



TERMS & CONDITIONS OF SALE

1 INTRODUCTION & DEFINITIONS

- 1.1 These conditions shall apply to all sales, installations, servicing and repairs of all Products and Services supplied or undertaken by Xact Building Profiles, hereinafter referred to as "**Xact**", "**we**", or "**us**", or "**our**".
- 1.2 The "**Client**", "**you**" or "**your**" means any person, firm, company or corporation or organisation which contracts with Xact for the supply of Products and/or Services.
The following definitions and rules of interpretation apply to these conditions:
- 1.3 "**Business Day**" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.4 "**Cancellation Form**" means the cancellation form referred to in clause 19.3 which can be found here [xactbp.co.uk/downloads].
- 1.5 "**Cancellation Period**" has the meaning given in clause 19.2.
- 1.6 "**CIS**" means the Income Tax (Contractors in the Construction Industry) (Amendment) Regulations 1998.
- 1.7 "**Client Customer**" means a customer of the Client for whom the Client is obtaining the Products and/or Services.
- 1.8 "**Client Materials**" means any materials owned by or supplied by a third party to the Client, on or with which Xact is to provide the Services.
- 1.9 "**Conditions**" means these terms and conditions as amended from time to time in accordance with clause 2.3.
- 1.10 "**Contract**" means the contract for the sale and purchase, hire, repair or refurbishment of Products or the supply of services or execution of works.
- 1.11 "**Force Majeure Event**" has the meaning given in clause 21.1.
- 1.12 "**Products**" means the Products (or any part of them) set out in the Order.
- 1.13 "**Installation**" means installation of the Products by Xact at the Site.
- 1.14 "**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in design, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.15 "**Order**" means the Client's order for the supply of Products and/or Services, which shall be the Client's acceptance, whether written or oral, of the Quotation.
- 1.16 "**Order Price**" means the aggregate price for the Products and/or Services detailed in the Order.
- 1.17 "**Project Completion Sign Off**" means the form to be signed by Xact and the Client in accordance with clause 10.3.
- 1.18 "**Quotation**" means Xact's written quotation for the supply of Products and/or Services based on the Specification and any discussions between Xact and the Client.
- 1.19 "**Sales Order Acceptance**" means Xact's written acceptance of the Order.
- 1.20 "**Services**" means the services supplied by Xact to the Client as set out in the Order, including where applicable, Installation.
- 1.21 "**Services Request Form**" means the form to be completed by a consumer Client requesting Xact to commence the Services during the Cancellation Period which can be found here [xactbp.co.uk/downloads].
- 1.22 "**Site**" means the building or part of a building including its external environs at which work is to be executed, services supplied, or to which Products are to be supplied under the Contract.
- 1.23 "**Specification**" means the description or specification for the Products and/or Services provided by the Client to Xact.

