

ASGARD SECURE STEEL STORAGE(“Asgard”), a trading division of **FLEXIFORM BUSINESS FURNITURE LIMITED**, a Company registered in England Company Number 2542123 whose registered office is at 1392 Leeds Road, Bradford, West Yorkshire BD3 7AE

TERMS AND CONDITIONS OF SALE

1. **Definitions**

In these Conditions:

“Act of Insolvency” means any one or more of the following namely a notice is issued to convene a meeting for the purpose of passing a resolution to wind up a company or a partnership or such a resolution is passed; a resolution is passed by its directors to seek a winding up or an administration order against a company; a resolution is passed seeking a winding up or an administration order against a partnership; a petition for a winding up or an administration order is presented against a company or against a partnership or such an order is made; a petition for a bankruptcy order is presented or such an order is made; a proposal for a voluntary arrangement or an application for an interim order is made under the Insolvency Act 1986; a party takes any action (including starting negotiations) with a view to readjustment, rescheduling or deferral of any part of its indebtedness; a party proposes or makes any general assignment, composition or arrangement with or for the benefit of all or some of its creditors; a party suspends or threatens to suspend making payments to all or some of its creditors; a party becomes subject to any type of voluntary arrangement; a receiver (administrative or otherwise) is appointed over all or part of a party’s assets; any action is taken outside the United Kingdom which is similar or analogous to any of the foregoing or the other party has reasonable grounds for believing that any of the foregoing is imminent;

“Business Day” means any day (other than Saturday or Sunday) on which clearing banks are open for normal banking business in sterling in the City of London;

“Confidential Information” means all secret or confidential commercial, financial and technical information, know how, trade secrets, inventions, computer software and other information whatsoever and in whatever form or medium and whether disclosed orally or in writing, together with all reproductions in whatsoever form or medium and any part or parts of it;

“Contract” means the contract made between Asgard and the Customer for supply of the Goods and/or Services which is subject to these Conditions;

“Customer” means the party with whom Asgard contracts;

“Goods” means all or any of the goods works and materials to be supplied by Asgard including any samples of the Goods provided to the Customer for demonstration purposes;

“Services” means any services to be performed by Asgard;

2. **Basis of contract**

- 2.1 These Conditions shall form the terms and conditions of the Contract and shall apply to the exclusion of any terms or conditions whether put forward by or on behalf of the Customer in or on its order or otherwise or whether implied by law (insofar as the exclusion of the same is lawful).
- 2.2 The placing by the Customer of any order shall constitute an offer by the Customer. No contract shall come into existence unless Asgard accepts the Customer's order in writing.
- 2.3 No alteration to these Conditions shall be effective unless expressly agreed to in writing by Asgard.

3. **Information, samples and materials supplied**

- 3.1 The Customer shall be responsible to Asgard for ensuring the accuracy and sufficiency of its order (including of any applicable specification and/or sample). Asgard shall be entitled to charge the Customer for all costs (and a reasonable element of profit) incurred by it where variations to Goods and/or Services are requested to the Customer and accepted by Asgard.
- 3.2 Asgard will supply such demonstration samples of the Goods as are appropriate and agreed with the Customer.

4. **Delivery**

- 4.1 Any time quoted by Asgard for delivery of all or any of the Goods and/or performance of all or any of the Services is an estimate only and time shall not be of the essence. Asgard shall not be liable for any failure to meet any such estimate, nor for any loss, of whatsoever nature resulting directly or indirectly therefrom.
- 4.2 Asgard reserves the right to deliver all or any of the Goods and/or the Services in advance of the estimated date.
- 4.3 The Goods shall be delivered to the address shown on the relevant order unless otherwise stated by Asgard in the order acknowledgement
- 4.4 If Asgard is unable to tender delivery of the Goods at the address shown on the order Asgard may pending the agreement of a revised delivery date and/or address deliver the Goods to the Customer's premises and the Customer shall store such Goods at its risk and expense and the provisions of clause 8 shall apply to such Goods.
- 4.5
- 4.5.1 Notification of short delivery of components or damage in transit must be made in writing to Asgard within 5 days of the receipt of the Goods;
- 4.5.2 The Asagrd shall at its option either make good by replacement or supply any such short delivery of parts or damage notified as aforesaid and save as provided in this Condition 4.5.2 shall not be liable for any such short delivery or damage in transit nor for any loss, financial or otherwise resulting directly or indirectly therefrom. In no event shall

Asgard be liable to the Customer in connection with any damage or loss in transit where delivery takes place at the Asgard's premises.

5. **Description**

All descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weight and dimensions supplied by Asgard are approximate only and Asgard reserves the right without notice to the Customer to make alterations thereto and to supply the Goods so altered in performance of the Contract provided that such alterations do not materially affect the characteristics of the Goods.

6. **Cancellation**

Following acceptance by Asgard of the Customer's order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the written consent of Asgard and upon terms that the Customer shall indemnify Asgard in full against all loss (including without limitation loss of profit) damages, costs expenses and other liabilities awarded against or incurred by Asgard as a result of or in connection with the cancellation.

