

TERMS OF SALE

DEFINITIONS

In these Terms of Sale the following meanings shall apply:

- "We, Ours and Us" means Shrophire Building Supplies Limited or Shrophire Door and Gate Limited whichever is the contracting party and the other shall be the Sister Company as the case may be.
- "You and Yours" means the person including bodies corporate and incorporate their employees or agents seeking to purchase goods from Us
- "the Goods" means the goods, works and/or services to be supplied by Us
- "Company Signatory" means a director or manager employed by Us
- "the terms" means these terms and any special terms agreed in writing between a Company Signatory and You.

IF YOU DEAL AS A CONSUMER AS DEFINED BY THE UNFAIR CONTRACT TERMS ACT 1977, ANY PROVISIONS OF THESE TERMS WHICH IS OF NO EFFECT SHALL NOT APPLY. THE STATUTORY RIGHTS OF A CONSUMER ARE NOT AFFECTED BY THESE TERMS. HEALTH AND SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS PROVIDED AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.

THE CONTRACT

- 2.1 Orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Company Signatory. Any contract or additional terms unless so agreed are excluded.
- 2.2 Quotations are invitations to treat only and shall lapse 30 days from their date.
- 2.3 We shall not be liable for any misrepresentation made by Us Our employees or agents to You as to the condition of the goods their fitness for any purpose or as to quantity measurements or specification unless the representation is made or confirmed in writing by a Company Signatory and/or is fraudulent.
- 2.4 Our brochures and other literature are for Your guidance only and (in the absence of fraud on Our part) shall not constitute representations by Us. If you require advice in relation to the Goods a specific request for advice should be made and any advice given in writing by a Company Signatory in response to such a request shall amount to a representation and We shall be liable accordingly.
- 2.5 We may make changes to the specification of the goods necessary to conform to any applicable statutory or EC requirements or without materially affecting their quality or performance. You accept that there may be minor variations of colour in certain goods which is beyond Our control and in respect of which We shall not be liable to You at all.
- 2.6 You shall be responsible to us for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided by You and for giving Us any necessary information relating to the Goods within a sufficient time to enable Us to perform the Contract in accordance with its Terms.
- 2.7 Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation. Unused Goods will be accepted for return at Our discretion and on terms agreed with Us.

PRICE

- 3.1 The price of the Goods shall be as quoted or stated in Our price list current at the date of the Contract and is exclusive of VAT. A separate charge shall be made for delivery, transport, insurance and packaging. Any discounts deductions or rebates agreed are only available if the price is paid by the due date.
- 3.2 Our quotations and prices are based on costs prevailing at the time when they are given or agreed. We shall be entitled to adjust the price of the goods as at the time of delivery by such amount as may be necessary to cover an increase sustained by Us after the date of Your order and any direct or indirect costs of making obtaining handling or supplying the Goods.
- 3.3 Prices stated or quoted are applicable to the quantity specification delivery dates and information provided by You. If the order placed varies or differs is caused by Your instructions or lack of instructions We shall be entitled to adjust the price.

PAYMENT

- 4.1 If We have agreed in writing to give You credit all accounts are due for payment without deduction or retention 30 days after the end of the month in which the invoices were issued which shall be on or at any time after delivery of the Goods.
- 4.2 Credit is granted and may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any order or contract if the arrangements for payment or Your credit rating is not satisfactory to Us.
- 4.3 You may not pay payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason.

DELIVERY

- 5.1 Delivery shall occur when the goods arrive at the delivery address or 5 working days after the delivery or collection is offered to You.
- 5.2 If You fail to take or make arrangements to accept delivery or collect the goods, or We are unable to deliver because of inadequate access or instructions delivery shall be deemed and We may do any one or more of the following (without prejudice to any other right or remedy We may have).
- make additional charges for failed delivery
 - store the Goods at Your risk and cost
 - invoice You for the Goods
 - terminate this contract without any liability in our part
 - recover from You all costs and losses incurred by Us.
- 5.3 Delivery dates are given in good faith but are estimates only. Time for delivery Shall not be of the essence of the contract.
- 5.4 We shall not be liable for damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by US in delivery of the Goods or failure to deliver the Goods in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.
- 5.5 If We fail to deliver the goods our entire liability shall be limited to the excess of any over the price of the Goods, of the cost to You (purchasing in the cheapest market reasonably available to You) of similar goods to replace those not delivered.
- 5.6 We reserve the right to make delivery by installments and tender a separate invoice in respect of each installment. Any claim which You may have in respect of one installment shall not affect Our liability in respect of any other installment.
- 5.7 You must provide the necessary labour for unloading the Goods and unloading is to be completed with reasonable speed. If Our delivery vehicle is kept waiting for an unreasonable time or is obliged to return without completing delivery or if We provide additional staff to unload Goods or if for any reason You fail to accept delivery of the goods as an additional charge will be made.
- 5.8 We shall deliver the Goods as near as possible to the delivery address as a safe hard road permits. We reserve the right to refuse to deliver the goods to the premises considered in the discretion of the driver to be unsuitable.
- 5.9 If the Goods are to be deposited other than on Your private premises you shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and will indemnify Us in respect of all losses damages costs and expenses. We may incur as a result of such delivery whether on public highway or elsewhere.
- 5.10 You will indemnify Us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to Our negligence.