- 1.24 "**Survey**" means any survey of the Site or the property to which the Products are to be fixed and/or the Services are to be supplied.
 - 1.25 The headings appearing above each clause are for reference purposes only and shall not affect or limit the interpretation and effect of these Conditions as a whole.
- ### 2 BASIS OF CONTRACT
- 2.1 The Order constitutes an offer by the Client to purchase Products and/or Services in accordance with these Conditions.
 - 2.2 The Order shall only be deemed to be accepted when Xact issues a Sales Order Acceptance to the Client at which point and on which date the Contract shall come into existence ("**Commencement Date**").
 - 2.3 These Conditions apply to the Contract and shall supersede any earlier conditions issued by Xact or which the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
 - 2.4 No alterations, variation or additions to, or exclusion of any part, of these Conditions shall be effective unless specifically agreed to in writing by Xact.
 - 2.5 A Quotation 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 Products and Services to both businesses and consumers, except where application to one or the other is specified.
- ### 3 PRICE & PAYMENT
- 3.1 The Order Price shall be set out in the Sales Order Acceptance.
 - 3.2 Xact reserves the right to be paid the Order Price in instalments in accordance with the payments schedule detailed in the Sales Order Acceptance. Subject to clauses 7.5 and 19.2, the first instalment payable by the Client shall be non-refundable once received by Xact.
 - 3.3 The Client shall not apply any main contractor discount or any retention to the Order Price and the Order Price shall be paid in full in accordance with these Conditions.
 - 3.4 All invoices shall be addressed to the Client. The Client may arrange for the Client Customer to pay any invoice issued under the Contract, but Xact is not able to address any such invoice to the Client Customer.
 - 3.5 All prices quoted exclude VAT and all applicable taxes and duties, which shall be added to the invoice at the rate prevailing. The Client shall pay such additional amounts in respect of VAT at the same time as payment is due for the supply of the Products and/or Services.
 - 3.6 If the Client is, or at any time up to payment of the final instalment of the Order Price becomes, a "contractor" for the purposes of the CIS, the Client's obligations to make payment to Xact under the Contract will be subject to the provisions of the CIS.
 - 3.7 The price stated in any price list, or written or verbal quotation by Xact, is for goods ex-works, excluding delivery, offloading and assembly unless otherwise stated in writing.
 - 3.8 Any Quotation, detailed or budget, provided by Xact will be based on the information available, or schedule or drawings provided by the Client. It is the duty of the Client to make known any special requirements.
 - 3.9 Prices detailed in the Sales Order Acceptance are based on the Order. Xact reserves the right to charge additional fees at Xact's normal rates for any additional costs arising from variations to the Order communicated to Xact by the Client after the issue of the Sales Order Acceptance.
 - 3.10 Where a Survey is carried out, Xact reserves the right to charge additional fees in the event that additional costs are incurred as a result of the Client not following any instructions or guidance provided by the surveyor, or the Client making any changes to the structure(s) to which the Services are to be supplied.
 - 3.11 All prices are subject to variation without notice to cover any increase in costs incurred by Xact including the costs of materials, carriage, labour, overheads, imposition of tax duty or other levy and any variation of exchange rates since the date of Sales Order Acceptance.

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- 3.12 All Products quoted from stock are quoted subject to being unsold at the time the Quotation is issued.
- 3.13 Unless Xact agrees otherwise in writing the price shall not include the amount of any government or local authority fees for consents, nor any provision for the cost of heating, lighting, power and water used on Site, and such costs shall be the sole responsibility of the Client.
- 3.14 Xact reserves the right to amend any Quotation or invoice which contains any accidental typing, arithmetical or similar error or omission, at whatever stage it is discovered, and the Client agrees to pay Xact the corrected amount.
- 3.15 If at the Client's request or approval, Xact agrees to carry out any Services outside of normal working hours, as defined in Clause 9.3 then the Client agrees to pay the additional cost of such overtime working.
- 3.16 The Client shall not be entitled to withhold, or offset payment of any amount due to Xact, against any alleged claims made by the Client in respect of Products or Services supplied by Xact.
- 3.17 Where the Client owes Xact monies which have not been paid in accordance with clause 3.2, Xact may at its discretion suspend deliveries of Products or the provision of the Services without incurring any liability to the Client until the Client has paid such monies to Xact.
- 3.18 Without prejudice to Xact's right to enforce payment, if the Client fails to make payment in accordance with these terms, Xact is entitled to charge interest on any balance outstanding from the date the same became due, until payment is made, at the rate of 4% above the base rate of Bank of England from time to time.

4 SPECIFICATION AND ORDER

- 4.1 The Products and/or Services shall be as set out in the Order. The Client, whether acting directly for themselves or for any Client Customer, shall be responsible for ensuring that the Order is correct and contains all material details necessary for Xact to supply the Products and/or Services ordered.
- 4.2 The Client, whether acting directly for themselves or for any Client Customer, shall be solely responsible for ensuring that any Specification provided to Xact is accurate.
- 4.3 The Client shall be responsible for giving Xact any necessary information or samples relating to the Specification within a sufficient time to enable Xact to perform the Contract in accordance with these Conditions.
- 4.4 Xact reserves the right to make, without notice, any changes to the Specification which may be required to conform with any safety or statutory requirements, or, having regard to all the circumstances, considers them reasonable or desirable. Such changes will not affect the validity of the Contract.
- 4.5 The Client on placing its Order warrants that:
- 4.5.1 it has not relied on any representation made by Xact or its employees or agents, or upon any descriptions or technical specifications, drawings, dimensions or weights supplied by Xact or its employees, and waives any claim for breach of any such representation;
- 4.5.2 it is satisfied that the Products are sufficient and suitable for the purpose or purposes intended; and
- 4.5.3 the Products will (whether by the Client or by any third party) be properly used or dealt with, and only in a manner fit for the purpose for which they are supplied.
- 4.6 Although every effort will be made by Xact to match colours and materials used or supplied, Xact cannot guarantee that a variation in such colours and materials will not occur.