7. **Price**

7.1 Subject to prior written agreement to the contrary, Asgard shall be entitled to invoice the Customer for the price of the Goods on or at any time after the despatch of the Goods together with the installation charge as shown in Asgard's then current catalogue and on Asgard's website if Asgard is requested to install the Goods and the relevant delivery charge.

7.2 Unless otherwise expressly stated in writing, all prices are exclusive of VAT which shall be charged where appropriate at the rate prevailing at the relevant tax point.

7.3 The Customer shall make payment in full within 30 days following the date appearing on Asgard's invoice notwithstanding that the delivery may not have taken place and the property in the Goods may not have passed to the Customer. Interest at the annual rate of 3% over the base rate of the Royal Bank of Scotland Plc will be charged on all monies outstanding after the due date until the actual date of payment (both before and after judgment), and any cash discount will not be allowed to the Customer.

8. **Risk and title**

8.1 Risk in the Goods shall pass to the Customer immediately on delivery to the Customer or into custody on the Customer's behalf whichever is the sooner.

8.2 Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain in Asgard until Asgard has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by Asgard to the Customer under any other contract whatsoever.

8.3 Until property in and title to the Goods passes to the Customer

8.3.1 the Customer shall keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to Asgard the Customer or any third party;

- 8.3.2 Asgard shall be entitled at any time forthwith to revoke the Customer's power to deal with the Goods; and it shall automatically cease if the Customer shall commit or be subject to any Act of Insolvency; and
- 8.3.3 the Customer shall not make any modification to the Goods or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods.
- 8.4 Upon termination of the Customer's power to deal with the Goods, the Customer shall place the Goods at the disposal of Asgard and Asgard and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Customer or any third party for the purpose of removing the Goods.
- 8.5 If any of the foregoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

9. **Termination and suspension**

Without prejudice to any rights and remedies available to it, Asgard shall be entitled, forthwith on written notice to the Customer either to terminate the Contract wholly or in part and/or any other contract with the Customer or to withhold performance of all or any of its obligations under the Contract and/or any other contract with the Customer (and on the giving of such notice all monies outstanding from the Customer to Asgard shall become immediately due and payable) if any sum owing to the Asgard from the Customer on any account whatsoever shall be unpaid after the due date for payment (in which event Asgard shall have a general lien for any such sum on all and any property of the Customer in its possession) or the Customer shall commit or be subject to any Act of Insolvency or the Customer shall commit any breach of any contract (including without limitation the Contract) with Asgard.

In the event of a suspension of performance Asgard shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

10. **Warranty**

10.1 Asgard shall:

10.1.1 make good at its option by reimbursement of the whole or part of the price (and, where relevant, as a deduction from any part of the price remaining unpaid) or by repair or by replacement of the defective panel or parts as appropriate:-

10.1.1.1 subject to Condition 5 any failure by the Goods to correspond with their specification at the time of delivery;

10.1.1.2 any defect developing under normal use in the Goods and due solely to faulty design (except where the design is supplied by or on behalf of the Customer) materials and/or workmanship;

- 10.1.1.3 any perforation by water or rust affecting the carcass of the Goods within 10 years of delivery;
 - 10.1.1.4 any defect developing under normal use in the lock(s) of the Goods within 1 year of delivery;
 - 10.1.1.5 any defect under normal use in the locking mechanism within 5 years of delivery.
- 10.1.2 make good by reimbursement of the price or by reperformance of the Services any defective workmanship in the performance of Services;
- provided that:
- 10.1.3 any failure to meet specification is notified in writing to Asgard within 7 days from the date of delivery or (where the failure was not apparent on reasonable inspection) within 7 days after discovery of the failure quoting the relevant serial numbers of the complete unit concerned;
 - 10.1.4 Asgard shall be under no liability in respect of any defect arising from fair wear and tear, or other acts of the Customer including without limitation wilful damage, negligence, lack of proper maintenance or servicing, abnormal working conditions, failure to follow Asgard's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Asgard's approval;
 - 10.1.5 any Goods alleged to be defective are promptly made available to Asgard for inspection and, if so required by Asgard, are promptly returned at the Customer's risk and expense to the Asgard's works for inspection.
 - 10.1.6 the above warranty does not extend to parts, materials or equipment not manufactured by Asgard in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Asgard and can be transferred.
- 10.2 Provided that nothing in this Condition shall operate so as:-
- 10.2.1 to exclude Asgard's non-excludable liability in respect of death or personal injury caused by the negligence of Asgard its servants or agents;
 - 10.2.2 to affect the statutory rights of the Customer where Goods are sold or Services are supplied to a Customer dealing as a consumer within the meaning of Unfair Contract Terms Act; or
 - 10.2.3 to exclude the application of Section 12 of the Sale of Goods Act 1979;
 - 10.2.4 to exclude liability for fraudulent misrepresentation.
- 10.3 Asgard shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by Asgard its servants or

agents, in a sum which is greater than the price of the defective Goods giving rise to such loss or damage.

10.4 Asgard shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss of profits and/or loss of production or any indirect or consequential (including economic) loss of any kind which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by Asgard, its servants or agents.

