

Terms and Conditions



IMPORTANT These Terms and Conditions together with the Quotation govern and form an integral part of your contract with Function.

1. INTERPRETATIONS

1.1 In these conditions: "**Function**" means Function Business Relocation Limited, a limited company registered in England under number 10238805 whose details are set on each page of these Terms; "**Client**" means the person identified as such on the Quotation to whom Function has agreed to provide the Goods and/or Services; "**Affiliates**" means in relation to a party, a person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party's holding company; "**Agreement**" means these Terms and the Quotation which together constitute the contract for the provision of the Services and/or supply of the Goods; "**Agreement Date**" has the meaning set out in clause 2.2; "**Charges**" has the meaning set out in clause 8.1; "**Client Items**" means the items to be relocated by Function by Function providing the Services; "**Collection Point**" means the Client location specified in the Quotation from which the Client Items are to be collected by Function pursuant to the Services; "**Commencement Date**" means the date for the provision of the Services to start as set out in the Quotation; "**Confidential Information**" means all information (whether written, oral or in electronic form) concerning the business and affairs of either party that the other party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement, including information of a financial and technical nature and information about clients; "**Fit-Out**" means the supply, delivery and installation of goods and materials to create a commercial environment, including, but not limited to, partitions, ceilings, flooring, decorations, mechanical, electrical and fixtures, fittings and equipment; "**Fit-Out Terms and Conditions**" has the meaning set out in clause 2.7; "**Force Majeure Event**" means an act, event, omission or accident beyond a party's reasonable control, including but not limited to Acts of God (such as flood or earthquake, fire or explosion, adverse weather conditions, interruption or failure of utility services (such as electricity or gas) or significant disruption to roads or other transport systems; "**Function Materials**" means all materials and equipment used by Function in providing the Services; "**Goods**" means the goods supplied by Function to the Client as set out in the Quotation, including Second Hand Goods; "**Quotation**" means the quotation sheet in which these Terms are referred and either appended to or accompanied by; "**Normal Perils**" means loss of or damage to Goods and/or Client Items caused by fire, lightning, explosion, earthquake, aircraft, storm, flood, bursting and/or leaking pipes, theft accompanied by forcible and violent entry or exit, riot, strike, civil commotion, malicious damage and impact by vehicles; "**Removals and Storage Insurance**" has the meaning set out in clause 13.2; "**Second Hand Goods**" means the second hand goods supplied by Function to the Client as set out in the Quotation; "**Services**" means the Services supplied by Function to the Client as set out in the Quotation; "**Site**" means the location set out in the Quotation for the delivery of the Goods and/or the delivery of the Client Items, as applicable; and "**Terms**" means these terms and conditions.

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation. A reference to **writing** or **written** in these Terms includes e- mail.

1.3 Unless the context otherwise requires, reference to a term, condition or schedule is to a term or condition of or schedule to this Agreement.

1.4 Should any term of the Quotation conflict with these Terms, the term set out in the Quotation shall prevail.

1.5 References to a "party" or the "parties" are respectively to Function and/or the Client, but these terms are expressly distinguished from references to a "thirdparty".

1.6 Words denoting the singular number only include the plural and words denoting the masculine gender include the feminine and (in each case) vice versa. Any words following the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. BASIS OF CONTRACT

2.1 The Quotation once agreed by the Client constitutes an offer by the Client to Function to purchase Services and/or Goods in accordance with this Agreement.

2.2 The Quotation shall only be deemed to be accepted when Function confirms acceptance of the Quotation by counter-signing the same at which point and on which date the Agreement shall come into existence ("AgreementDate").

2.3 The Agreement constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Function which is not set out in the Agreement.

2.4 Any samples, drawings, descriptive matters or advertising issued by Function and any descriptions of the Goods or illustrations or descriptions of the Services contained in Function's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Agreement or have any contractual force.

2.5 Any Quotation given by Function shall not constitute an offer, and is only valid for a period of 28 days from its date of issue.

