



Terms & Conditions

Quotation Validity - This quotation remains valid for the period stated on page 1 of this quotation. However, we do understand that there are many obstacles to negotiate in the purchase of large items such as our products. We therefore will do our best to hold the prices quoted to help with the-aforementioned. For all queries regarding the validation of our quotations please do not hesitate to contact us at any time

Deposit Payment - A **non-refundable** deposit of 25% of the total contract value is required at the time of order. The date of payment of this deposit will be deemed as day 1 of the contract & no work will be undertaken until this deposit has been received

Storage - Storage charges for any items of equipment ordered from Sunshade Services Ltd. Is specifically excluded from this contract. All items ordered will be stored, if required for an initial period of up to 8 weeks from the date of receipt of the deposit payment before any charges are incurred. Storage of any items after this date will be charged at a rate of £100 per week or £20 per day for the final week of storage. It is the client's responsibility to ensure that the site will be accessible for installation before the storage period begins

Right of ownership - The goods sold remain the full and entire property of Sunshade Services Ltd. until payment in full of the purchase price has been made. However, the client shall be liable for the risks of deterioration or theft of any items of equipment installed at the location that they have selected. It is the client's responsibility to underwrite all possible insurance coverage of their choice

Public Liability Insurance - Our Company carries comprehensive public liability insurance. A copy of the insurance certificate can be provided upon request.

Method Statement & Risk Assessment - If required, we can prepare a method statement & a risk assessment covering all aspects of our work.

Soil Conditions - We have assumed that soil conditions on the site are suitable for our standard footing design. Should this not be the case an additional fee will be charged to cover the alteration to the specification i.e. to cover the costs associated with larger footings and/or columns.

Site Egress - Whilst work is being carried out, it is your responsibility to ensure that the working area is made out-of-bounds to any other person who is not associated with the works unless otherwise approved by our company. If security fencing is required, we can supply this at an additional cost.

Site Access - During the installation we have assumed that minimum access will be available for the use of a mini size excavator if required. Space must be made available on site for the siting of a skip of the appropriate size & for the parking of 1 or possibly 2 lorries.

Site Security - Specific site security is normally required. However, should the need arise, we have assumed that you will provide us with lockup facilities for tools and/or materials as required.

Welfare Facilities - It is assumed that welfare services will be made available, to our personnel at-all-times during the installation.

Power & Water Requirements - It is the responsibility of the client to provide a 240Volt power supply & running water facilities for the duration of the installation

Hidden Services - All care will be taken when conducting surveys to locate as accurately as possible the location of all existing underground services prior to the commencement of works. However, no responsibility will be accepted for the damage of any unknown or incorrectly located services. Where possible, we ask that you provide any drawings or plans for existing services including; electric cables, gas pipes, sewers, water, telephone, fibre-optics etc.

Existing Pavements & Surfaces

Trafficable Damage - All due care will be taken to avoid damage to any such features. However, no responsibility will be accepted that may be incurred during installation. This includes; subsidence, pavement cracking and/or buckling due to machinery, scrapes & discolouration.

Finished Levels - Where any surface is broken for excavation, unless specifically quoted & agreed otherwise we will not be responsible for the reinstatement or repair of any surface that needs to be excavated or broken to allow us to carry out our specified task. Where we have allowed for reinstatement, we will fill to the existing surface with concrete infill which will be troweled smooth for a clean finish

Concrete/Asphalt Cutting - Where any cutting is necessary a portable demolition saw, or larger mechanical saw shall be used depending on the site requirements, cutting depth required, available access etc.

Site Tidiness/Waste Removal - All waste material created, as-a-result of the excavation of the footings / concrete bases will be removed from site at no extra cost unless otherwise agreed. All waste removal from site created as-a-result of the installation of any structure will be the client's responsibility

Guarantees - No liability will be accepted for damage to any item of equipment due to vandalism, Extreme rainfall (above average for the time of year), snow & high wind conditions (greater than the specified guarantee), bird damage through clawing or pecking, penetration by any foreign object eg. tree branches & twigs or any other unforeseen 'act of God'. Should any amount of snow remain on the structure or rain remain in the gutters for any period-of-time, there is a danger of the fabric material 'sagging', which cannot be removed once it has occurred meaning that the only course of action available will be to supply a new fabric. All establishments must have a named individual who must take responsibility for thorough & regular checks of your structure during periods of extreme rainfall & snowfall. Should any structure show signs of 'sagging' it will be that person's responsibility to ensure that any or all rain or snow is cleared as much as possible from that structure. No liability will be accepted by Sunshade Services Ltd. for a lack of continued maintenance on your structure.