5 PRODUCTS

- 5.1 Subject to clauses 7.5 and 19.2, all Products are non-returnable and non-refundable.
- 5.2 Subject to clauses 7.5 and 19.2, it shall be at Xact's sole discretion to choose whether to accept the return of any Products which have been over-ordered, ordered incorrectly or are no longer wanted by the Client.
- 5.3 It is the responsibility of the Client to examine the Products on delivery for defects in materials and/or workmanship or design.

6 DELIVERY OF PRODUCTS

- 6.1 Any dates quoted for the delivery of the Products are approximate only, and the time of delivery is not of the essence.
- 6.2 Delivery is made by the Client collecting the Products from Xact's premises after Xact has notified the Client that the Products are ready for collection or by Xact delivering the Products to the Site, as agreed between Xact and the Client.
- 6.3 Where the Client appoints an agent to accept delivery on the Client's behalf, it shall be deemed by Xact that the agent has full powers and the right to authorise inspection and acceptance of delivery.
- 6.4 Xact reserves the right to deliver in instalments. Where the Products are delivered in instalments, each delivery shall constitute a separate contract, and failure by Xact to deliver any one or more of the instalments in accordance with these Conditions, or any claim by the Client in respect of any one or more instalments, shall not entitle the Client to treat the Contract as a whole as repudiated.
- 6.5 It is the responsibility of the Client to provide any equipment required for the offloading and distribution of the Products.
- 6.6 It is the Client's responsibility to notify Xact of any vehicular or access restrictions or difficulties in relation to the Site in advance of the delivery date.
- 6.7 If the Client fails to take delivery of the Products, or fails to give adequate delivery instructions, within three Business Days of Xact notifying the Client that the Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by Xact's failure to comply with its obligations under the Contract in respect of the Products:
- 6.7.1 delivery shall be deemed to have been completed at 9.00am on the third Business Day following the day on which Xact notified the Client that the Products were ready;
- 6.7.2 Xact shall return the Products to store (at its own or any third party's premises) and charge the Client for its reasonable costs including carriage, storage, insurance and VAT; and
- 6.7.3 if ten Business Days after Xact notified the Client that the Products were ready for the delivery the Customer has not collected them from the premises at which they are being stored by Xact, Xact may resell or otherwise dispose of the Products.
- 6.8 Notification of short deliveries or damage in transit must be made to Xact verbally within 24 hours of delivery and confirmed in writing within 5 Business Days.

7 QUALITY OF PRODUCTS

- 7.1 Xact will give the Client the benefit of any manufacturer's warranty in respect of the Products.
- 7.2 Xact warrants that on delivery, and for the duration of any warranty given by the manufacturer of the Products, ("**Warranty Period**") the Products shall:
- 7.2.1 conform in all material respects with their description and any Specification;
- 7.2.2 be free from material defects in design, material and workmanship;
- 7.2.3 be of satisfactory quality; and
- 7.2.4 be fit for purpose.
- IF THE CLIENT IS A BUSINESS CLAUSES 7.3 - 7.4 SHALL APPLY**
- 7.3 Subject to clause 7.4, Xact shall at its option, repair or replace any Products which do not comply with the warranty given in clause 7.2 if:
- 7.3.1 the Client gives notice in writing to Xact during the Warranty Period and within a reasonable time of discovery that the Products do not conform to the warranty set out in clause 7.1;
- 7.3.2 Xact is given a reasonable opportunity of examining such Products; and
- 7.3.3 the Client (if asked to do so by Xact) returns the Products to Xact's premises at the Client's cost.
- 7.4 Xact shall not be liable for the Products failure to comply with the warranty set out in clause 7.1 if:



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- 7.4.1 the Client makes any further use of the Products after notifying Xact in accordance with clause 7.3.1;
- 7.4.2 the defect arose as a result of the Client's failure to follow Xact's oral or written instructions as to the storage, installation, use or maintenance of the Products;
- 7.4.3 the defect arose as a result of any drawing, design or Specification provided by the Client;
- 7.4.4 the structure or roof to which the Products are to be fixed has not been built in compliance with building regulations;
- 7.4.5 the Client alters the Products without the prior written consent of Xact;
- 7.4.6 the defect arose as a result of fair wear and tear, wilful damage, negligence or abnormal conditions; or
- 7.4.7 the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- IF THE CLIENT IS A CONSUMER CLAUSES 7.5 - 7.7 SHALL APPLY**
- 7.5 If the Products do not comply with the warranty given in clause 7.2, the Client shall have 30 days to reject the Products and receive a full refund. This 30 day period shall commence on the date on which delivery of the Products has been completed and title to the Products has passed to the Client, and if the Products are to be Installed by Xact, installation has been completed.
- 7.6 If the 30 day period referred to in clause 7.6 has expired, and at any time during the six month period following delivery of the Products, the Products do not comply with the warranty in clause 7.2, Xact shall, at its option, repair or replace the Products. If any such repair or replacement fails to remedy the defect, the Client shall have the right, at its option, to reject the Products and receive a full refund, or keep the Products and receive a partial refund.
- 7.7 In the event that a defect in the Products arises after 6 months from the date of delivery of the Products, the Client must prove to Xact the defect was present at the time the Products were delivered. In such circumstances, any remedy shall be at Xact's discretion.
- 7.8 These Conditions shall apply to any repaired or replacement Products supplied by Xact.
- 7.9 Nothing in this clause 7 shall affect the rights and remedies of any Client who is a consumer under the Consumer Rights Act 2015.
- 8 SUPPLY OF SERVICES**
- 8.1 Xact shall supply the Services in accordance with the Specification in all material respects.
- 8.2 Xact shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 Xact warrants to the Client that the Services will be provided using reasonable care and skill and will comply with any pre-contract information given by Xact to the Client.
- 8.4 If the Services fail to comply with the warranty given in clause 8.3 Xact shall repeat the Services, at the request of the Client, or if this is not possible, Xact shall offer the Client a reduction to the Order Price in respect of the non-conforming Services under the Contract.
- 8.5 Nothing in this clause 8 shall affect the rights and remedies of any Client who is a consumer under the Consumer Rights Act 2015.
- 9 INSTALLATION**
- 9.1 Where Installation is to be undertaken by Xact, it shall be the Client's responsibility to make sure that Xact has unrestricted access to the installation area for free movement of personnel, Products and equipment between the installation area and any vehicles or storage areas required for the duration on Site, and to ensure that any such areas are ready in all respects for the Installation on such date as may have been agreed between the parties.
- 9.2 Where any other trades or works such as for example, the addition, alteration or removal of electrical communication equipment and cabling and/or the emptying of storage units or moving of furniture or building works is required prior to Installation, it is the Client's responsibility to co-ordinate such works and to ensure it is completed in time in accordance with clause 9.1 above.
