

PLATINUM STAIRLIFTS TERMS & CONDITIONS OF SALE

January 2019 edition

1 Interpretation

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

'Business Day'	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
'Conditions'	means the terms and conditions set out in this document as amended from time to time in accordance with clause 13.8.
'Contract'	means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
'Customer'	means the person or firm who purchases the Goods from the Supplier.
'Force Majeure Event'	has the meaning given in clause 12.
'Goods'	means the goods (or any part of them) set out in the Order and shall include the New Goods and the Refurbished Goods as the case may be.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
'New Goods'	means goods which are classified as new in the Order and have not been refurbished.
'Order'	means the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of the Specification, as the case may be.
'Refurbished Goods'	means goods which have been refurbished or which have been classified as refurbished in the Order
'Services'	means the services set out in the Order.
'Specification'	means any specification for the Goods or the Services, including any related plans and drawings, that is prepared by the Supplier and agreed by the Customer.
'Supplier'	means Platinum Stairlifts Limited (registered in England and Wales with company number 03179671).

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

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 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.
- 1.2.4 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.
- 1.2.5 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 in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier 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 the Supplier which is not set out in the Contract or the Specification.
- 2.5 All figures, speeds, measurements, capacities and other technical information and data and any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of **60** days from its date of issue.

3 Goods

- 3.1 The Goods will be produced to any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification approved by the Customer, then notwithstanding any other provisions of these Conditions the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.4 The Supplier reserves the right to alter or change the specification of the Goods to be supplied within reasonable limits without notice to the Customer.

4 Delivery

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier 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.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree or the Customer shall collect the Goods from the location set out in the Order as may be advised by the Supplier before delivery (in both cases this shall be referred to as the **'Delivery Location'**), at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed either upon the Goods' arrival or collection at the Delivery Location. The Customer is responsible for loading (upon collection) and unloading the Goods (upon delivery).
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier 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 the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier 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. The Supplier 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 the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of, or collect the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
 - 4.6.1 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 the Supplier notified the Customer that the Goods were ready; and
 - 4.6.2 the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 21 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier 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.

5 Quality (warranty)

- 5.1 The Supplier warrants that for a period of 24 months from the invoice date in relation to New Goods and 12 months from the invoice date in relation to Refurbished Goods (**'warranty period'**), the Goods shall:
 - 5.1.1 conform in all material respects with their description and any applicable Specification;
 - 5.1.2 be free from material defects in design, material and workmanship;
 - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 5.1.4 be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, during the warranty period provided that the following conditions are met:
 - 5.2.1 the Customer gives notice in writing to the Supplier during the warranty period, within a reasonable time of discovery;
 - 5.2.2 once the Customer has given notice under clause 5.2 the Goods shall not be used, and no alterations or unauthorised repairs must be made to the Goods prior to their inspection by the Supplier or its representative;
 - 5.2.3 the Supplier shall be given a reasonable opportunity to examine such Goods;
 - 5.2.4 the Customer (if asked to do so by the Supplier) shall return such Goods to the Supplier's place of business or where instructed to by the Supplier, at the Customer's cost; and
 - 5.2.5 any costs incurred in fitting or installing the replacement Goods shall be borne by the Customer.
- 5.3 Items of a consumable nature will not normally be covered during the warranty period unless such items have suffered undue wear as a direct result of an original manufacturing defect. These items include without limitation lubricants, motor brushes, upholstery, PCBs and batteries.
- 5.4 The Customer acknowledges that any warranty provided in clause 5.1 is invalidated if:
 - 5.4.1 the Customer or the user makes any further use of such Goods after giving notice in accordance with clause **Error! Reference source not found.**;
 - 5.4.2 if the defect or failure is as a consequence (whether director or indirect) of the Customer failing to achieve and maintain the certification of a competent installer as provided by the Supplier from time to time and as a result of the Customer failing to attend appropriate training or advisory sessions as and when required to enable competent installation;
 - 5.4.3 the defect arises because the Customer or user failed to follow the Supplier's or manufacturers oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.4.4 the defect arises as a result of the Supplier following any drawing, design or Specification approved by the Customer;
 - 5.4.5 the Customer or the user alters or repairs such Goods without the written consent of the Supplier, or such Goods are repaired or altered by a person who is not trained or authorised to repair such Goods;
 - 5.4.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.4.7 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

