**T&Cs FOR THE SUPPLY OF GOODS & RELATED SERVICES**

**BY ETOPIA INTERNATIONAL LIMITED (company number 13523001)**

1. **Interpretation**
	1. **Definitions:**

**Business Day**: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Commencement Date**: the date the Contract commences, as set out in the Sales Order.

**Conditions**: these terms and conditions set out in clause 1 to clause 13 (inclusive).

**Contract**: the contract between the Customer and Etopia for the sale and purchase of the Goods, and any related Services, which is made up of the Sales Order and these Conditions.

**Delivery Date**: the date specified for delivery in a Sales Order, in accordance with clause 3.2.

**Delivery Location and method**: the address for delivery of the Goods, as set out in the Sales Order.

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

**Project:** the construction, or other building project, being undertaken by the Customer as detailed in the Sales Order.

**Payment Terms:** as set out in the Sales Order.

**Sales Order**: Etopia’s Sales Order for the Goods, and any related Services, submitted to the Customer for acceptance and signature in accordance with clause 3.

**Price**: the price for the Goods, as set out in the Sales Order.

 **Quotation:** the written quotation provided by Etopia to the Customer which preceded the Sales Order.

 **Rejection Notice**:means a notice provided by the Customer to Etopia under Clause 4.4 upon receipt of defective Goods, specifying the alleged defect(s) and stating that Etopia rejects the defective Goods.

 **Services**:the services (or any part of them) as set out in the Sales Order.

 **Specification**: the specification for the Goods, including any related plans and drawings that are agreed in writing by the Customer and Etopia as referred to in the Quotation.

* 1. A reference 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;
	2. 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; and
	3. a reference to **writing** or **written** includes emails.
1. **Commencement and termination**

2.1 This Contract shall commence on the Commencement Date and shall continue, in accordance with the terms. Once the contract has commenced it can only be terminated by mutual agreement between the parties. On completion of the Sales Order Etopia will commit to significant expenditure on materials hence the reason that termination must then be mutually agreed.

2.2 The terms of this Contract shall apply to any Sales Orders, and the subsequent supply of Goods and Services, that were placed prior to the Commencement Date and which relate to the Project.

1. **Sales Orders**
	1. The Customer and Etopia may agree Sales Orders for Goods, and any related Services, at any time. The Customer shall be required to sign the Sales Order. However, should the Customer fail to sign a Sales Order but continue to engage Etopia for the supply of the Goods and Services detailed in a Quotation than the Sales Order shall be deemed to form part of the Contract.
	2. Etopia shall use its reasonable commercial endeavours to supply Goods, and any related Services, in accordance with the relevant Sales Order, by the delivery date specified in the Sales Order. However, all shipping and delivery dates are approximate and not guaranteed.
	3. The lead time between receipt of each order and the shipment date shall be agreed between the Customer and Etopia on an order-by-order basis provided always that the minimum lead time in all cases shall be 21 days.
	4. The Customer may not cancel or amend a Sales Order once signed without the written agreement of Etopia. Etopia begins manufacture of the Products on signing of the Sales Order and so it may not be possible to amend or cancel the Purchase Order.
2. **The Goods and Services**
	1. Etopia shall ensure that the Goods, and any related Services:
		1. correspond with their description and applicable Specification as detailed in the BDA Agrèment certificate applicable to the Products;
		2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by Etopia or made known to Etopia by the Customer expressly;
		3. shall be free from defects in design, material and workmanship;
		4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods**,** and the provision of any related Services;
		5. are provided with all the reasonable skill, care and diligence to be expected of a qualified and experienced member of Etopia’s trade undertaking the Services on works similar in scope and character to the Project;
	2. Etopia will ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
	3. The Customer has the right to inspect the Goods immediately upon unloading at the point of delivery and any defect or damage shall be notified in writing to Etopia within two (2) Business Days.
	4. Within ten (10) Business Days of arrival of each delivery of the Goods, the Customer shall be entitled to submit a Rejection Notice to Etopia specifying any defect by reason of which the Customer alleges that the Products delivered are not in accordance with the Specification and which should be apparent on reasonable inspection. The Customer must provide photos detailing any damage or defect evident with the Products following their unloading.
	5. If the Customer fails to give notice in accordance with Clause 4.3 or a Rejection Notice in accordance with Clause 4.4 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall be conclusively presumed to be in all respects in accordance with the Specification, The Customer shall be deemed to have accepted the delivery of the Goods in question and Etopia shall have no liability to the Customer with respect to that delivery and the relevant Goods.
	6. If the Customer gives such Rejection Notice in respect of any delivery of the Goods which are not in accordance with the Specification, the Customer and Etopia shall agree upon the period of time in which Etopia shall supply replacement Goods which are in accordance with the Specification (in which event Etopia shall not be deemed to be in breach of this Agreement or have any liability to the Customer beyond providing the replacement Goods).
3. **Delivery**
	1. Etopia shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.
	2. Etopia shall use all commercially reasonable efforts to deliver the Goods specified in each Sales Order:

		1. on or before its relevant Delivery Date;
		2. at the Delivery Location; and
		3. during the Customer's normal business hours, or as instructed by the Customer.
	3. Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.
4. **Title and risk**

6.1 Risk in the Goods shall pass to the Customer on completion of delivery. Title (ownership) in the Goods shall also pass on completion of delivery, provided that payment has been received for the Goods.

6.2 If payment has not been received for the Goods prior to their delivery then title shall remain with Etopia until payment. Etopia shall have the right to repossess the Goods from the Customer in the event of non-payment, including a right to enter premises owned, or occupied, by the Customer to enable repossession.

6.3 Where a Customer has not paid for Goods prior to their delivery the Customer shall insure the Goods for their full replacement value.

1. **Price and payment**
	1. The Customer shall pay for Goods, and any related Services, in accordance with this clause 7.
	2. Subject to the following provisions of this Clause 3, the price for the Goods shall be as stated in the relevant Sales Order.
	3. It is expressly acknowledged that Etopia may need to increase prices for the Goods from time to time to the extent that Etopia, in its sole discretion, considers the same to be justified by any material increase in the prices of raw materials used by Etopia in the manufacture of the Goods.
	4. Payment terms for the Goods, and any related Services, shall be in accordance with the relevant Sales Order.
	5. The Price:
		* 1. excludes amounts in respect of any applicable tax charges or duty, which the Customer shall additionally be liable to pay to Etopia at the prevailing rate, subject to the receipt of a valid tax or duty invoice; and
			2. includes the costs of packaging, insurance, and carriage of the Goods to the delivery destination.
2. **Customer materials**

8.1 Etopia acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to Etopia (**Customer Materials**) and all rights in the Customer Materials are and shall remain the exclusive property of the Customer. Etopia shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

1. **Indemnity**
	1. Etopia shall keep the Customer indemnified against all direct liabilities, reasonable costs and expenses, damages and losses (but excluding consequential losses and loss of profit) and all other reasonable professional costs and expenses suffered or incurred by the Customer as a result of or in connection with:
		* 1. any claim made against the Customer for actual infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of Etopia, its employees, agents or subcontractors; or
			2. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of Etopia, its employees, agents or subcontractors.
	2. The indemnities set out in Clauses 9.1 shall apply provided that:
	3. The Customer gives written notice to Etopia of any claim or proceeding as soon as is reasonably possible following receipt of it;
	4. The Customer makes no admission of liability, agreement or compromise and gives Etopia sole authority to defend or settle the claim or proceedings at Etopia’s cost and expense; and
	5. The Customer gives Etopia all reasonable information, access, and assistance in connection with any such claims or proceedings at Etopia’s cost and expense.
2. **Insurance and Liability**

10.1 During the term of the Contract and for a period of at least three years thereafter, Etopia shall maintain in force, with a reputable insurance company product liability insurance and public liability insurance, to a value of at least £3million and professional indemnity insurance to a value of at least £3million to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10.2 Save as stated in Clause 9.1, this Clause 10 sets out the entire financial liability of the parties (including that for the acts or omissions of their employees, agents or subcontractors) to each other for any breach of the Contract; any use or resale made by Etopia of the Products; and any representation, statement or tortious act or omission (including, but not limited to, negligence and breach of statutory duty) arising out of or in connection with the Contract.