2.6 All of these Terms shall apply to the supply of both Goods and Services except where a term limits its application to just one or the other or where clause 2.7 below applies.

2.7 Where the Services and/or Goods supplied by Function relate to Fit Out, separate terms and conditions will apply to the supply of such Goods and Services (the "**Fit Out Terms and Conditions**") which will be made available to the Client. In the event that the Fit Out Terms and Conditions are not made available to the Client, these terms and conditions will apply.

3. GOODS

3.1 Function shall supply the Goods to the Client as described in the Quotation subject to these Terms.

3.2 Function reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory



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requirement.

4. DELIVERY AND INSTALLATION OF GOODS

4.1 Function shall deliver the Goods to the Site on the date agreed in the Quotation. Delivery of the Goods shall be deemed to be completed upon the Goods' arrival at the Site.

4.2 Function shall arrange and/or install the Goods as set out in the Quotation.

4.3 Any dates and times quoted for delivery, arrangement and/or installation of the Goods are approximate only, and the time for the same is not of the essence. Function shall not be liable for any delay in delivery, arrangement and/or installation of the Goods that is caused by a Force Majeure Event or by the Client's failure to provide Function with adequate delivery, arrangement and/or installation instructions or any other instructions that are relevant to the supply of the Goods and/or the Services.

4.4 If Function fails to deliver, arrange and/or install some or all of the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining and installing replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

5. QUALITY OF SECOND HAND GOODS

Function provides no warranties in respect of any Second Hand Goods supplied to the Client and all Second Hand Goods are supplied on an "as is" basis. All common law and statutory warranties are hereby expressly excluded in respect of Second Hand Goods.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Client on completion of delivery as set out in clause 4.1.

6.2 Title to the Goods shall not pass to the Client until Function has received payment in full of all Charges and other sums due in respect of:

6.2.1 the Goods; and

6.2.2 any other goods that Function has supplied to the Client in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Client, the Client shall:

6.3.1 hold the Goods on a fiduciary basis as Function's bailee;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Function's behalf from the date of delivery; and

6.3.4 notify Function immediately if it becomes subject to any of the events listed in clause 17.2.2 and/or clause 17.2.3,

however, the Client may resell or use the Goods in the ordinary course of its business.

6.5 If before title to the Goods passes to the Client the Client becomes subject to any of the events listed in clause 17.2.2 and/or 17.2.3 or Function reasonably believes that any such event is about to happen and notifies the Client accordingly, then, provided that the

Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy which Function may have, in order to recover the Goods Function may at any time require the Client (including via its Administrator or other third party which has control of the Client) to deliver up the Goods and, if the Client fails to do so promptly then the representatives of Function are hereby irrevocably licensed and permitted to enter any and all premises of the Client (and the Client shall procure that Function has the equivalent and necessary rights to enter the premises of any third party) where Goods are stored.

7. SUPPLY OF SERVICES

7.1 Function shall provide the Services to the Client as set out in the Quotation subject to these Terms. Any changes or additions to the Services must be agreed in writing by Function and the Client.

7.2 Function shall:

7.2.1 use reasonable endeavors to meet any performance dates for the Services specified in the Quotation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services; and

7.2.2 use reasonable endeavors to ensure that no loss or damage is caused to the Client Items or the Site in the performance of the Services.

7.3 Function shall not be liable for any loss or damage caused to the Client Items or to the Site unless:

7.3.1 any claim is notified in writing by the Client to Function as soon as such loss or damage is discovered or ought reasonably to be discovered and in any event no later than seven days from the date of delivery of any Client Items; and

7.3.2 in the event of any such claim arising out of damage to the Site, the damage is noted on Function's written job instructions at the time the damage occurs and is confirmed in writing to Function by the Client within seven days thereafter.

7.4 Where a claim is made in accordance with clause 7.3, Function reserves the right to require proof of value in relation to any lost or damaged Client Items or loss or damage to the Site.