- 5.7 These Conditions shall also apply to any repaired or replacement Goods supplied by the Supplier.
- 5.8 Insofar as the Goods comprise or contain equipment or components which were not manufactured or produced by the Supplier, the Supplier shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer.
- 6 Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 6.2.1 the Goods; and
- 6.2.2 any other goods or services that the Supplier has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
- 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
- 6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier 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 the Supplier may have, the Supplier 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 in order to recover them.
- 7 Supply of Services**
- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Specification in all material respects. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Supplier 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 the Supplier shall notify the Customer in any such event. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.2 The Customer shall: ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate; co-operate with the Supplier in all matters relating to the Services; provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services; provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects and prepare the Customer's premises for the supply of the Services.
- 8 Price and payment**
- 8.1 The price of the Goods shall be the price set out in the Supplier's acknowledgement of the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 8.2 The Supplier may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 8.4 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 the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 Goods supplied for individual disabled persons are at present not subject to VAT but VAT may be charged in the event of a change in the law. The Supplier will require a signed declaration of disability in the event that goods are supplied for an individual disabled person.
- 8.6 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.7 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice unless the Supplier has notified the Customer that payment for the Goods must be made in advance of delivery. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 8.8 If the Customer fails to make any payment due to the Supplier 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 National Westminster Bank Plc base 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.
- 8.9 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 the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier 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 the Supplier to the Customer.
- 8.10 The charges for the Services shall be as detailed within the Order, or if the Order is silent the charges shall be on a time and materials basis.
- 9 Customer's insolvency or incapacity**
- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier 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 the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- 9.2.1 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;
- 9.2.2 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 other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 9.2.5 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;
- 9.2.6 (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;
- 9.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 9.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 9.2.9 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 9.2.1 to clause 9.2.8 (inclusive);
- 9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- 9.2.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 9.2.12 (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.
- 9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10 Limitation of liability**
- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.1.2 fraud or fraudulent misrepresentation;
- 10.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1972;
- 10.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 10.1.5 defective products under the Consumer Protection Act 1987; or
- 10.1.6 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Subject to clause 10.1; the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of data or information, loss of or damage to goodwill, and any indirect or consequential loss arising under or in connection with the Contract; and the Supplier's 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, shall in no circumstances exceed the price of the Goods.
- 11 Intellectual Property**
- 11.1 All Intellectual Property Rights which exist or arise out of or in connection with the Goods or the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 11.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Goods and Services to the Customer.
- 12 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 suppliers or subcontractors.
- 13 General**
- 13.1 Assignment and subcontracting.**
- 13.1.1 The Supplier 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.

- 13.1.2 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 the Supplier.
- 13.2 **Notices.**
- 13.2.1 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 (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.
- 13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; 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; or, if sent by fax or e-mail, one Business Day after transmission.
- 13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.3 **Severance.**
- 13.3.1 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.
- 13.3.2 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.
- 13.4 **No partnership or agency.** There is nothing in the Contract which is intended or will be considered to establish any partnership or joint venture between the parties, or make either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 13.5 **Entire agreement.** The Contract is the entire agreement between the parties and replaces all previous agreement and understandings between them, whether written or oral, relating to its subject matter.
- 13.6 **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.
- 13.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 13.8 **Variation.** Except as set out in these Conditions, 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 Supplier.
- 13.9 **Confidentiality.** A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 13.9 shall survive termination of the Contract.
- 13.10 **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 non-contractual 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.