Our guarantees & warranties are as follows:

Shade Sail Structures –100mm snow / 40mph winds

1-year guarantee against faulty workmanship on any component part of the installation

1-year guarantee on bumper pads unless caused by any item in the 'guarantees' clause

5-year guarantee on all structures covering movement of posts & footings unless caused by any item in the 'guarantees' clause

3-year guarantee on all shade sails including their construction unless caused by any item in the 'guarantees' clause

Fixed Conical Structures, Umbrella & Star Structures –200mm snow / 40mph winds

1-year guarantee against faulty workmanship on any component part of the installation

1-year guarantee on bumper pads unless caused by any item in the 'guarantees' clause

5-year guarantee on all structures covering movement of posts & footings unless caused by any item in the 'guarantees' clause

3-year guarantee on all umbrella covers including their construction unless caused by any item in the 'guarantees' clause

Fixed Canopy Structures – 200mm snow / 50mph winds

1-year guarantee against faulty workmanship on any component part of the installation

1-year guarantee on bumper pads unless caused by any item in the 'guarantees' clause

5-year guarantee on all structures covering movement of posts & footings unless caused by any item in the 'guarantees' clause

Retractable Awning Structures – no snow / no wind

1-year guarantee against faulty workmanship on any component part of the installation

1-year guarantee on bumper pads unless caused by any item in the 'guarantees' clause

5-year guarantee on all structures covering movement of posts & footings unless caused by any item in the 'guarantees' clause

1-year manufacturers guarantee on the retractable awning unless caused by any item in the 'guarantees' clause

Folding Umbrella Structures – no snow / no wind

1-year guarantee against faulty workmanship on any component part of the installation

1-year guarantee on bumper pads unless caused by any item in the 'guarantees' clause

1-year manufacturers guarantee on the folding umbrella & cover unless caused by any item in the 'guarantees' clause

Trent Canopy Structures – 100mm snow / 40mph winds

1-year guarantee against faulty workmanship on any component part of the installation

1-year guarantee on bumper pads unless caused by any item in the 'guarantees' clause

5-year guarantee on all structures covering movement of posts & footings unless caused by any item in the 'guarantees' clause

1-year guarantee on all covers including their construction unless caused by any item in the 'guarantees' clause

No guarantee on gutters

Important Note

The guarantee regarding structural movement is void if the concrete foundation blocks are installed into grass, soil or any other built up or non-solid natural ground

The guarantee only applies where the top surface is either tarmac or concrete which creates a solid structure for our foundation blocks to lock into

Sunshade Services Limited Contractual Terms & Conditions

The customer's attention is drawn in-particular to the provisions of clause 9.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

Contract: the contract between Sunshade Services and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Credit Terms: an agreement between Sunshade Services and the Customer that any invoice for the supply of Goods and/or Services is to be paid within 30 days of the date of that invoice.

Customer: the person or firm who purchases the Goods and/or Services from Sunshade Services.

Force Majeure Event: has the meaning given in clause 10.

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

Goods Specification: any specification for the Goods including any related plans and drawings, that is provided in writing to Sunshade Services by the customer or produced by Sunshade Services and agreed in writing by the Customer.

Order: The Customer's order for the Goods or Services, as set out in the Customer's written acceptance of Sunshade Services quotation.

Sunshade Services: Sunshade Services Limited (registered in England and Wales with company number **07583042**).

Services: the services supplied by Sunshade Services to the Customer as set out in the order or service specification

Service Specification: the description or specification for the Services provided in writing to Sunshade Services by the customer or produced by Sunshade Services and agreed in writing by the Customer.

1.2 **Construction.** In these Conditions, the following rules apply:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) 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.

(d) 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.

(e) A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Sunshade Services issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Sunshade Services which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by Sunshade Services and any descriptions or illustrations contained in Sunshade Services catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or any other contract between Sunshade Services and the Customer for the sale of the Goods.

2.5 A quotation for the Goods given by Sunshade Services shall not constitute an offer. Where a quotation states that it shall only be valid for a certain number of Business Days from its date of issue, this constitutes only a commitment by Sunshade Services to honour the terms of such quotation and not renegotiate it in the event that the Customer makes an offer on the basis of the quotation, but Sunshade Services shall not be obliged to accept the offer.

3. DELIVERY

3.1 Sunshade Services shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Sunshade Services reference

numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the

Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if Sunshade Services requires the Customer to return any packaging materials to Sunshade Services that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Sunshade Services shall reasonably request. Returns of packaging materials shall be at Sunshade Services expense.

(c) Sunshade Services shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Sunshade Services notifies the Customer that the Goods are ready. If the parties have agreed that the Customer shall collect the Goods from Sunshade Services premises or some other location (**Collection Location**), the Customer shall make such collection within 3 Business Days of Sunshade Services notifying the Customer that the Goods are ready and the Customer shall sign a delivery note to confirm the Goods have been collected.

3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or on the completion of loading of the Goods at the Collection Location.

3.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Sunshade Services shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide Sunshade Services with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.4 If Sunshade Services fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Sunshade Services shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Sunshade Services with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.5 If the Customer fails to take or accept delivery of the Goods within 3 Business Days of Sunshade Services notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Sunshade Services failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which Sunshade Services notified

the Customer that the Goods were ready; and

(b) Sunshade Services shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

3.6 If 10 Business Days after Sunshade Services notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, Sunshade Services may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

3.7 Sunshade Services may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. QUALITY

4.1 Sunshade Services warrants that on delivery and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

(a) conform in all material respects with their description and any applicable Goods Specification; and

(b) be free from material defects in design, material and workmanship.

4.2 Subject to clause 4.4, if:

(a) the Customer gives notice in writing to Sunshade Services during the warranty period within a reasonable time of discovery that some or all of the Goods do not

comply with the warranty set out in clause 4.1; and

(b) Sunshade Services is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by Sunshade Services) returns such Goods to Sunshade Services place of business at the Customer's cost, Sunshade Services shall, if a breach of warranty is established, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.3 If a breach of warranty is established and the defective Goods are repaired or replaced in accordance with clause 4.2, the original warranty period set out in clause 4.1 shall be extended by a period of time equivalent to the period between notification of the breach of warranty and the date of repair or replacement.

4.4 Sunshade Services shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 if:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 4.2; or

(b) the defect arises because the Customer failed to follow Sunshade Services oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or

(c) the defect arises as a result of Sunshade Services following any drawing, design or specification supplied by the Customer; or

(d) the Customer alters or repairs such Goods without the written consent of Sunshade Services; or (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions.

4.5 Except as provided in this clause 4, Sunshade Services shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

4.7 Except as provided in clause 4.3, these Conditions shall apply to any repaired or replacement Goods supplied by Sunshade Services.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until Sunshade Services has received payment in full (in cash or cleared funds) for:

(a) the Goods; and

(b) all other sums which are due to Sunshade Services for sales of the Goods or any other products or Services to the Customer.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as Sunshade Services bailee;

(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Sunshade Services property;

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

(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(e) notify Sunshade Services immediately if it becomes subject to any of the events listed in clause 8.2; and

(f) give Sunshade Services such information relating to the Goods as Sunshade Services may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or Sunshade Services reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Sunshade Services may have, Sunshade Services may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored, and where such Goods are incorporated into another product (but not irrevocably) unincorporate them, in order to recover them.

6. SUPPLY OF SERVICES

6.1 Sunshade Services shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

6.2 Sunshade Services shall use all reasonable endeavours to meet any performance dates specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

6.3 Sunshade Services shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Sunshade Services shall notify the Customer in any such event.

6.4 Sunshade Services warrants to the Customer that the Services will be provided using reasonable care and skill.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Sunshade Services quotation as at the date of delivery.

7.2 The charges for Services shall be on a time and materials basis:

(a) the charges shall be calculated in accordance with the Sunshade Services standard daily fee rates;

(b) Sunshade Services standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on business days and include travel time between Sunshade Services premises and the Customer's premises; and;

(c) Sunshade Services shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Sunshade Services engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Sunshade Services for the performance of the Services, and for the cost of any materials.

7.3 Sunshade Services reserves the right to increase its standard daily fee rates for the charges for the Services. Sunshade Services will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Sunshade Services in writing within 2 weeks of the date of Sunshade Services notice and Sunshade Services shall have the right without limiting its other rights or remedies to terminate the Contract by giving 7 days written notice to the Customer;

7.4 Sunshade Services may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(d) any factor beyond Sunshade Services control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials

and other manufacturing costs);

(e) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(f) any delay caused by any instructions of the Customer or failure of the Customer to give Sunshade Services adequate or accurate information or instructions.

7.5 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

7.6 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Sunshade Services, pay to Sunshade Services such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.7 Sunshade Services may invoice the Customer for the Goods and/or Services on or at any time after the completion of delivery.

7.8 Where a Customer has agreed Credit Terms with Sunshade Services, the Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Sunshade Services. Time of payment is of the essence.

7.9 Where a Customer has not agreed Credit Terms with Sunshade Services, the Customer shall pay for the Goods and/or Services at the time the Customer issues a written acceptance of Sunshade Services' quotation or estimate for the supply of

Goods and/or Services. Where this clause 7.9 applies, Sunshade Services shall not be obliged to issue a written acceptance of the Order until payment has been received from the Customer.

7.10 If the Customer fails to make any payment due to Sunshade Services under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above The Bank of England's UK base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Sunshade Services in order to justify withholding payment of any such amount in whole or in part. Sunshade Services may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Sunshade Services to the Customer.

7.12 Where the Contract is for the supply of Services that requires Sunshade Services to be in possession of any of the Customer's property, or have access to the property through the possession of keys to its place of storage or otherwise, Sunshade Services shall have a pledge over such property and be entitled to retain possession of such property until any invoice raised in relation to that property has been paid in full, and in the event of non-payment within three months of the date of the relevant invoice Sunshade Services may exercise its power of sale over the property. In the event of such exercise, the Customer shall not do anything, and shall procure that no third party on whose premises the property is located does anything, to restrict Sunshade Services' access to the property and the removal of such property from its location.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Sunshade Services reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Sunshade Services, Sunshade Services may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Sunshade Services without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or (c) (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- (d) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- (f) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(g) (inclusive); or
- (i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (j) the financial position of Sunshade Services deteriorates to such an extent that in the opinion of the Customer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- (k) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude Sunshade Services' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for Sunshade Services to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) Sunshade Services shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by Sunshade Services, its employees, agents or subcontractors); and
- (b) Sunshade Services total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by Sunshade Services, its employees, agents or subcontractors, shall not exceed 105% of the price of the Goods.
- (c) Where a breach of warranty has been established under clause 4.1 and Sunshade Services has agreed to repair the Goods, Sunshade Services' liability extends only to the obligation to repair the goods in accordance with clause 4.2 and the Customer shall be responsible for any costs incurred in transporting the Goods to and from Sunshade Services for repair, and removing and re-installing the Goods.
- (d) Where a minor fault to the Goods has not been remedied promptly by the Customer or brought to the attention of Sunshade Services, and the fault subsequently leads to increased damage to the Goods due to the effects of adverse weather conditions, Sunshade Services shall not be liable to the Customer for the increased damage.
- (e) Where Sunshade Services has designed an item referring to wind and snow loads, Sunshade Services shall assess any damage to the canopy in the light of Met Office weather forecasts and records for the time of the alleged breach. Where the Met Office records show that wind or snow was forecast to exceed, or in fact exceeded, the level requiring protection Sunshade Services shall not be held in breach of warranty in relation to the item.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sunshade Services or subcontractors.

11. GENERAL

11.1 Assignment and subcontracting.

(a) Sunshade Services may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Sunshade Services.

11.2 Notices and other communications

(a) 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 (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

(b) A notice or other communication sent by one party to the other shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first-class post or recorded delivery, 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.

(c) A notice or other communication sent by one party to the other by fax or email shall not be deemed to have been received until the sending party has received a written response from the receiving party confirming receipt of the notice or other communication.

(d) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance

(a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 Variation. Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

11.7 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.