

CONDITIONS OF SALE

1. Interpretation

1.1

In these Terms:-

"Buyer" means the person who places an Order for the Goods;
 "Contract" means the contract between the Buyer and the Seller for the sale and purchase of the Goods;
 "Delivery Point" means the place stated in the Order to which the Goods are to be delivered;
 "Goods" means the Goods stated in the Order which the Seller is to supply in accordance with these Terms;
 "Order" means the Buyer's order;
 "Price" means the price of the Goods set out in the Order;
 "Seller" means MKM Building Supplies Limited;
 "Terms" means these standard terms of sale and includes any special terms agreed in writing between the Buyer and the Seller;

2. Entire Agreement.

2.1

These Terms contain the whole agreement between the parties who confirm that they have not entered into the Contract in reliance on any representations that are not expressly incorporated in these Terms.

3. Basis of Sale.

3.1

The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Terms which are applied to all Contracts to the exclusion of all other conditions including any conditions which the Buyer may purport to apply under any purchase order confirmation or similar document or otherwise.

3.2

All Orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Terms.

3.3

No Order submitted by the Buyer shall be binding on the Seller unless and until accepted either in writing or otherwise by the Seller.

3.4

Any variation to these Terms (including any special conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

4. Specifications.

4.1

The Buyer shall be responsible for ensuring the accuracy of any Order and providing any necessary information within a sufficient time to enable the Seller to perform the Contract in accordance with these Terms. Where the Buyer has been shown a sample the Seller does not undertake that the bulk shall correspond with the sample in colour, exact dimensions or quality.

4.2

If the Goods are to be manufactured or subjected to any process 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 person attributable to the Seller's use of the Buyer's specification.

4.3

No Order 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 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.

5. Price of the Goods.

5.1

The Price is exclusive of VAT

5.2

Accounts in respect of Goods supplied are due for payment by the Buyer on or before the last day of the month following the month of delivery ("the Due Date").

5.3

The Price includes the cost of packaging and delivery to the Delivery Point.

5.4

The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller or any delay attributable to the Buyer.

5.5

The Seller may invoice the Buyer for the Price on or at any time after delivery of the Goods.

5.6

The cost of any returnable containers crates or pallets shall be charged to the Buyer in addition to the Price but credit will be given to the Buyer provided that they are returned undamaged to the Seller before the Due Date.

5.7

In the event that full payment is not received by the Seller by the Due Date, the Seller may in addition to its rights in clause 7:-

5.6.1

charge interest on overdue invoices from the Due Date on a day-to-day basis until full and final payment is received in accordance with the Commercial Debts (Interest) Act 1998 together with any regulations thereunder;

5.6.2

cancel the Contract or suspend any further deliveries to the Buyer; or

5.6.3

appropriate any payment made by the Buyer to such of the Goods as the Seller may deem fit.

6. Delivery.

6.1

Delivery of the Goods shall be made by the Buyer collecting the Goods from the Seller's premises or if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to the nearest point to the road which is suitable in the opinion of the Seller's driver. The unloading of Goods without undue delay is the responsibility of the Buyer unless off-loading by crane lorry has been contracted for. 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.

6.2

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 Terms 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.

6.3

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, then without limiting any other right or remedy available to the Seller, the Seller may:-

6.4.1

store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.4.2

sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses charge the Buyer for any shortfall below the Price under the Contract.

6.4

Where by express agreement with the Seller the Buyer return Goods to stock a minimum handling charge of 15% of the Price plus any carriage or other costs incurred will be deducted from the amount to be credited.

7. Property and Risks.

7.1

Risk of damage to or loss of the Goods shall pass to the Buyer on delivery.

7.2

Property in the Goods shall notwithstanding delivery remain with the Seller until all sums due and owing by the Buyer to the Seller on any account have been paid in cash or cleared funds.

