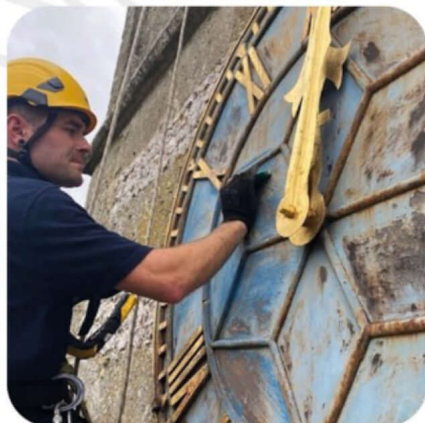
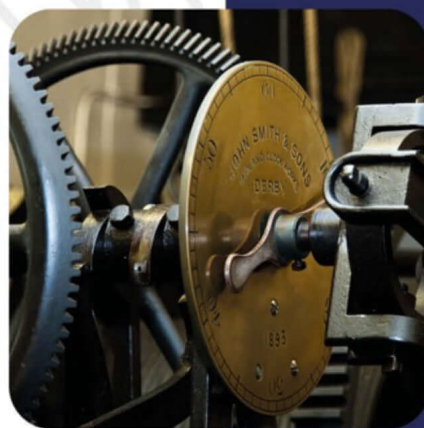
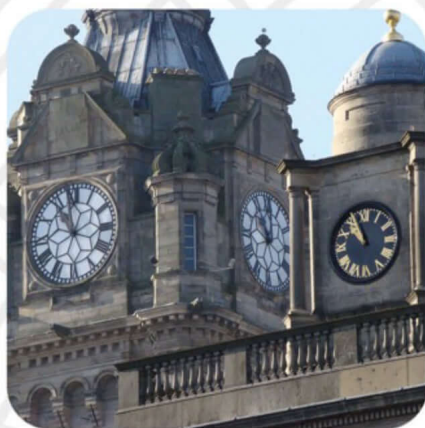


Customer Proposal



Prepared by
Tom Ratcliffe

Date
January 27th 2025

Site Ref
8599

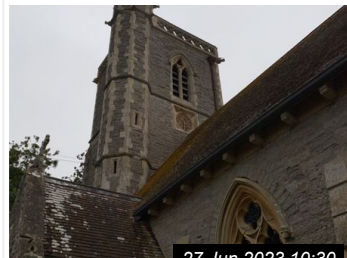
Site Name
St Mary Magdalene Church +
8599 + SOMERSET +
Bridgewater + TA5 2PZ,
Stockland Bristol

1. INTRODUCTION & SUMMARY

Ref	Name	Condition
1.1	Introduction	Dear Marcus, Following your recent enquiry, please find below the report, proposal and quotation for your consideration. We trust this information is helpful and we will contact you to discuss any queries that you may have. Please do not hesitate to contact me on any of the details below. Kind regards Tom Ratcliffe Clockmaker / Technical Sales Engineer +44 (0) 7800 689 417 tom.ratcliffe@smithofderby.com
1.2	Summary Quotation	To remove 1x 4ft cast iron skeleton dial with copper backing for workshop restoration (plus hands & dialworks), return and refit on site - £17,438 plus VAT.

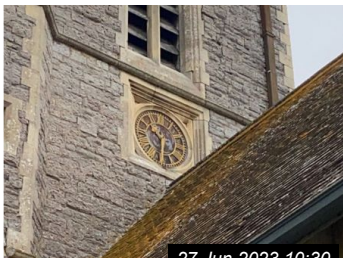
2. CUSTOMER REPORT & PHOTOS

Ref	Name	Condition
2.1	Report & Photos	The clock is a 3-train flatbed mechanism with a pinwheel escapement, sequential strike, and 'ting tang' quarter chimes. The going train drives out to 1x approx. 4ft cast iron skeleton dial with copper backing sections which was previously finished in Trafalgar Blue and gold leaf. The dial is currently in a very poor state with little of the blue paint left on the outer face and a lot of surface rust on the edges of the cast iron. We are recommending that the dial is removed to our workshop for full dismantling & restoration - this will ensure that iron skeleton does not deteriorate any further and the original materials are preserved for as long as possible. In order to remove the dial we will require assistance from stonemasons to release it from the stone/ mortar around the edges, and then re-point after reinstallation.