7.5 Where Function is required to sell Client Items in performance of the Services, Function shall conduct the sale and account for the [profit/price obtained (less all expenses incurred in respect of the sale)] to the Client as set out in the Quotation.

7.6 Function may at any time, without notifying the Client, make any changes to the Services which are necessary to comply with any applicable health and safety or other statutory requirements; or are necessary because of a Force Majeure Event; or do not materially affect the nature or quality of the Services.

8. CHARGES

8.1 The Client shall pay the charges for the supply of the Goods and/or Services as set out in the Quotation plus any additional sums which are agreed between Function and the Client for the supply of the Goods and/or Services or which, in Function's sole discretion, are required as a result of the Client's instructions or lack of instructions, or any other cause attributable to the Client ("**Charges**").

8.2 Function may vary the Charges from time to time by giving



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written notice to the Client where:

8.2.1 there is delay to the provision of the Services which is not attributable to any act or omission of Function; or

8.2.2 the work is carried out on a weekend or public holiday at the Client's request; or

8.2.3 Function is required to collect or deliver items to or from storeys higher than ground floor and/or first floor and this was not notified to Function prior to the Agreement Date; or

8.2.4 Function incurs any additional fees or other costs relating to the provision of the Services not set out in the Quotation, including without limitation any penalty charge notices incurred due to a breach by the Client of clause 10.1.7; or

8.2.5 Function provides any additional Services not set out in the Quotation.

8.3 All Charges are exclusive of any value-added tax, for which the Client shall be additionally liable at the applicable rate from time to time.

8.4 The Charges and any additional sums payable under the Agreement shall be paid by the Client in accordance with the Quotation (together with any applicable value added tax – all prices in the Quotation or otherwise quoted are always provided by Function from time to time are quoted exclusive of VAT) without any set-off or other deduction which at no time shall be permitted in respect of this Agreement and the payment of the Charges.

8.5 If payment is not made on the due date set out in the Quotation, Function shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) calculated daily at the rate of 6% per annum above the base rate from time to time of Barclays Bank Plc from the due date until the outstanding amount is paid in full. The Client is further liable to Function for all Function's costs and expenses (including its legal costs) incurred in recovery of the outstanding amounts.

8.6 Orders placed with Function are divisible. Each delivery made thereunder:

- shall be deemed to arise from a separate contract, and
- shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for therein without reference to and notwithstanding any defect or default in the delivery of any other instalment or of any other instalment under any other contract.

9 CONFIDENTIAL INFORMATION

9.1 Function shall use all reasonable endeavors to keep any Confidential Information belonging to the Client which is so designated by the Client confidential, and all Confidential Information belonging to Function shall be kept confidential by the Client.

9.2 Clause 9.1 shall not apply to any document or other material, data or other information which are public knowledge at the time when they are so provided by the other party, and shall cease to apply if at any future time, they become public knowledge through no fault of the other party.

9.3 Notwithstanding clause 9.1, either party may disclose

Confidential Information to the extent required by law by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

10 CLIENT'S OBLIGATIONS

10.1 Throughout the duration of the Agreement the Client agrees to:

10.1.1 declare to Function the accurate value of the Client Items; ensure that, where ownership of the Client Items is not vested in the Client, it and its representatives have the authority to enter into this Agreement in respect of those items;

10.1.2 obtain at the Client's own expense prior to the Commencement Date all documents, permits, licences, customs documents or other materials and any data or other information necessary to enable Function to provide the Services;

10.1.3 ensure that providing the Services will not cause Function to handle or move any prohibited, restricted or otherwise illegal items;