7.3

Pending the transfer of the property in the Goods and until payment in full of all accounts of the Buyer to the Seller:-

7.3.1

the Buyer shall hold the Goods as the Seller's bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property; and

7.3.2

the Seller may at any time require the Buyer to deliver up the Goods to the Seller and in default the Buyer hereby grants the Seller a licence to enter upon any premises of the Buyer and any third party where the Goods are stored and repossess the Goods.

7.4

In the event of any payment being overdue in whole or in part or any act or proceeding involving the Buyer's solvency being taken the Buyer's right to sell the Goods shall cease and the Seller (without prejudice to any other rights it may have) may by its servants or agents enter upon the premises of the Buyer to recover any Goods as yet unsold by the Buyer.

8. Warranties and Liability.

8.1

Goods are not tested or sold as fit for any particular purpose and any term warranty or condition express implied or statutory to the contrary is excluded. In no circumstances whatsoever shall the Seller's liability (in contract, tort or otherwise) to the Buyer arising out of or in connection with the Contract or the Goods supplied hereunder exceed the Price. The Seller shall be under no liability for loss or damage or delay howsoever arising.

8.2

If and to the extent that any person who has supplied the Seller with the Goods supplied hereunder (hereinafter referred to as the Supplier) validly excludes restricts or limits its liability to the Seller in respect of the said Goods or of any loss or damage arising from any liability of the Seller to the Buyer in connection with the said Goods, then the liability of the Seller to the Buyer in respect of such Goods shall be correspondingly excluded restricted or limited to the extent to which the Supplier is liable to the Seller in respect of the Seller's liability to the Buyer and no further. Any term warranty or condition express or implied or statutory to the contrary is excluded. The Seller will upon request supply the Buyer with the details of any such exclusion restriction or limitation.

8.3

Subject as expressly provided in these Terms, 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

Except in respect of death or personal injury caused by the Seller's negligence or liability for defective products under the Consumer Protection Act 1987, 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 loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever 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 including any delay in supplying or failure to supply the Goods in accordance with the Contract or at all 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.

8.5

Notice of any claim arising out of or in connection with this Contract must be given in writing to the Seller within 7 working days of delivery of the Goods failing which all claims shall be deemed to be waived and absolutely barred. In any event, the Seller shall be under no liability for shortage or damage in transit or for deviation mis-delivery, delay or detention unless the Seller and the Carrier of the Goods are advised thereof in writing otherwise than upon a consignment note or a delivery document within 3 days and a claim is made on the Seller and the Carrier in writing within 7 days after the termination of transit as defined under the current conditions of carriage of the Road Haulage Association (in the computation of time for this purpose the following days shall not be included: Sunday, or any statutory holiday). The Seller shall be under no liability whatsoever if bulk is broken pending settlement of any claim, or, where the Goods collected or delivered include plywood or particle board, if the marked battens on the packages (if any) are not produced with the Goods for inspection by the Seller.

9. Force Majeure.

9.1

The Seller shall not be liable for any delay in delivery or otherwise or defect due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest, or other event beyond its control.

10. Arbitration.

10.1

Any disputes which may arise between the parties concerning the Contract shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators for determination in accordance with the Arbitration Act 1996.

11. Termination.

11.1

The Seller may terminate this agreement at any time and without further obligation to the Buyer by notice in writing if the Buyer becomes insolvent or an order is made or a resolution passed for the winding up of the Buyer (other than for the purpose of a solvent amalgamation or reconstruction) or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of its assets.

12. General.

12.1

The Buyer may not assign any of its rights or obligations under the Contract without the prior written consent of the Seller.

12.2

The Buyer will at all times keep confidential all information acquired in consequence of or pursuant to this Contract save as may be required by law or where such information is in the public domain other than due to the Buyer's breach.

12.3

A notice to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business.

12.4

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 provision.

12.5

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

12.6

The Buyer acknowledges and by submitting an Order consents to the processing and disclosure by the Seller of personal data relating to the Buyer relevant to any credit which may from time to time be afforded by the Seller to credit reference agencies, banks and credit insurers and that such organisations may process the data provided.

12.7

This agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the jurisdiction of the courts of England and Wales.

12.8

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions.