

Poliform UK

TERMS AND CONDITIONS FOR SUPPLY OF GOODS, FITTING AND/OR SPACE PLANNING SERVICES TO BUSINESS ENTITIES

The customer's attention is drawn in particular to the provisions of clause 7.

1. Interpretation

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

Business Day: a day other than a Saturday, Sunday or public holiday in England 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 15.6.

Contract: the contract between Poliform UK and the Customer for the sale and purchase of the Goods and/or Space Planning Services and/or Fitting Services in accordance with these Conditions.

Customer: the sole trader, proprietor or firm who purchases the Goods and/or Space Planning Services and/or Fitting Services from Poliform UK.

Drawings: the space planning drawings prepared for and provided to the Customer by Poliform UK.

Fitting Services: the fitting and installation services provided by Poliform UK to the Customer, including delivering and installing the Goods at the Installation Premises.

Force Majeure Event: has the meaning given in clause 14.

Goods: the wardrobes, furniture, equipment and/or goods (or any part of them) set out in the Order.

Installation Premises: the premises where the Goods are to be installed.

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.

Order: the order by the Customer for the Goods and/or Space Planning Services and/or Fitting Services, as set out in the purchase order form of the Customer.

Space Planning Services: the design services provided by Poliform UK to the Customer, including the Drawings as set out in the Specification.

Specification: any specification for the Goods that is agreed in writing by the Customer and Poliform UK.

Poliform UK: Poliform UK Limited (registered in England and Wales with company number 04216083).

1.2 **Interpretation.** 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 Space Planning Services and/or Fitting Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Poliform UK 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, representation, assurance or warranty made or given by or on behalf of Poliform UK which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Poliform UK and any descriptions or illustrations contained in the catalogues or brochures of Poliform UK are produced for the sole purpose of giving an approximate idea of the Goods and/or Space Planning Services and/or Fitting Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods and/or Space Planning Services and/or Fitting Services given by Poliform UK shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. Supply of Goods

3.1 The Goods are described in the catalogue of Poliform UK as modified by any applicable Specification.

3.2 The Customer shall indemnify Poliform UK against all liabilities, costs, expenses, damages and losses suffered or incurred by Poliform UK in connection with any claim made against Poliform UK for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of a Specification supplied by the Customer for use by Poliform UK. This clause 3.2 shall survive termination of the Contract.

3.3 Poliform UK reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. Supply of Space Planning Services

4.1 Poliform UK shall supply the Space Planning Services to the Customer in accordance with the Specification in all material respects.

4.2 Poliform UK shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Space Planning Services.

4.3 The Customer may not use the Drawings for any purpose other than for completing the sale and purchase of Goods from Poliform UK. The Drawings will not be provided to the Customer until an Order for Goods from Poliform UK is made, or until the Customer pays Poliform UK's invoice for the Space Planning Services in full, whichever is the earliest.