10.3 Subject to Clauses 9.1 and 10.2, neither party shall be liable to the other, whether in contract, tort (including negligence), restitution, or for breach of statutory duty or misrepresentation for any loss of profit, loss of goodwill, loss of business opportunity, loss of anticipated saving, loss or corruption of any data or information, or any special, indirect or consequential damage or loss that may be suffered by the other party that arises out of or in connection with the Contract.

10.4 Nothing in the Contract shall limit the liability of either party to the other for fraud or fraudulent misrepresentation, for deliberate default or wilful misconduct, or for death or personal injury arising out of negligence.

10.5 Nothing in the Contract shall limit the liability of either Party to the other for breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or for breach of Section 2 of the Consumer Protection Act 1987.

10.6 Without prejudice to Clause 9.1, the total liability of Etopia arising out of or in connection with the Contract (whether in contract, tort (including negligence), restitution, for breach of statutory duty or misrepresentation or otherwise) shall be limited to three million Pounds (£3,000,000) in respect of any and all other acts or omissions occurring in each year.

10.7 Without prejudice to Clause 9.1, the total liability of Etopia arising out of or in connection with the Contract (whether in contract, tort (including negligence), restitution, for breach of statutory duty or misrepresentation or otherwise) shall be limited, in the case of unpaid invoices, to the sum outstanding together with any interest due, and in respect of any and all other acts or omissions occurring in each Year, to the sum of three million Pounds (£3,000,000) for that year.

1. **Compliance with relevant laws and policies**
	1. In performing its obligations under the Contract, Etopia shall comply with all applicable laws, statutes, regulations and codes from time to time in force applicable to its obligations arising under the Contract.
	2. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and notifying to Etopia the requirements of any such legislation or regulations requiring action on the part of Etopia and for the payment of any duties in connection with the Goods.
	3. Etopia is committed to eliminating all risk of bribery and corruption in our business.  We comply with our *Anti Corruption and Bribery Policy*.  We expect all our customers and partners to uphold the spirit of this policy and you shall not do any act or thing nor omit to do any act or thing for the benefit of, in the name of or on behalf of us that could cause us to be in breach of this policy or which is an offence under any applicable anti-corruption legislation including (but not limited to) the UK Bribery Act.
2. **Termination**
	1. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

		* 1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten Business Days of that party being notified in writing to do so;
			2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by Order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on; or
			3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
	2. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
	3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
3. **General**
	1. **Force majeure.** 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 such delay or failure result from events, circumstances or causes beyond its reasonable control, including default or failure by carriers. If the period of delay or non-performance continues for 4 weeks the party not affected may terminate this Contract by giving 10 Business Days’ written notice to the affected party. Where Etopia has manufactured Goods for the Customer the Customer shall remain liable for payment of the Price applicable to those manufactured Goods despite termination of the Contract by either party.
	2. **Subcontracting.** Etopia may subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer.
	3. **Confidentiality.**
		1. Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 13.3(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
		2. Each party may disclose the other party's confidential information:

			1. to its employees, 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 this agreement. Each party shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this clause 13.3(b); and
			2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
		3. No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.
	4. **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.
	5. **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
	6. **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.
	7. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
	8. **Notices.**
		1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing, including the email address used by the parties to conclude the Sales Order, in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or by email.
		2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
		3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
	9. **Third party rights.** No one other than a party to this agreement [and their permitted assignees] shall have any right to enforce any of its terms.
	10. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
	11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.