27 Jun 2023 10:30

Ref # 2.1



27 Jun 2023 10:30

Ref # 2.1



27 Jun 2023 10:06

Ref # 2.1



27 Jun 2023 10:07

Ref # 2.1



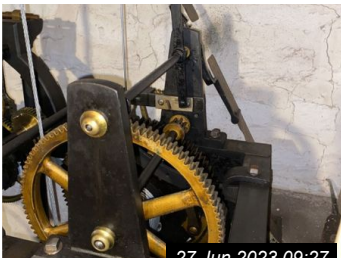
27 Jun 2023 09:26

Ref # 2.1



27 Jun 2023 09:26

Ref # 2.1



27 Jun 2023 09:27

Ref # 2.1



27 Jun 2023 09:27

Ref # 2.1

2. CUSTOMER REPORT & PHOTOS (Cont.)

Ref	Name	Condition
		
Ref # 2.1		
		
Ref # 2.1		
		
Ref # 2.1		
		
Ref # 2.1		

3. CUSTOMER PROPOSAL & QUOTATION

Ref	Name	Description	Condition
3.1	Proposal & Quotation	- To approach the tower via scaffolding and remove the hands and dial, which would be lowered to ground for transportation to our Derby workshop. - To withdraw the dial works from within for stripping and full servicing in our workshop (the dial works pass through the fabric of the building and rarely receive full servicing attention, as it is necessary for the hands to be removed to do so. It would be prudent therefore to carry out this work during the restoration operation. The driving tubes would be separated, and all corrosion removed, the tubes re-polished and correctly lubricated. The counterbalances would also be adjusted as necessary for correct operation. The result of this would be that the clock would be under less strain and wear. This is work often missed by non-clock specialists and is an essential part of our dial refurbishment). - In our workshop we would dismantle and then sympathetically abrade the dial down to a sound base, followed by the application of appropriate primers, undercoat and finally weatherproof gloss. The dial would then be baked in our oven at 80°C to achieve a hard enamel like finish for maximum longevity. If the copper backings to the dial sections are found to be in too poor condition to restore, we would manufacture and install replacements before undertaking the paint process. - Any previously gilded areas would be sized, followed by the application of gold leaf. This is particularly long lasting and attractive and is used in preference to ordinary gold paint. The latter soon loses its fresh appearance and deteriorates quickly, whereas gold leaf has an expected life span of 20 – 25 years (subject to local conditions). The hands would be similarly treated. - Once all restoration works are completed, including servicing of the dial works, we would return to site and, again using scaffold, would refit the clock dial, the dial works and the hands.	To remove 1x 4ft cast iron skeleton dial with copper backing for workshop restoration (plus hands & dialworks), return and refit on site - £17,438 plus VAT.

3. CUSTOMER PROPOSAL & QUOTATION (Cont.)

Ref	Name	Description	Condition
  Before restoration After restoration and re-installed Ref # 3.1			

4. POINTS TO NOTE

Ref	Name	Condition
4.1	Quotation & Validity	All quotations are as per our terms and conditions. All quotations are valid for 30 days unless otherwise stated.
4.2	Deposit	40% deposit required with order, which must be paid within 14 days to hold the price as quoted. 60% after completion of installation, payable within 30 days from date of invoice.
4.3	Access Equipment	To complete this work will require a scaffolding with suitable lifting points to lift/lower the dial to ground level. Cost for this is not included in our quotation and should be sourced separately, at no cost to ourselves.
4.4	Stonework	As mentioned previously, to complete this work will require assistance from stonemasons to release the dial before removal and repair the stonework following reinstallation. This is not included in our quotation and should be sourced separately, at no cost to ourselves.

