begins and the remaining balance of the charges on delivery of the Output Material. Cottam Brush reserves the right to invoice the Client for the charges in full in the event that the Client's compliance with clause B1.6 is unreasonably delayed.

B5.2 Where applicable Cottam Brush shall issue invoices in respect of additional charges as set out in the Proposal, such charges to be subject to an annual review by Cottam Brush with increases to be notified promptly to the Client.

B5.3 Where payment is not made in accordance with the Terms Cottam Brush shall be entitled to withhold or suspend the Services and, where the Output Material is hosted by Cottam Brush, post a notice to that effect in place of the Services.

B5.4 Repairs carried out by Cottam Brush to remedy damage caused by the Client or third parties to the Output Material shall be charged at Cottam Brush's standard rates, from time to time in force.

B5.5 Where the Services rendered in accordance with these terms consist of the customisation of Cottam Brush products to the Client's requirements, such customisation shall be invoiced to and payable by the Client alongside the Goods in accordance with clause A4.

PART C – SPECULATIVE WORK & CONCEPT DESIGN

C1. Services

- C1.1 Cottam Brush will use reasonable skill and care to create the Output Material.
- C1.2 In the case of speculative work, designs, tenders, ideas, or pitches being provided by Cottam Brush:
- C1.2.1 the Client will be bound by Clause C2; and
- C1.2.2 Cottam Brush makes no warranties in relation to such speculative Output Material that has not been paid for, and accordingly clause C3 does not apply to such Output Material.

C2. Rights in the Output Material

- C2.1 All IPRs in the Output Material shall belong to Cottam Brush until full payment for the Services is received by Cottam Brush, at which time Cottam Brush grants to the Client an exclusive licence to use the Output Material solely for the limited purposes specified in the Proposal, or as otherwise specified in the Proposal.
- C2.2 The Client will treat all Output Material and all other ideas, concepts and information provided by Cottam Brush, whether provided in relation to the supply of the Services, speculatively or otherwise, as strictly confidential until full payment is received by Cottam Brush and shall not display, make use of or disclose the same to any third party.
- C2.3 Cottam Brush will retain the right to use any such Output Material in its own marketing.
- C2.4 Cottam Brush retains all IPRs and other proprietary rights in all speculative Output Material until agreed with the Client to the contrary.

C3. Warranties

- C3.1 Cottam Brush warrants that:
- C3.1.1 all Output Material and its use by the Client and any ideas used in developing the Output Material are original and will not infringe the IPRs of any third party;
- C3.1.2 it has not granted, assigned or otherwise disposed of any rights of any nature in the Output Material to any third party.

C4. Liability

- C4.1 The liability of Cottam Brush to the Client shall not exceed the charges paid or payable in accordance with the Terms for the provision of the Services relating only to the design or concept material giving rise to the liability in question.
- C4.2 Cottam Brush will not be required to provide assistance to the Client with any proceedings which may be brought by the Client against any third party in relation to the IPRs in the Output Material for which no payment has been made. If, at Cottam Brush's discretion, assistance is provided, the Client will indemnify Cottam Brush in respect of any and all costs and expenses (including legal costs) incurred by Cottam Brush.

PART D – SUPPLY OF GOODS

D1. Services

- D1.1 Cottam Brush will produce the Goods in accordance with the Client's requirements as stated in the Proposal and will use reasonable endeavours to ensure that the Goods correspond with any samples, prototypes or description referred to in the Proposal or previous batches of Goods supplied.
- D1.2 The price payable by the Client for the Goods shall be as specified in the Proposal or any price list or catalogue of Cottam Brush specified therein and published on or before the date on which the Goods are delivered or are deemed to have been delivered. The price specified shall exclude value added tax, carriage and insurance save where expressly stated to the contrary.

D2. Delivery and Acceptance

- D2.1 Delivery of the Goods shall be made to the Client's address on the date specified in the Proposal. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- D2.2 Any dates specified by Cottam Brush for delivery of the Goods are intended to be an estimate and time for deliver shall not be made of the essence by notice. If no date for delivery is specified in the Proposal, delivery shall take place within a reasonable time of the acceptance of the Proposal by Cottam Brush.
- D2.3 If for any reason the Client fails to accept delivery of any or all of the Goods when they are ready for delivery:
- D2.3.1 risk in the Goods shall pass to the Client (including loss or damage caused by the negligence of Cottam Brush) with immediate effect;
- D2.3.2 the Goods shall be deemed to have been delivered; and
- D2.3.3 Cottam Brush may store the Goods until delivery, whereupon the Client shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- D2.4 Cottam Brush may make delivery by separate instalments, in which case each separate instalment may, at the discretion of Cottam Brush, be individually invoiced and paid for by the Client in accordance with these Terms.
- D2.5 The Client shall be deemed to have accepted the Goods and Cottam Brush shall not be liable for any damage to or shortage in or other defect in the Goods unless Cottam Brush has received written notice at its principal office from the Client of such damage, shortage or defect within seventy two hours of the time when the Client discovered or ought to have discovered such damage, shortage or defect.
- D2.6 If Cottam Brush delivers to the Client a quantity of Goods of up to 10% more or less than the quantity specified in the Proposal, the Client shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata contract rate.

D3. Title and Risk

- D3.1 The Goods are at the risk of the Client from the time of delivery (or the deemed time of delivery in accordance with clause D2.3).
- D3.2 Ownership of the Goods shall not pass to the Client until Cottam Brush has received in full all sums due to it in respect of the Goods and all other sums that are or that become due to Cottam Brush from the Client on any account.
- D3.3 Until ownership of the Goods has passed to the Client, the Client shall:
- D3.3.1 hold the Goods on a fiduciary basis as the bailee of Cottam Brush;
- D3.3.2 store the Goods (at no cost to Cottam Brush) separately from all other goods (whether belonging to the Client or to any third party) in such a way that they remain readily identifiable as the property of Cottam Brush;
- D3.3.3 not destroy, deface or obscure any identifying marks or packaging on or relating to the Goods; and
- D3.3.4 maintain the Goods in a satisfactory condition and keep them insured on the behalf of Cottam Brush for their full price against all risks to the reasonable satisfaction of Cottam Brush. On request, the Client shall produce the policy of insurance to Cottam Brush.

D4. Warranties

- D4.1 Cottam Brush warrants that it will use reasonable skill and care in the production of the Goods.
- D4.2 Save in respect of defects that would have been apparent on a reasonably diligent inspection carried out by the Client at the time of delivery, Cottam Brush further warrants that the Goods will conform to the specification set out in the Proposal and/or any sample provided to the Client and that for a period of six months from the date of delivery or deemed deliver, the Goods shall be free from defects in workmanship and materials.
- D4.3 In the event of the breach by Cottam Brush of the warranties given at clause D4.2, Cottam Brush may, at its discretion, replace or repair the Goods found not to comply with the specification cited in the Proposal or to be defective in some way. The Client accepts and acknowledges that the repair or replacement of the Goods by Cottam Brush shall be its sole remedy in the event of the breach of the warranties given at clause D4.2, subject at all times to clause A6.6.

D4. Liability

- D4.1 Where Goods are supplied to conform with the Client's specifications in respect of design and components or raw materials, as set out in the Proposal, Cottam Brush shall have no liability to the Client for the quality, safety or suitability of the Goods and provides no warranty in respect thereof and the Client shall indemnify Cottam Brush against any loss, damages, costs, expenses or other claims arising in respect of the quality, safety or suitability of the Goods.
- D4.2 The liability of Cottam Brush to the Client, whether for breach of contract, negligence or otherwise, shall not exceed the price of the Goods as specified in the Proposal.

- D4.3 Cottam Brush shall not be liable for and damage to or defects in Goods caused by their improper use (including storage, commissioning, use or maintenance contrary to any operating instructions provided, whether the same are provided orally or in writing) or use outside their normal application or where the Client has informed Cottam Brush of damage or defects to the Goods in accordance with clause D2.5 or where the Client has not paid for the Goods in full.
- D4.4 Save for the conditions implied by section 12 of the Sale of Goods Act 1979 and always subject to clause A6.6, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, are excluded.
- D4.5 Save where delivery is not possible due to an event of force majeure, any liability of Cottam Brush arising from the non-delivery of Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note against any invoice (or part thereof) raised for the non-delivered goods in question.
- D4.6 Where the Client has rejected any Goods it shall have no further rights whatsoever in respect of the supply to itself of such Goods or the failure by Cottam Brush to supply Goods that conform to the specification provided in the Proposal.
- D4.7 Where the Client accepts or has been deemed to have accepted any Goods then Cottam Brush shall have no liability whatsoever to the Client in respect of such Goods save where specified in these Terms to the contrary.