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- 4.4 Poliform UK shall have the right to make any changes to the Space Planning 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 Space Planning Services, and Poliform UK shall notify the Customer in any such event.
5. **Customer's Obligations**
- 5.1 The Customer warrants that it shall:
- a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - b) co-operate with Poliform UK in all matters relating to the Goods and/or Space Planning Services and/or Fitting Services;
 - c) provide Poliform UK, its employees, agents, consultants and subcontractors, with access to the Installation Premises as reasonably required to install the Goods and/or provide the Fitting or Space Planning Services;
 - d) provide Poliform UK with such information and materials as Poliform UK may reasonably require in order to supply the Goods and/or Space Planning Services and/or Fitting Services, and ensure that such information is accurate in all material respects;
 - e) if using the Fitting Services, to prepare the Installation Premises for the Fitting Services and, in particular:
 - i. to ensure the fitter has access to the Installation Premises at reasonable times (between 8.30am and 5.00pm on weekdays);
 - ii. to ensure that any re-routing or installation of plumbing or electrics, or removal of existing furniture has been carried out prior to the fitting date;
 - iii. to provide reasonable access to the Installation Premises (ladder access is not acceptable), to clear the Installation Premises, to provide sufficient working space for the fitter, and to co-operate in reducing health and safety risks at the Installation Premises to an acceptable level;
 - iv. to not make any material alterations to the Installation Premises, and in particular, to not install, relocate or remove any fixed items that Poliform UK are not aware of;
 - v. to inform Poliform UK of anything at the Installation Premises that might make the installation more difficult than Poliform UK might reasonably expect; and
 - vi. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the fitting services are to start.
- 5.2 If Poliform UK's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or the Customer's client, or failure by the Customer or its client to perform any relevant obligation (**Customer Default**):
- a) Poliform UK shall without limiting its other rights or remedies have the right to suspend performance of the Space Planning Services or delivery of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Poliform UK's performance of any of its obligations; and
 - b) Poliform UK shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Poliform UK's failure or delay to perform any of its obligations as set out in this clause 5.2.
6. **Delivery of the Goods**
- 6.1 Poliform UK shall deliver the Goods to the Installation Premises as set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Poliform UK notifies the Customer that the Goods are ready.
- 6.2 The Customer must inform Poliform UK of any changes to the delivery or fitting date or to the Delivery Location at least three weeks before the scheduled delivery or fitting date. In the event that the Customer does not inform Poliform UK within this time frame, the Customer may be liable for a cancellation or postponement charge.
- 6.3 Delivery of the Goods shall be completed upon the arrival of the Goods at the Delivery Location.
- 6.4 If Poliform UK 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. Poliform UK 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 failure of the Customer to provide Poliform UK with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
7. **Storage**
- 7.1 The Goods will be delivered to Poliform UK's warehouse in the United Kingdom (the **Warehouse**) the week before they are due to be delivered to or fitted at the Delivery Location. The Goods will be stored at the Warehouse free of charge for up to one week. After this time, the Customer will be charged for the storage of the Goods at Poliform UK's standard storage rates and delivery will not take place until any storages charges have been paid by the Customer in full.
- 7.2 Without prejudice to any claim Poliform UK may have against the Customer for damages. Poliform UK retains the right to resell Goods that are not collected from the Warehouse within 12 months of the date that the Goods are delivered to the Warehouse.
8. **Quality of Goods**
- 8.1 Poliform UK warrants that on delivery and for a period of twenty-four months from the date of delivery (the **Warranty Period**), the Goods shall be free from material defects.
- 8.2 Subject to clause 8.3 and 8.4, if:
- a) the Customer gives notice in writing to Poliform UK 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 8.1; and
 - b) Poliform UK is given a reasonable opportunity of examining such Goods,
- Poliform UK shall, at its option, repair or replace the defective Goods.
- 8.3 Poliform UK shall not be liable for failure of the Goods to comply with the warranty set out in clause 8.1 in any of the following events:
- a) the Customer or any third party makes any further use of such Goods after giving notice in accordance with clause 8.2; or
 - b) the defect arises because the Customer failed to follow the oral or written instructions of Poliform UK as to the storage, commissioning, installation, use and maintenance of the

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- Goods or (if there are none) good trade practice regarding the same; or
- c) the defect arises as a result of Poliform UK following any drawing, design or Specification supplied by the Customer; or
 - d) the Customer alters or repairs such Goods and/or drawings, designs or Specification produced for the Customer as part of the Space Planning Services without the written consent of Poliform UK; or
 - e) the defect arises as a result of fair wear and tear, wilful damage, negligence, fire, accident or abnormal storage or working conditions; or
 - f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 Poliform UK do not guarantee against:
- a) any defects that cannot be attributed to issues in the manufacture of the Goods;
 - b) natural variations in the colour of wood;
 - c) changes in colour under ambient or artificial light;
 - d) slight variations in dimensions owing to high humidity or dry conditions and the grain of wood;
 - e) knots or other natural characteristics of wood;
 - f) occasional natural marks or wrinkles in suede or leather goods; or
 - g) changes in brightness and tone, specks and slight imperfections.
- 8.5 If Poliform UK determines in its sole discretion that the reported defect is due to any of the reasons set out in clauses 8.3 or 8.4, or the defect is reported outside of the Warranty Period, the Customer will be liable for a £150 plus VAT call out charge, plus expenses and the costs of any repair or replacement.
- 8.6 Except as provided in this clause 8, Poliform UK shall have no liability to the Customer in respect of the failure of the Goods to comply with the warranty set out in clause 8.1.
- 8.7 These Conditions shall apply to any repaired or replacement Goods supplied by Poliform UK.
- ### 9. Title and risk
- 9.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 9.2 Title to the Goods and/or Drawings shall not pass to the Customer until the earlier of:
- a) Poliform UK receives payment in full (in cash or cleared funds) for the Goods and any other Goods or Space Planning Services that Poliform UK has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 9.4.
- 9.3 Until title to the Goods and/or Drawings has passed to the Customer, the Customer shall:
- a) store the Goods and/or Drawings separately from all other goods held by the Customer so that they remain readily identifiable as the property of Poliform UK;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - c) maintain the Goods and/or Drawings in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - d) notify Poliform UK immediately if it becomes subject to any of the events listed in clause 12.2; and
 - e) give Poliform UK such information relating to the Goods and/or Drawings as Poliform UK may require from time to time.
- 9.4 Subject to clause 9.5, the Customer may resell or use the Goods and/or Drawings in the ordinary course of its business (but not otherwise) before Poliform UK receives payment. However, if the Customer resells the Goods before that time:
- a) it does so as principal and not as the agent of Poliform UK; and
 - b) title to the Goods shall pass from Poliform UK to the Customer immediately before the time at which resale by the Customer occurs.
- 9.5 If before title to the Goods and/or Drawings passes to the Customer the Customer becomes subject to any of the events listed in clause 12.2 then, without limiting any other right or remedy Poliform UK may have:
- a) the right to resell the Goods by the Customer or use them in the ordinary course of its business ceases immediately; and
 - b) Poliform UK may at any time:
 - i. require the Customer to deliver up all Goods and/or Drawings in its possession which have not been resold, or irrevocably incorporated into another product; and
 - ii. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods and/or Drawings are stored in order to recover them.
- ### 10. Price and payment
- 10.1 The price of the Goods and/or Space Planning Services and/or Fitting Services shall be the price set out in the Order, or, if no price is quoted, the price set out in the published price list of Poliform UK in force as at the date of delivery.
- 10.2 Subject to clause 10.3, 50% of the price shall be due when the Order is received by Poliform UK. The remaining 50% of the price shall become due prior to delivery and within five Business Days of the date on which the Customer is informed that the Goods have been delivered to the Warehouse. The Goods will not be delivered until the price for the Goods and any installation costs have been paid in full.
- 10.3 Orders for £2,000 or less must be paid in full on the date of the Order.
- 10.4 **If the Customer requires Poliform UK to deliver the Goods more than one week after the scheduled delivery date or delivery is delayed due to non-payment, storage charges will be applicable.**
- 10.5 Poliform UK may, by giving notice to the Customer at any time up to two Business Days before delivery, increase the price of the Goods and/or Space Planning Services and/or Fitting Services to reflect any increase in the cost of the Goods and/or Space Planning Services and/or Fitting Services that is due to:
- a) any factor beyond the control of Poliform UK (including foreign exchange fluctuations, increases in taxes and