5. TURRET CLOCK CODE OF PRACTICE

Ref	Name	Condition
5.1	Code of Practice	Smith of Derby proposals comply with the Church of England Clocks Advisers Forum Code of Practice for Turret Clock Work. We absolutely concur with the philosophy that all turret clocks are of historical importance, whether signed by a famous maker or mass-produced and should be kept in good condition and maintained in use wherever possible.
5.2	Principles	We will endeavour to preserve as much of the original material as possible and respect its current state to preserve the original heritage character of the clock; any parts removed will be returned to site i.e. not scrapped. Reversibility is a prime consideration to allow opportunity for easy removal.
5.3	Recording of Works	When appropriate, photographs will be taken as a permanent record of parts either before removal from site, or before any work commences on site, whilst being worked on in our Works, and prior to return to site and refitting.
5.4	Faculty Notice	The works detailed in this proposal will fall under either list A or list B exemption or full faculty approval will be needed. Permissions must be obtained before the works can be undertaken and before the works commence we will require confirmation that the appropriate permission has been obtained. We will also require a copy of the faculty document for our records. Here is a link to the Church of England On Line Faculty System, where you will find full details of faculty requirements and how to apply: Home - Online Faculty System (churchofengland.org)

5. TURRET CLOCK CODE OF PRACTICE (Cont.)

Ref	Name	Condition
5.5	VAT	Our price is exclusive of VAT which will be added to our invoice at the prevailing rate. The current situation is that you will be able to reclaim the VAT on this work if the value is above £1,000.00. In addition each listed place of worship will also be allowed to submit one claim in respect of works with a value of less than £1,000.00 but more than £500.00 in any twelve month period. This can be accomplished by applying via the Listed Places of Worship Scheme website - Listed Places of Worship (LPW) Grant Scheme (dcms.gov.uk)

Smith of Derby Limited, Terms and Conditions of the Supply of Goods & Services

SMITH OF DERBY
CLOCKMAKERS • EST. 1856

1.0 DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions ("**Conditions**"):

"**Additional Charges**" has the meaning given to it in **condition 6.5**;

"**Additional Deliverables**" any Goods, Services or other work provided by Smith under the Contract in addition to the Deliverables;

"**Client**" the person, firm or company who purchases Goods and/or Services from Smith;

"**Contract**" any contract between Smith and the Client created in accordance with **condition 2.2**;

"**Deliverables**" any Goods and the Services (or either of them as the context requires) to be provided by Smith under the Contract;

"**Deposit**" the deposit (if any) to be paid to Smith by the Client under the Contract as set out in the Proposal or Purchase Order;

"**Design Work**" any designs produced by Smith in relation to the Contract, including sketches, project development and production drawings, models, prototypes and other matters;

"**Goods**" any goods to be provided under the Contract as set out in the Proposal or the Purchase Order or which Smith otherwise provides or agrees to provide to the Client;

"**In-put Material**" all documents, information and materials provided by the Client relating to the Contract;

"**Intellectual Property Rights**" all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Performance Dates**" has the meaning given to it in **condition 3.2**;

"**Price**" the aggregate of the charges to be paid by the Client for the Deliverables calculated in accordance with **condition 6**;

"**Proposal**" any proposal, quotation or similar document issued by Smith in connection with the provision of the Deliverables;

"**Purchase Order**" the order setting out the particulars of the Deliverables to be provided by Smith under the Contract;

"**Rights**" has the meaning given to it in **condition 10.1**;

"**Services**" any services to be provided under the Contract as set out in the Proposal or the Purchase Order or which Smith otherwise provides or agrees to provide to the Client;

"**Smith**" Smith of Derby Limited of 112 Alfreton Road, Derby, DE21 4AU; and

"**Warranty Period**" has the meaning given in **condition 9.1**.

2.0 APPLICATION OF CONDITIONS

2.1 These Conditions shall apply to and be incorporated into the Contract and shall prevail over any inconsistent terms or conditions attached to, or referred to, in the Purchase Order, acceptance of a Proposal, or any other document issued by the Client, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Client's signed acceptance of the Proposal or Purchase Order constitutes an offer by the Client to purchase the Deliverables specified in it on these Conditions. No offer placed by the Client shall be accepted by Smith other than by Smith issuing an order acknowledgement or (if earlier) by Smith starting to provide the Deliverables when a contract for the supply and purchase of those Deliverables on these Conditions will be established (the "**Contract**"). The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in the Purchase Order, acceptance of a Proposal or any other document shall not govern the Contract.