- 9.3 Unless specifically agreed otherwise in writing by Xact, all installation costs, which shall be included in the Order Price, are based on working hours of 8:00am to 5:00pm during a Business Day, including reasonable travelling time, and that work can proceed on a single phase basis of starting on Site and continuing on consecutive days if needed until completion of the Installation.
- 9.4 In the event that conditions 9.1, 9.2 and 9.3 above are not complied with by the Client, Xact shall be entitled to make additional charges in respect of any costs and expenses incurred in consequence.
- 9.5 Where Installation is not undertaken by Xact or its approved subcontractor, the Client undertakes that the Products will be installed, used, stored, maintained and serviced in strict compliance with any relevant instructions of Xact and that the Client will notify any subsequent purchasers of such instructions. It is the Client's responsibility to ensure that these instructions have been obtained from Xact. Xact shall not be liable to the Client for any loss or damage suffered or incurred by the Client as a result of the Client's failure to comply with this clause 9.5.
- 9.6 Unless otherwise stated in the Quotation, Xact will not have allowed for access equipment or scaffolding in the Quotation. In the event Xact considers that either of these are necessary for safe working, then the cost of providing and erecting the same will be an additional cost which shall be payable by the Client.
- 9.7 Upon completion of Installation or other Services, Xact will take photos of the completed Installation or other Service for marketing purposes, which may include use of the images on its website and in its marketing materials. If the Client does not wish for such images to be used by Xact for marketing purposes, the Client must notify Xact of this in writing.
- 10 THE CLIENT'S RESPONSIBILITIES**
- 10.1 The Client shall:
- 10.1.1 ensure that the terms of the Order, and any Specification, are complete and accurate;
- 10.1.2 co-operate with Xact in all matters relating to the Services;
- 10.1.3 be responsible for obtaining and maintaining any required consents for carrying out the Contract, including planning permission, building control, and listed building consent, unless otherwise agreed with Xact;
- 10.1.4 ensure that at the date on which Supplier is due to commence the Services the Site is ready for the supply of the Services;
- 10.1.5 give Xact, its employees, agents and contractors unimpeded access to the Site during normal working hours as defined in Clause 9.3 during any Business Day for carrying out the Services and any incidental matters; and
- 10.1.6 comply with all applicable laws, including health and safety laws.
- 10.2 Unless no-one other than Xact's employees, contractors or agents can gain access to the Site during the period of the Services, the Client must make adequate secure on-site storage available for materials awaiting fixing and for plant, equipment and loose tools.
- 10.3 Upon completion of delivery of the Products and/or the supply of Services the Client shall be required to sign the Project Completion Sign-Off form to confirm that all of the Products have been delivered and/or the Services have been fully supplied.
- 11 DELAY CAUSED BY CLIENT**
- 11.1 If Xact cannot deliver the Products or commence the Services on any agreed date or perform any other of its obligations under the Contract because the Client requests Xact not to, or because the Site is not ready, or because of any default on the Client's part, or if there is any interruption to the continuity of the Services ("**Customer Default**"):