10.1.4 ensure that all Client locations (including, but not limited to, the Collection Point and the Site) are both safe prior to the Commencement Date and throughout the period during which Function is required to provide the Services, including by ensuring that all Client Items (and/or other items and equipment which need disconnecting from any services in order to enable a Client Item to be relocated as per the Services) are disconnected from (at the Collection Point) and reconnected to (as the Site) all services (including electricity, water and/or gas) by a appropriately qualified service engineer with relevant and sufficient experience, as well as removing any explosive, caustic, inflammable, corrosive or other dangerous substances from all Client locations (including, but not limited to, the Collection Point and the Site);

10.1.5 ensure that the Client Items and their packaging are in good condition;

10.1.6 ensure that there will be adequate access to the Client Items at the Site for all vehicles and personnel to allow for safe and legal portage and loading;

10.1.7 ensure that any IT equipment included in the Client Items is in good working order other than any existing faults which have been communicated to Function prior to or on the Commencement Date;

10.1.8 ensure that all software and data stored in any electronic format has been suitably backed up and the Client has appropriate disaster recovery procedures in place;

10.1.9 be present or represented by a person with sufficient delegated authority so as to be able to give proper and immediate instructions to Function, throughout the removal of any items (including the Client Items) pursuant to the provision of Function of the Services, which person shall further ensure that no item (including any Client Item) is taken or left by Function in error;

10.1.10 arrange for any Client Items left at unoccupied or unattended premises to be properly secured;

10.1.11 disconnect and stabilise all electronic appliances and equipment prior to the provision of the Services and thoroughly defrost and clean any refrigerators and deep freezers;



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10.1.12 make Function aware of all risks to the health and safety of Function's employees, contractors or subcontractors prior to the Agreement Date;

10.1.13 keep and maintain in good condition all Function Materials at the Site in safe custody at the Client's own risk and not dispose of or use the Function Materials other than in accordance with Function's written instructions or authorization to ensure that all software (including programmes and operating systems) and data (including all electronic information) used and/or owned by the Client or any of its Affiliates, wherever the software or data is located, is properly and fully backed-up at all relevant times;

10.1.14 where the Services include decommissioning and/or recommissioning of IT equipment, ensure that adequate consumables for implementation and testing of all equipment are available; and

10.1.15 immediately bring to Function's attention any error, omission or act and afford Function reasonable opportunity to make corrections.

10.2 If Function's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation set out in clause 10.1 ("**Client Default**"):

10.2.1 Function shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client Default; and

10.2.2 the Client shall reimburse Function on written demand for any costs or losses sustained or incurred by Function arising directly or indirectly from the Client Default, including any costs or losses arising out of any claim made against Function by a third party.

11 LIABILITY FOR COMPUTER HARDWARE AND SOFTWARE

11.1 Function shall not be liable for any loss or damage suffered by the Client or any of its Affiliates caused by any IT equipment, IT parts or related materials used by or belonging to the Client and/or its Affiliates which have pre-existing faults, whether or not such faults were notified in advance to Function.

11.2 Subject to clause 11.3, all software (including programmes and operating systems) and data loading and configuration, and the installation and configuration of all IT equipment, IT parts and other materials shall be the sole responsibility of the Client and for which accordingly Function bears no responsibility nor any liability.

11.3 Without prejudice to clause 11.4 and clause 12, where the Services specifically provide for the decommissioning and/or recommissioning of the Client's IT equipment by Function, the Client shall notify Function of any fault or damage to the equipment caused by Function within three working days of completion of the Services and Function shall be given the opportunity to have such damage repaired by appropriately skilled persons. Function shall not be liable for any damage or fault where the Client fails to notify Function of such within the time period set out above.

11.4 Function shall bear no liability where the Client fails to comply with clause 12.3 and undertakes or engages a third party direct to carry out such repairs.

12 LIMIT OF LIABILITY

12.1 Nothing in these Terms shall limit or exclude Function's liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

12.1.2 fraud or fraudulent misrepresentation.

12.1.3 Subject to clauses 12.1, 4.4, 11.3, and 14: Function shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement; and

12.1.4 Function's total liability to the Client in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges.

13 INSURANCE

13.1 Function does not insure the Goods or the Client Items. The Client shall ensure that at all times it has insured the Goods and the Client Items against Normal Perils under a valid contract of insurance with a reputable insurance company in respect of the insurable risks related to the supply of the Goods and/or Services under this Agreement and will not cause or allow that insurance cover to lapse during the period Goods and/or Services are supplied. The Client warrants that such insurance cover will not be for a sum which is lower than the replacement value of the Goods and/or the Client Items.

13.2 Function offers the Client the opportunity to take out removals and storage insurance using a policy available through Function ("Removals and Storage Insurance"). The Client may apply for such Removals and Storage Insurance by accepting in writing the offer made in the quotation provided by Function and such insurance will be provided on the terms and conditions of the Removals and Storage Insurance policy which will be provided to you. Your insurance administration cost will be included in the Quotation (such insurance administration costs will not exceed 15% of the charges).

13.3 The excess to the client for each individual claim will be £250.00, this will be deducted from the final settlement offer.

13.4 Function does not give any advice concerning insurance for the Goods and/or the Client Items and the Client acknowledges that it is its responsibility to make its own judgment as to whether the insurance in place is appropriate to cover the Goods and/or the Client Items and risks to them.

14 EXCLUDED ITEMS

14.1 Unless otherwise agreed in writing, the following are excluded from this Agreement and Function shall not be liable for any loss or damage to any one or more of the following items, including where the same are Client Items:

14.1.1 jewelry, watches, trinkets, precious stones or metals, money, deeds, securities, stamps, coins, goods or collections of any similar kind;

14.1.2 potentially or actually dangerous, damaging or explosive items including gas bottles, aerosols or flammable materials;

14.1.3 plants or goods likely to encourage vermin or other pests or



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to cause infestation;

14.1.4 refrigerated or frozen food or drink;

14.1.5 any animals and their cages or tanks, including pets, birds or fish;

14.1.6 prohibited or illegal items, including without limitation drugs, firearms, or explosives; or

14.1.7 stolen goods.

15 LIEN

Function has the right to withhold and/or dispose of some or all of the Goods where there is a failure to make payment by the Client in accordance with clause 8.

16 OWNERSHIP OF FUNCTION EQUIPMENT

16.1 Title to the Function Materials remains vested in Function or other legal owner as appropriate.

16.2 The Client shall be responsible for obtaining a signed delivery note upon the return of any Function Materials, thereby evidencing their return to Function.

16.3 Additional Charges will be incurred in the event that the hire period for Function Materials under this Agreement is extended beyond the initial agreed term.

17 TERMINATION

17.1 The Client may terminate the Agreement:

17.1.1 without charge by giving to Function not less than 48 hours' written notice in advance of the Commencement Date; or

17.1.2 on less than 48 hours' notice prior to the Commencement Date subject to a Charge of 50% (fifty per cent) of the price (including insurance and VAT) set out in the Quotation.

17.2 Either party may (without limiting any other remedy) at any time terminate the Agreement with immediate effect by giving written notice to the other if:

17.2.1 the other commits any breach of the Agreement and (if capable of remedy) fails to remedy the breach within thirty days after being required by written notice to do so;

17.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as and when they fall due or

admits its inability to pay its debts or the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed, or suffers anything analogous to any of the foregoing.

18 COMMON CARRIER Function is not a Common Carrier.

19 GENERAL

19.1 Function shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event. If the Force Majeure Event prevents Function from providing any of the Services for more than 2 weeks, either party shall have the right to terminate this Agreement immediately by giving written notice to the Client.

19.2 Function may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party. The Client shall not, without the prior written consent of Function, assign, transfer, charge, subcontract or otherwise dispose of its rights or obligations under the Agreement. A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

19.3 No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Agreement by the other shall be considered a waiver of any subsequent breach of the same or any other provision.

19.4 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

19.5 English law shall apply to the Agreement and the parties agree to submit to the non-exclusive jurisdiction of the English courts.



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