2.3 All Proposals are submitted by Smith on the basis that no Contract shall come into existence except in accordance with **condition 2.2**. All Proposals are valid for a period of 30 days from their date, provided that they have not been previously withdrawn by Smith.

2.4 All dimensions, prices, assembly instructions and other data included in catalogues, circulars, advertisements, Design Work and price lists constitute approximate guides only and shall not form part of the Contract save to the extent that they are by reference expressly included in the Contract.

2.5 Any typographical and clerical errors or omissions in any Proposal, Design Work or other document or information issued by Smith are subject to correction without any liability on the part of Smith.

2.6 Any advice or recommendation given by Smith or its employees, contractors or agents about the storage, application or use of the Goods which is not confirmed in writing by an authorised officer of Smith is followed or acted upon entirely at the Client's risk.

2.7 If the period of time between 'acceptance of the offer by Smith and the start of the materials purchased or work on site commences', is greater than 6 months from the date of Purchase Order or Acceptance of Smiths Proposal, and this delay is due to delay by the Client being unable to move forward, Smith reserves the right to re-price the original proposal, for inflationary costs of labour, materials and expenses, including for any storage costs for client materials on Smith premises. Should this re-price be unacceptable to the Client, the Client may terminate the contract subject to clause 14.0.

3.0 SMITHS OBLIGATIONS

3.1 Smith shall use reasonable endeavours to provide the Deliverables to the Client in all material respects in accordance with the Purchase Order or Proposal.

3.2 Subject to **condition 7.2**, Smith shall use all reasonable endeavours to meet any performance dates (in the case of Services) and any delivery dates (in the case of Goods) specified in the Purchase Order or Proposal (together constituting the "**Performance Dates**").

3.3 Smith can not be held responsible for delays outside of Smith control.

4.0 CLIENT OBLIGATIONS

4.1 The Client shall in order to assist in the provision of the Deliverables:

4.1.1 co-operate with Smith in all matters relating to the Services;

4.1.2 provide, in a timely manner, such In-put Material and other information as Smith may reasonably request and ensure that it is accurate in all material respects;

4.1.3 provide, for Smith, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Client's premises as reasonably requested by Smith for the purposes of installation of the Goods and/or performance of the services; and

4.1.4 inform Smith of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises.

4.2 If Smith's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, Smith shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

4.3 The Client shall be liable to pay to Smith, on demand, all reasonable costs, charges or losses sustained or incurred by Smith (including any direct or indirect losses) arising from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

4.4 Should Smith attend to site for the execution of an annual maintenance agreement or for installation work of an agreed project, and finds that subsequently the site is not prepared, or access is not available or available at the agreed time, as was confirmed previously by Smith planning team, then the customer is liable to pay to Smith, on demand, all reasonable costs, charges or losses sustained or incurred by Smith for this aborted visit.

5.0 CHANGE CONTROL

5.0 Following Smith's proposal and quotation and the subsequent acceptance of the clients purchase order or written authority to proceed, Smith has endeavoured to estimate accurately for the work to be undertaken and priced accordingly with as much care and knowledge to the works required as possible.

If, following inspection of removed parts or cleaning of parts, work is identified as being required as over and above that which could have been reasonably foreseen and proposed, Smith withhold the right to change the Deliverables. Smith shall submit details of the requested change in writing and shall, within a reasonable time, provide a written estimate to the Client of:

5.1.1 the likely time required to implement the change;

5.1.2 any variations to the Price arising from the change;

5.1.3 the likely effect of the change on the Proposal or Purchase Order; and

5.1.4 any other impact of the change on the terms of the Contract.

5.2 Smith may, from time to time and without notice, change the Deliverables in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the Price, or the nature or scope of the Deliverables. If Smith requests a change to the scope of the Deliverables for safety or statutory requirements, the Client shall not unreasonably withhold or delay consent to it.

5.3 If the Client wishes Smith to proceed with the change, Smith has no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to the Price and any other relevant terms of the Contract to take account of the change.

5.4 Smith may charge for its time spent in assessing a request for change from the Client.

5.5 If the Client rejects the change to the deliverables, this may effect the ability for Smith to perform the contract and Smith reserves the right to charge for work completed to that point.