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- 11.1.1 without limiting or affecting any other right or remedy available to it, Xact shall have the right to suspend performance of the Services until the Client remedies 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 Xact's performance of any of its obligations;
- 11.1.2 Xact shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Xact's failure or delay to perform any of its obligations as set out in this clause 11;
- 11.1.3 the Client shall be liable to cover any costs or losses suffered or incurred by Xact arising directly or indirectly from the Customer Default which may include: any direct costs, including abortive journeys, fitter's labour, waiting time, additional handling, storage and transport costs, provided that in the case of fitter's labour costs, no charge will be incurred if no less than 7 days' notice of the postponement is given to Xact.
- 12 DELAY CAUSED BY XACT**
- 12.1 Any date given by Xact for delivery of any Products and/or the supply of the Services shall be approximate and shall be given from the later of the date on which the Survey is carried out, the first instalment of the Order Price is paid or when Xact received all necessary details in respect of the Products from the Client.
- 12.2 Xact shall not be liable for any losses or claims suffered or incurred by the Client as a result of any delay caused to the Site as a result of the lead time for the manufacture of the Products being longer than anticipated or the unavailability of personnel.
- 13 ADVICE, INFORMATION & SAMPLES**
- 13.1 Although every reasonable precaution will be taken to ensure the accuracy of information, descriptive matter, colours, dimensions, weights, fire and acoustic performance and other documentation supplied by Xact, and the descriptions and illustrations contained in Xact's catalogues, price lists and other marketing material, such information is approximate only and is intended merely as a general description of the Products. They are not, unless specifically expressed in the Sales Order Acceptance, deemed to form any part of the Contract and are not to be regarded as a warranty or representation.
- 13.2 Any estimates given in respect of quantities needed, or advice as to the suitability or fitness of any products for any particular purpose given by Xact or its employees or agents, is given in good faith but is without obligation or responsibility on the part of Xact, and the Client is entirely responsible for ascertaining the quantities required and the suitability and fitness of the Products or services for the purpose intended.
- 13.3 Any samples or other items which the Client supplies or arranges to be supplied to Xact, shall be delivered at the sole risk and expense of the Client and shall remain at the Client's risk and expense throughout the period of them, remaining at Xact's premises or such other address as Xact may specify.
- 13.4 Where samples are supplied, or are to be supplied by Xact, the Services shall not be commenced until the Client has confirmed to Xact in writing that the samples are in all respects satisfactory. Xact may at its own discretion deem that the Client has so confirmed to Xact that the samples are in all respects satisfactory if there is no express written rejection of such samples within 7 working days of delivery to the Client.
- 14 SUBCONTRACTING**
- 14.1 Xact may subcontract the whole or any part of its obligations under the Contract.
- 14.2 The Client must obtain Xact's consent before transferring or assigning the benefit under this Contract to any other person or firm.
- 15 THE CLIENT'S MATERIALS**
- 15.1 The Client warrants that any Client Materials:
- 15.1.1 are fit for the purpose of Xact providing the Services; and
- 15.1.2 comply with all applicable laws.
- 15.2 Notwithstanding the provisions of clause 18, if the Client requires Xact to carry out Work on the Client Materials, Xact's liability in respect of any loss or damage caused to any Client Materials will be limited to the cost at which the Client purchased or manufactured the Client Materials and Xact will not be liable for any loss of profit, loss of business or business interruption, or any indirect or consequential loss.
- 16 INTELLECTUAL PROPERTY RIGHTS**
- 16.1 Any specification, drawing or other particulars submitted to the Client by Xact with a Quotation or at any other time during the continuance of the Contract shall remain Xact's property and must be returned to Xact on request. Such items should not be disclosed to any third party without the consent of Xact.
- 16.2 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Client Materials) shall be owned by Xact.
- 16.3 Xact grants to the Client a non-exclusive, non-transferable, royalty free, worldwide licence to use any Intellectual Property Rights in or arising out of or in connection with the Services for the purpose of receiving and using the Services.
- 16.4 The Client grants to Xact a non-exclusive, royalty free, worldwide licence to use any Intellectual Property Rights in any Client Materials for the purpose of providing the Services.
- 16.5 The Client warrants that any samples, drawing, plans or any other materials or documents supplied by the Client to Xact do not infringe the Intellectual Property Rights of any third party. The Client shall indemnify Xact against all costs, claims and losses suffered or incurred by Xact, including any reasonable legal and professional fees, arising out of or in connection with any breach of the warranty contained in this clause 16.5.
- 17 RISK AND TITLE – RETENTION OF TITLE UNTIL PAYMENT IS MADE IN FULL**
- 17.1 The risk in the Products shall pass to the Client upon completion of delivery.
- 17.2 Products shall remain Xact's property until paid for in full and until any other monies owing by the Client to Xact have been paid for in full. Xact may enter the Site and detach (if possible) and recover such Products if payment is overdue, or if the Client has become insolvent, or if any act indicating insolvency has taken place.
- 18 LIABILITY**
- 18.1 Nothing in these conditions shall limit or exclude Xact's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, or fraud or fraudulent misrepresentation, or anything else in respect of which it would be unlawful to exclude or limit its liability.
- 18.2 Subject to clause 18.1, Xact shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract for:
- 18.2.1 loss of profits;
- 18.2.2 loss of sales or business;
- 18.2.3 loss of anticipated savings;
- 18.2.4 delay or interruption to business;
- 18.2.5 loss of or damage to property; and
- 18.2.6 any indirect or consequential loss.
- 18.3 Subject to clause 18.1, Xact's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the Order Price.
- 19 CANCELLING THE CONTRACT**
- IF THE CLIENT IS A BUSINESS OR THE PRODUCTS ARE BESPOKE CLAUSE 19.1 SHALL APPLY:**
- 19.1 If the Client is a business or has entered into the Contract for a business purpose, or the Client is a consumer but the Products are bespoke manufactured items, the Client shall have no right to cancel the Contract. Xact may at its discretion agree to cancellation of the Contract but shall not be obliged to do so. In circumstances where Xact is agreeable to the Contract being cancelled, the initial instalment of the Order Price shall be non-refundable.