11. **Health and safety**

For the purposes of Section 6(8) of the Health and Safety at Work Etc Act 1974 the Customer undertakes to comply with all instructions relating to the Goods received from Asgard from time to time and to take such other steps sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when being properly used, set, cleaned and maintained by a person at work.

12. **Intellectual property rights**

12.1 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, database right, design right, registered design, trade mark or other industrial or intellectual property rights of any other person or any claim is made in respect of passing off or unauthorised use of Confidential Information in relation to the Goods and/or their use or resale the Customer shall forthwith notify Asgard in writing and Asgard shall be given full control of any proceedings or negotiations in connection with any such claim. The Customer shall give Asgard all reasonable assistance for the purposes of any such proceedings or negotiations and except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Asgard (which shall not be unreasonably withheld). The Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which Asgard may have in relation to such infringement.

12.2 If the Goods are to be manufactured or any process is to be applied to the Goods by Asgard in accordance with a specification submitted by the Customer, the Customer shall (without prejudice to the other rights and remedies of Asgard) indemnify Asgard in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by Asgard as a result of or in connection with

12.2.1 any claim for infringement of any patent, copyright, database right, design right, registered design, trade mark or other industrial or intellectual property rights of any other person and/or for passing off and/or unauthorised use of Confidential Information which results from Asgard's use of the Customer's specifications;

12.2.2 any other liability of any kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from the specification.

13. **Contracts for Services**

If the Contract is for or to include Services to be performed by Asgard the following provisions shall apply:-

- 13.1 Asgard shall only be obliged to carry out Services during normal working hours and shall be entitled to charge for any overtime worked upon request by the Customer.
- 13.2 Where Services are performed at the premises of the Customer, the Customer shall provide free of charge:-
- 13.2.1 Proper and safe storage and protection of all Goods, tools, plant, equipment and materials on site;
 - 13.2.2 Free and safe access to the site and place where the Services are to be performed;
 - 13.2.3 All facilities and services necessary to enable such Services to be performed safely and expeditiously;
 - 13.2.4 If such Services include the installation of Goods, all builders work, foundations and cutting away and making good where necessary;
 - 13.2.5 The availability of all plant and equipment to permit the Goods to be tested upon completion of Services.
- 13.3 The Customer shall pay Asgard any expenses incurred by Asgard by reason of a breach by the Customer of any of its obligations in this Condition without prejudice to the Asgard's right to recover any loss thereby occasioned.
- 13.4 Goods and Services supplied on the site of the Customer are at all times at the sole risk of Asgard and if any part is lost or destroyed for any reason whatsoever Asgard shall be entitled to charge as a variation to the Contract for the restoration of such Goods and/or Services. The Customer shall for the benefit of itself and Asgard insure and keep insured with reputable insurers the full value of Goods and Services against every kind of loss, damage or destruction. The Customer shall produce the policy to Asgard upon request together with the latest premium receipts and in default of effecting the same Asgard shall be entitled to do so and add the cost of such insurance to the Contract price.

14. **General**

- 14.1 It shall be the responsibility of the Customer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with. It shall be a condition precedent to the performance by Asgard of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Customer.
- 14.2 Without prejudice to the generality of Condition 14.1 the obtaining of any relevant exchange control consents shall be a condition precedent to the performance by Asgard of any of its obligations under the Contract.

- 14.3 Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.

The rights and remedies of the Customer in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by Asgard to the Customer nor by any failure of or delay by Asgard in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by Asgard shall not affect its rights and remedies as regards any other party nor its rights and remedies against the Customer in whose favour it is granted or made except to the extent of the express terms of the release and no such release shall have effect unless granted or made in writing. The rights and remedies in this Contract are cumulative and not exclusive of any rights and/or remedies provided by law.

- 14.4 The Contract is personal to the Customer. The Customer shall not assign, transfer or charge its rights and responsibilities under this Contract or any of them, nor appoint any sub-contractor or agent without the prior written consent of Asgard.

- 14.5 The provisions of the Conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.

- 14.6 The headings in these Conditions are for convenience only and do not affect the interpretation of the Contract.

- 14.7 The Conditions and the Contract shall not constitute and shall not be deemed to constitute a partnership between Asgard and the Customer and the Customer shall not act nor purport to act as agent for Asgard but solely as an independent contractor.

- 14.8 All notices under this Contract shall be in writing and may be served by post or facsimile transmission addressed to the other party at the address given in this Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under this Contract and every such notice shall be deemed to have been served by post at the expiration of 2 days after despatch of the same or if sent by facsimile transmission at ten hours local time on the next normal Business Day of the recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays shall not in any event be treated as days on which service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.

- 14.9 For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any provision of these Conditions.

- 14.10 The Contract shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts, save in the case of a Customer who has no assets within the jurisdiction of the English Courts and who is established in a country which will not enforce the judgement of the English Courts. In those

circumstances Asgard may if it chooses refer any disputes arising out of the Contract to arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, such arbitration to take place in London and the language of the arbitration shall be English.