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- duties, and increases in labour, materials and other manufacturing costs); or
- b) any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Space Planning Services and/or Fitting Services ordered, or the Specification; or
- c) any delay caused by any instructions of the Customer or failure of the Customer to give Poliform UK adequate or accurate information or instructions.
- 10.6 The price of the Goods and/or Space Planning Services and/or Fitting Services is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Poliform UK, pay to Poliform UK such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Space Planning Services and/or Fitting Services.
- 10.7 Poliform UK may invoice the Customer for the Goods and/or Space Planning Services and/or Fitting Services at any time. Time of payment is of the essence.
- 10.8 If the Customer fails to make any payment due to Poliform UK under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Natwest Bank PLC from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Poliform UK 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 Poliform UK to the Customer.
- 10.10 We retain the right to resell any Goods which are:
- 10.11 not paid for in full within a reasonable period; or
- 10.12 are not collected from Our warehouse after a period of 12 months from the date that they are delivered to Our warehouse.
- 11. Intellectual Property Rights**
- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Drawings shall be owned by Poliform UK.
- 12. Termination and suspension**
- 12.1 If the Customer becomes subject to any of the events listed in clause 12.2, Poliform UK may terminate the Contract with immediate effect by giving written notice to the Customer.
- 12.2 For the purposes of clause 12.1, 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 or limited liability partnership) 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;
- 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 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;
- c) (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;
- d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- e) 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;
- f) (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;
- g) (being a company) the holder of a qualifying charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- h) 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;
- i) 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 12.2a) to clause 12.2h) (inclusive);
- j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- k) the financial position of the Customer deteriorates to such an extent that in the opinion of Poliform UK the capability of the Customer to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- l) (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.
- 12.3 Without limiting its other rights or remedies, Poliform UK may suspend provision or installation of the Goods and/or Space Planning Services and/or Fitting Services under the Contract or any other contract between the Customer and Poliform UK if the Customer becomes subject to any of the events listed in clause 12.2a) to clause 12.2i), or Poliform UK reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.4 On termination of the Contract for any reason the Customer shall immediately pay to Poliform UK all of the outstanding unpaid invoices and interest of Poliform UK.
- 12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 12.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 13. Limitation of liability**
- 13.1 Nothing in these Conditions shall limit or exclude the liability of Poliform UK for:

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- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - b) fraud or fraudulent misrepresentation; or
 - c) breach of the terms implied by section 12 of the Sale of Goods and Services 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 Poliform UK to exclude or restrict liability,
- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

or any of the above statutes or provisions as amended or re-enacted.

13.2 Subject to clause 13.1:

- a) Poliform UK 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, any indirect or consequential loss, or any ex gratia payments arising under or in connection with the Contract; and
 - b) the total liability of Poliform UK 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 100% of the aggregate price of the Goods, Space Planning Services and/or Fitting Services.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14. Force majeure

- 14.1 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, 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 Poliform UK's suppliers or subcontractors.
- 15.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Poliform UK.
- 15.7 **Governing law.** 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 the law of England and Wales.
- 15.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

15. General

15.1 Assignment and other dealings.

- a) Poliform UK may at any time assign, transfer, mortgage, 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, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Poliform UK.

15.2 Notices.

- 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 or other next working day delivery service, commercial courier, fax or e-mail.