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IF THE CLIENT IS A CONSUMER AND THE PRODUCTS ARE NOT BESPOKE CLAUSES 19.2 - 19.6 SHALL APPLY:

19.2 If the Client is a consumer and the Products are not bespoke manufactured items the Client shall have the right to cancel the Contract as follows:

19.2.1 the Client shall have 14 days from the date of the Sales Order Acceptance to cancel the Services under the Contract and receive a refund of any amounts paid in respect of such Services; and

19.2.2 the Client shall have 14 days from the date of delivery to cancel any Products under the Contract and, subject to clause 19.6, receive a refund of any amounts paid in respect of such Products. Where Products are delivered in instalments, the 14 day period shall start from the date on which the last instalment of the Products is delivered. In such circumstances, any Products under the Contract shall be returned by the Client or collected by the Supplier, as appropriate, at the Client's cost; and

19.2.3 in the case of Contracts for the supply of Products and Services, and where the Client wishes to cancel the whole Contract, the provisions of clause 19.2.1 shall apply.

In the case of each of 19.2.1 and 19.2.2 the 14 day period shall be the "**Cancellation Period**".

19.3 If the Client wishes to exercise its right to cancel the Contract, or any part of it under clause 19.2, the Client must telephone, email or write to Xact on the contact details set out in the Sales Order Acceptance, providing details of the Quotation reference and the part of the Contract which it is cancelling, or by using the Cancellation Form [xactbp.co.uk/downloads].

19.4 Xact shall not commence the Services during the Cancellation Period unless the Client has completed the Services Request Form [xactbp.co.uk/downloads]. For the avoidance of doubt, if the Client requests Xact to commence the Services during the Cancellation Period, the Client shall lose the right to cancel the Contract once the Services have been fully performed and full payment shall be due. If the Client requests Xact to commence the Services during the Cancellation Period, and subsequently cancels the Contract before the Services have been fully performed, the Client shall pay Xact in respect of the Services supplied up to the date of cancellation of the Contract.

19.5 If the Client cancels the Contract in accordance with clause 19.3, Xact shall refund any amount due to the Client within 14 days of receipt of the returned Products (in the case of Products), or within 14 days of the Client notifying Xact of its wish to cancel the Contract (in the case of Services). Any refund due to the Client shall be given using the same payment method as was used by the Client to pay with.

19.6 If the Client wishes to return Products under the Contract in accordance with clause 19.2.2, the refund due to the Client may be reduced by an amount to reflect any reduction in the value of the Products caused by the Client's handling of the Products.

20 DATA PROTECTION

20.1 Where Xact collects personal data from a Client for the purposes of the Contract, Xact undertakes to comply with applicable data protection legislation in force from time to time and to maintain the security of such personal data.

20.2 Xact shall only use the personal data for the purposes of fulfilling its obligations under the Contract.

20.3 Xact shall only permit access to the personal data to those its employees who need such access for the purposes of fulfilling the Contract.

21 FORCE MAJEURE

21.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if any such delay is caused wholly or in part, by act of God, outbreak of war, civil commotion, governmental policies or restrictions or control, including restrictions of export or import or other licenses, trade or industrial disputes of whatever nature, or any other event, circumstance or cause beyond its reasonable control.

21.2 In the event of a Force Majeure Event the time for performance by the party so affected of its obligations under the Contract shall be reasonably extended in the circumstances.

22 ADJUDICATION

22.1 In the event of any dispute or difference arising under or in connection with the Contract, either party may refer the matter to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 and the adjudicator nominating body shall be:

22.1.1 Royal Institute of British Architects;

22.1.2 The Royal Institution of Chartered Surveyors;

22.1.3 constructionadjudication.com;

22.1.4 Association of Independent Construction Adjudicators;

or

22.1.5 Chartered Institute of Arbitrators, and which shall be selected by agreement between the parties.

23 APPLICABLE LAW AND JURISDICTION

23.1 The contract shall in all respects be governed by and construed in accordance with English law.

23.2 It is irrevocably agreed that the Courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, the contract.

24 GENERAL

24.1 Any notice or other communication given to a party under or in connection with the Contract shall be delivered by hand or by pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (if a business) or its residential address (if a consumer); or sent by email to the address specified for the purpose of this clause 24.1. Delivery of any such notice or communication shall be deemed to have occurred at the time of delivery in respect of hand delivery, at 9.00am on the second Business Day after posting in the case of first class post or other next day delivery service, or at 9.00am on the next Business Day after transmission of an email. 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.

24.2 The failure of either party to the Contract to exercise or enforce any rights conferred by the Contract, or any particular clause of the Contract, shall not be deemed to be a waiver of any such right, nor operate so as to bar the exercise or enforcement of the Contract or any particular clause of the contract at any time in the future.

24.3 In the event of the invalidity of any of these Conditions of any paragraph, sub-paragraph or part thereof, the same should be severed and shall not affect the validity or enforceability of the remaining provisions.

24.4 No person other than a party to the Contract shall have any right to enforce any term of the Contract and the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999.

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

24.6 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.