6.0 PAYMENT

6.1 Unless otherwise stated in the proposal, excluding 'supply only' items, payment for goods shall be 40% on deposit before work is commenced, 60% on completion of the works in question or upon delivery.

Smith withhold the right to invoice for work completed and ready for installation if client/site delays, outside of Smith control, cause more than 1 month delay in installation work.

For 'supply only' items payment is 100% before shipment.

6.2 The Deposit shall be paid to Smith within 7 days of the Contract coming into effect pursuant to **condition 2.2**. Deposits are not refundable except at the sole discretion of Smith.

6.3 The total Price shall be paid to Smith (without deduction or set-off) in accordance with the payment timetable set out in the Proposal or Purchase Order (or otherwise when the Deliverables have been supplied).

6.4 Smith shall invoice the Client when any proportion of the Price becomes due under the payment timetable set out in the Proposal or Purchase Order.

6.5 Smith reserves the right to charge the Client additional charges (the "**Additional Charges**") in respect of:

6.5.1 any time spent assessing a request for change pursuant to **condition 5.4**;

6.5.2 any Additional Deliverables; or

6.5.3 any costs or expenses suffered or incurred by Smith resulting from any suspension of the Services which has been caused by the Client's instructions or lack of instructions or any other cause for which the Client is responsible

6.6 Any time and materials charges shall be calculated on the basis of the following:

6.6.1 the charges payable for the Additional Deliverables or in respect of any Additional Charges shall be calculated in accordance with Smith's daily fee rates, as amended from time to time;

6.6.2 Smith's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 08:00 am and 5:00 pm on weekdays (excluding public holidays);

6.6.3 Smith shall be entitled to charge an overtime rate of 25% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals outside the hours referred to in **condition 6.6.2**; and

6.6.4 Smith shall invoice the Client monthly in arrears for its charges for time, expenses and materials (with a 25% mark up on all material costs) for the month concerned, calculated as provided in this **condition 6.6**.

6.7 Unless otherwise agreed in the Proposal or Purchase Order, the Price and any Additional Charges exclude:

6.7.1 any costs in terms of hotel, subsistence, travelling and any other ancillary expenses incurred in the installation of the Goods; and

6.7.2 any costs associated with the provision of ladders above a height of 20 feet, scaffolding or other access equipment,

6.7.3 the provision of an electrical supply and the making of final electrical connections for any installation of the Goods

6.8 The Price, any Additional Charges and any additional costs shall be exclusive of VAT which Smith shall add to its invoices at the appropriate rate.

6.9 The Client shall pay each invoice submitted to it by Smith, in full and in cleared funds, without counterclaim, deduction or set off within 30 days of receipt. Time for payment shall be of the essence of the Contract.

6.10 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Smith on the due date, Smith may (at Smith's sole discretion):

6.10.1 charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of the HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made; or

6.10.2 immediately suspend all provision of the Deliverables until payment of either the total Price or the outstanding amount (at the sole discretion of Smith) has been made in full.

6.11 All sums payable to Smith under the Contract shall become due immediately on its termination, despite any other provision. This **condition 6.11** is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

6.12 Smith may, without prejudice to any other rights it may have, set off any liability of the Client to Smith against any liability of Smith to the Client.

7.0 DELIVERY

7.1 Unless otherwise agreed in writing by Smith, delivery of the Goods shall take place at Smith's place of business and the Client shall be responsible for the loading, unloading, carriage and insurance of the Goods.

7.2 The Performance Dates shall be estimates only and time of delivery shall not be of the essence of the Contract.

7.3 Unless otherwise stated in these Conditions, Smith shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Smith's negligence).

7.4 The delivery of the Goods shall be deemed as occurring when either two business days have elapsed following the day the Client has been informed that the Goods are awaiting collection or, in cases where the Deliverables include delivery of the Goods to the Client, on the day of delivery to the Client.

7.5 If the Client is unable to collect or take delivery of the Goods in accordance with the provisions of **condition 7.4** above, then Smith shall be entitled to arrange storage and/or transportation for the Goods on the Client's behalf at the Client's expense. All charges for such storage, transport and any insurance shall be payable by the Client forthwith on request.

7.6 It is the Client's responsibility to check the Goods for any damage following delivery and the Client must inform Smith of any such damage within 3 working days of delivery. The Client will permit Smith to inspect any allegedly defective Goods. If the Client fails to inform Smith of any such damage, the Goods shall be deemed to be in accordance with the Contract and the Client shall be deemed to have accepted the Goods and to be liable to pay the Price.

7.7 Where risk in the Goods has already passed to the Client under **condition 8.1**, Smith shall not be responsible for any damage or theft of the Goods in transit but will give the Client all reasonable assistance in making a claim against the carrier. In the case of damage or theft of the Goods in transit, immediate notice should be given to the carrier and a copy of this notice should also be sent to Smith.

8.0 TITLE & RISK

8.1 The Goods are at the risk of the Client from the time of delivery or deemed delivery.

8.2 Ownership of the Goods shall not pass to the Client until Smith has received in full (in cash or cleared funds) all sums due.

8.3 Until ownership of the Goods has passed to the Client, the Client shall:

8.3.1 hold the Goods on a fiduciary basis as Smith's bailee;

8.3.2 store the Goods separately from all other goods of the Client or any third party in such a way that they remain readily identifiable as Smith's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.3.4 maintain the Goods in satisfactory condition.

8.4 The Client may resell the Goods before ownership has passed to it on condition that any sale shall be affected in the ordinary course of the Client's business at full market value and that any such sale shall be a sale of Smith's property on the Client's own behalf and the Client shall deal as principal when making such a sale.

8.5 Smith shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Smith

8.6 Until the ownership of the Goods has passed to the Client, Smith may at any time require the Client to deliver up the Goods. If the Client fails to deliver up the Goods within a reasonable period, Smith may repossess and dismantle, use, sell or otherwise deal with the Goods and may for that purpose, or for the purposes of determining whether the Goods are held by the Client, or to inspect them, enter onto any premises where the Goods are or may be stored.

8.7 The Client shall not pledge or in any way charge by way of security for any indebtedness any Goods which remain the property of Smith.

8.8 Any items, parts or components which are sent to Smith for repair under the Contract are at the risk of the Client at all times, and the Client shall keep those items, parts or components insured against loss or damage and third party risks throughout the transportation of those items, parts or components to and from Smith, and the entire period during which those repairs are being carried out by Smith

9A/1 WARRANTY FOR GOODS

9.1 Smith warrants that the Goods will correspond with the particulars set out in the Proposal or Purchase Order at the time of delivery and will be free from defects in materials and workmanship for a period of 12 months from delivery (the "**Warranty Period**").

9.2 The warranty at **condition 9.1** does not extend to Goods not fabricated by Smith. Where Smith is not the fabricator of the Goods (or any part of the Goods), Smith shall endeavour to transfer to the Client the benefit of any warranty or guarantee given to Smith.

9.3 If the Client gives written notice of a defect to Smith during the Warranty Period, Smith must be provided with photographic evidence of such defect if requested by Smith, and must be given a reasonable opportunity after receiving the notice (and any photographic evidence) to examine the Goods and the Client (if asked to do by Smith) shall return such Goods to Smith at Smith's cost for the examination to take place at Smith's premises.

9.4 Smith shall not be liable for a breach of the warranty if:

9.4.1 the Client makes any further use of such Goods after giving such notice;

9.4.2 the defect arises from the In-put Material supplied by the Client;

9.4.3 the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions; or failure to follow Smith's written instructions;

9.4.4 the defect arises because the Client failed to follow Smith's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

9.4.5 the Client alters or repairs the Goods without the written consent of Smith; or

9.4.6 the Price has not been paid by the due date for payment or the customer has been abusive or unreasonable to our team.

9.5 Subject to **condition 9.4**, if any of the Goods do not conform with the warranty in **condition 9.1** Smith shall at its option (and expense) repair or replace such Goods (or the defective part) or refund the Price provided that, if Smith so requests, the Client shall (at Smith's expense) return the defective Goods to Smith.

9.6 If Smith complies with **condition 9.5** it shall have no further liability for a breach of the warranty in **condition 9.1**.

9.7 Unless otherwise agreed in writing, Smith does not undertake to bear the cost of any work involved in removing or reinstating a repaired or new part. Smith will only bear the cost of the part.

9.7.1 The Warranty at Condition 9.1 does not extend to cover the cost of hire of scaffold or access equipment; Smith of Derby shall not be liable for the cost of such equipment.

9A/2 WARRANTY FOR SERVICES

9.8 In the case of mechanical pendulum clocks Smith takes no responsibility for 'on-site regulation' on completion of the work carried out by Smith. But full instruction will be given to local personnel upon request.

9.9 Smith warrants that Services will be provided with reasonable skill and care and in accordance with generally recognised commercial and industry practices and standards.

These services include the repair, restoration work and fitment of products to traditional mechanical clocks, including dial restorations. Work performed on these old mechanical movements and dials cannot be guaranteed. However -

9.10 If, within 2 working weeks of the completion of the Contract, any Services that were performed are found to be in breach of the warranty contained in **condition 9.9**, Smith will attend to the site to address and within reason, re-perform the Services work where defective.

9.11 This re-performance of services under 9.10 will be performed once. Following this, Smith shall have no further liability to the Client for the breach of the warranty contained in **condition 9.9** in respect of such Services.

Should a mechanical clock movement or dial restoration continue to be problematic, following the re-performance of the services work under 9.10, Smith shall attend the site with a senior manager to assess the issue.

Smith shall provide a written assessment of the issue and Smith shall give an honest opinion as to the options moving forward. No further work, under warranty, shall be delivered free of charge and a costed proposal to rectify any issues shall be delivered to the client for their review. This includes mechanical clocks where Smith has attempted to correct and re-start, including contracts to repair, restore materials, or the fitment of new products and 'stopper' visits.

9.12 Warranty for Services will be invalid if the services work has not been paid by the due date for payment or the customer has been abusive or unreasonable to our team.

Smith shall have no further liability to the client for the breach of the warranty contained in condition 9.9

NOTE:

For clarification – Smith does not guarantee that the fitment of new products and/or services work performed to old mechanical clocks or dials will be successful. But Smith, as a recognised leader in the field of mechanical clock service, repair and restoration, will attempt to care for this important artefact with the upmost professionalism. However, following a second site visit to attempt any corrective activity and a subsequent costed proposal of the options moving forward, Smith withhold the right to charge for subsequent corrective work and shall have no further liability to the client for the breach of the warranty condition in 9.9.

9B ANNUAL SERVICE (MAINTENANCE) AGREEMENT & CALL-OUT SERVICES

9.12 For customers under the cover of an Annual Service Agreement, at each visit Smith will clean, adjust and lubricate all normally accessible parts of the clock system and associated equipment.

9.13 Under notification of a 'stopped clock' or request for a call-out visit, Smith will endeavour to attend on site as soon as possible.

9.13.1 This visit will be chargeable if the fault is found to be caused by normal wear and tear, misuse, tampering, neglect, failure of power supply, vandalism or other circumstances beyond Smith control. Also if the fault falls outside of the annual service practice this will be chargeable.

9.13.2 Smith will endeavour to start a stopped clock but makes no guarantee that this repair or start-up will be sustainable. Should a stopped clock, whether covered by the service or not, continue to be faulty, Smith will charge for subsequent site attendance unless covered under Product warranty in 9A1 or 9A/2.

9.14 The provision and fitting of new parts will be chargeable.

9.15 All terms in this whole agreement are applicable to ASA services.

10 INTELLECTUAL PROPERTY

10.1 As between the Client and Smith, all Intellectual Property Rights in the Goods and the Design Work (the "**Rights**") shall be owned by Smith. Smith grants a perpetual and irrevocable non-exclusive licence of the Rights to the Client on a worldwide basis to enable the Client to use the Goods and the Design Work for the purposes set out in the Proposal or Purchase Order but for no other purpose whatsoever.

10.2 The Client shall not grant any sub-licence or assign the benefit or burden of the licence granted at **condition 10.1** in whole or in part without the prior written consent of Smith.

10.3 The Client acknowledges and agrees that notwithstanding the licence granted at **condition 10.1**, Smith shall not assign to the Client any Intellectual Property Rights under the Contract.

10.4 As between Smith and the Client, all Intellectual Property Rights in the In-put Materials shall be owned by the Client. The Client licenses all such rights to Smith free of charge and on a non-exclusive basis to such extent and, for such period of time, as may be necessary to enable Smith to provide the Deliverables.

10.5 The Client shall indemnify Smith against all damages, losses and expenses arising as a result of any action or claim by a third party that any In-put Material (or any part of it) infringes any Intellectual Property Rights of that third party.

11 CONFIDENTIALITY

11.1 During the term of the Contract and for a period of 12 months after termination or expiration of the Contract the following obligations shall

apply to the party disclosing (the "**Disclosing Party**") any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and any other confidential information concerning the party's business ("**Confidential Information**") to the other party (the "**Receiving Party**").

11.2 Subject to **condition 11.3**, the Receiving Party:

11.2.1 may not use any Confidential Information for any purpose other than in connection with the Contract;

11.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and

11.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information.

11.3 The obligations of confidence referred to in **condition 11.2** shall not apply to any Confidential Information that:

11.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party in connection with the Contract;

11.3.2 is or become publicly available on a non-confidential basis through no fault of the Receiving Party;

11.3.3 is required to be disclosed by any applicable law or regulation; or

11.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other party to the Contract in respect of it and who imposes no obligations of confidence upon the Receiving Party.

11.4 The obligations of the parties under all provisions of this condition shall survive the expiry of the termination of this agreement for whatever reason.

12 LIABILITY

12.1 This **condition 12** sets out the entire financial liability of Smith to the Client in respect of:

12.1.1 any breach of the Contract;

12.1.2 any use made by the Client of the Deliverables or any part of them; and

12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these Conditions limits or excludes the liability of Smith for:

12.3.1 death or personal injury resulting from Smith's negligence;

12.3.2 any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Smith; or

12.3.3 any matter which it would be illegal for Smith to exclude or to attempt to exclude or limit its liability.

12.4 Subject to **condition 12.2** and **condition 12.3**:

12.4.1 Smith's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and

12.4.2 Smith shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any other special,

indirect, consequential or pure economic loss, costs, damages, charges or expenses.

13 DATA PROTECTION

The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of Smith in connection with the Contract.

14 TERMINATION

14.1 Subject to **condition 14.2** the Contract shall terminate automatically once the Deliverables have been provided in accordance with the Proposal or Purchase Order and all due payments have been made by the Client under the Contract.

14.2 Without prejudice to any other rights or remedies which either party may have, a party (the "**Terminating Party**") may terminate the Contract without liability to the other party immediately on giving notice to the other party if:

14.2.1 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the other party being notified in writing of the breach;

14.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party;

14.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);

14.2.4 a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;

14.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;

14.2.6 the other party ceases, or threatens to cease, to trade; or

14.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.2.8 the delay due to the Client's inability to move forward in starting the deliverables is greater than 6 months and Smith's re-pricing in accordance with clause 2.7 is deemed unacceptable;

14.3 On termination of the Contract for any reason:

14.3.1 the Client shall immediately pay to Smith all of Smith's outstanding unpaid invoices and interest and, in respect of any Deliverables or Additional Deliverables provided but for which no invoice has been submitted, Smith may submit an invoice, which shall be payable immediately on receipt; and

14.3.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

15 GENERAL

15.1 Smith shall have no liability to the Client under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Smith or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

15.2 Subject to **condition 5**, no variation of the Contract or these conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by both Smith and the Client.

15.3 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

15.4 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15.5 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force and if any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

15.6 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

15.7 The Client shall not, without the prior written consent of Smith, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.8 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15.9 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act of 1999 to enforce any term of the Contract, but this does not affect any other right or remedy of a third party.

15.10 Notice given under the Contract shall be in writing, sent for the attention of the person and to the address or fax number given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of the pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this **condition 15.10** is not within business hours (meaning 9:00 am to 5:30 pm Monday to Friday) the notice shall be deemed to have been received at 9:00 am on the next business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

15.11 The Contract shall be governed by and construed in accordance with the laws of England and Wales and both parties agree to submit to the exclusive jurisdiction.

END