

CONDITIONS OF SALE

1 Interpretation

1.1 In these Conditions ("these Conditions"):

"Buyer" means the person who accepts a quotation of the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller.

"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

"Seller" means Main Contract Services Ltd having its registered office at Abacus House, Longbow Close, Huddersfield, HD2 1GQ.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer ("the Contract").

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3. Orders and Specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price and is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller. All prices quoted are valid for thirty days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

5. Terms of payment

5.1 Unless otherwise agreed in writing by the Seller, the price shall be payable in three instalments:

(a) 30% of the price shall be payable on acceptance of the Contract;

(b) 30% of the price shall be payable on delivery of the Goods, delivery that in the event that the Goods are to be collected by the Buyer, the date occurring seven days after the date on which the Seller notifies the Buyer that the Goods are available for collection shall be deemed to be the delivery date;

(c) 40% of the price, together with any delivery and other costs, and value added tax, shall be payable within 30 days of the final delivery.

5.2 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to: (a) cancel the Contract or suspend any further deliveries to the Buyer; (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and (c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above the base lending rate from time to time of The Royal Bank of Scotland plc, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.3 Proceeds of Sale

1. The Buyer is authorised to resell the Goods in the ordinary course of its business, provided that such authority shall automatically terminate upon:
 - (a) any failure by the Buyer to pay any invoice when due;
 - (b) the Buyer entering, or being reasonably suspected of entering, any form of insolvency process; or
 - (c) the Seller giving written notice withdrawing such authority.
2. Where the Buyer resells the Goods before title has passed in accordance with the Retention of Title provisions, the Buyer shall:
 - (a) act as fiduciary agent for the Seller in respect of such resale;
 - (b) hold the proceeds of sale (including any insurance proceeds arising from loss or damage to the Goods) on trust for the Seller;
 - (c) keep such proceeds separate from its own funds and clearly identifiable as the Seller's property; and
 - (d) account to the Seller immediately upon demand for all proceeds of sale up to the amount owed to the Seller.
3. The Buyer shall not assign, pledge, charge or otherwise encumber the Goods or any proceeds of sale of the Goods in favour of any third party while title remains vested in the Seller.
4. The Seller's rights under this clause shall not be affected by any mixing, incorporation, or transformation of the Goods, and the Buyer's obligation to hold the proceeds of sale on trust shall apply irrespective of the form or condition of the Goods at the time of resale.
5. Nothing in this clause shall be construed as creating a registrable charge. The parties agree that the purpose of this clause is solely to preserve the Seller's proprietary rights in the Goods and their traceable proceeds until payment is received in full.

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer;
 - (a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - (b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8. Warranties and Liability

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of delivery.

- 8.2 The above warranty is given by the Seller subject to the following conditions:
- (a) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
 - (b) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
 - (c) the Seller shall be under no liability under the Contract if the total price for the Goods has not been paid by the due date for payment.
 - (d) the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control (including without limitation any industrial action).

9. Insolvency of Buyer

9.1 This clause applies if:

- (a) the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (c) the Buyer ceases, or threatens to cease, to carry on business; or
- (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Building Safety Act Compliance

10.1 Client Responsibilities

- a) The Client acknowledges and agrees that they are responsible for complying with all duties imposed upon them under the Building Safety Act 2022 (the "Act"), including but not limited to:
- b) Ensuring that any products, equipment, or materials purchased from the Supplier are used, installed, and maintained in accordance with the requirements of the Act and all relevant regulations.
- c) Providing accurate and complete information to the Supplier and any other dutyholders where such information is necessary to demonstrate compliance with the Act.
- d) Maintaining appropriate records and evidence of compliance, including product specifications, installation details, and maintenance logs, as required under the Act.

10.2 Supplier Disclaimer

- a) The Supplier shall provide products and documentation in good faith and in accordance with applicable standards. However, the Supplier shall not be liable for any failure by the Client to discharge their duties under the Act, including but not limited to the duty to manage building safety risks, maintain the "golden thread" of information, or cooperate with other dutyholders.

10.3 Indemnity

- a) The Client agrees to indemnify and hold harmless the Supplier against any claims, liabilities, or penalties arising from the Client's failure to comply with their obligations under the Act.

11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provisions.

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provisions in question shall not be affected.

- 11.4 The Contract shall be governed by the laws of Scotland and the Buyer agrees to submit to the non-exclusive jurisdiction of the Scottish courts.
- 11.5 All copyright and other intellectual property rights in any drawings and designs created by the Seller shall be retained by the Seller and all such drawings and designs must not be used in whole or in part without our prior written consent. The Seller reserves the right to make a reasonable charge for use of any drawings and/or design of any layouts, or any cancelled or non-accepted schemes.