INSPECTION AND TESTING

- 6.1 Goods will be tested at Your request and in Your presence subject to:
- an additional charge
 - no liability on Our part for any delay caused
- 6.2 - tests in Your absence shall be deemed to be tests in Your presence if you have received 5 working days notice of the test date.
- 6.3 You shall inspect the goods at the place and time of unloading but nothing in these Terms shall require You to break packaging and/or unpack goods which are intended to be stored before use.
- 6.3 Unless You advise Us by telephone immediately and written notice is received by Us within 3 working days of unloading of any claim apparent on reasonable inspection for loss of damage in transport, short delivery or failure to conform to the Contract or (if the Contract is a contract for sale by sample) that the bulk does not compare with the sample the Goods will be deemed to have been delivered in accordance with the delivery documents and You shall not be entitled to and waive any right to reject the Goods.
- 6.4 Our liability for loss or damage in transit or short delivery apparent on reasonable inspection is limited to supplying the Goods as ordered and We shall not be liable for any damages whatsoever. You remain liable to pay the full invoice price of other Goods delivered in accordance with the Contract. Any other claim for damages is subject to clause 8.

TITLE AND RISK

- 7.1 Risk in the Goods shall pass to You when the Goods are delivered. The title to the Goods shall remain with Us until You pay the price of the Goods and any other sums outstanding between You and Us whether in respect of this contract or otherwise.
- 7.2 Until title passes:-
- 7.2.1 You own the Goods as Our fiduciary agent and bailee
 - 7.2.2 The Goods shall be stored separately from any other goods and You shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods.
 - 7.2.3 We agree that You may use or agree to sell the Goods as principal and not as Our Agents in the ordinary course of Your business subject to the following express conditions:
 - that the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for Us and not mixed with any other monies or paid into an overdraft bank account and shall at all times be identifiable as Our money.
 - that you notify Our customer that We shall remain the legal owner of the Goods until We receive payment in accordance with Clause 7.1

and we reserve the right to label the Goods accordingly.

- that You will at Our request and at Your expense assign to Us all rights You may have against Your customer, and that Your right to use or sell the Goods may be withdrawn by Us on notice at any time and will automatically cease in the event of Your becoming insolvent.
- 7.2.4 If Goods are to become affixed to any land or building You must ensure that they are capable of removal without material injury to the land or building and You shall take all necessary steps to prevent title to the Goods from passing to the owner or landlord of such land or building.
- 7.3 We shall be entitled at any time to recover any or all of the Goods to which We have title and for that purpose We Our employees or agents may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

LIABILITIES

- 8.1 In this clause the 'Defect' shall mean the condition and/or any attribute of the Goods and/or any condition or other circumstance arising from any service provided by Us and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.
- 8.2 Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or Our liability for fraudulent misrepresentation.
- 8.3 In this clause 8.2 of these Terms We shall not be liable by reason of any misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of Statutory duty) or otherwise howsoever and whatever the cause for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 8.4 below.
- 8.4 Where but for the effect of Clause 8.3 of those Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out on clause 8.5 below shall at Our sole discretion either repair the Goods at Our own expense or supply replacement Goods free of charge or re-perform any service or refund all (or where appropriate part) of the price paid.
- 8.5 We will not be liable under Clause 8.4:-
- a) if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these terms at the time of loading or unloading unless You give Us written notice within 3 working days of the time of unloading.
 - b) Unless the defect is discovered within 6 months from the date of delivery and we are given written notice of the Defect within 3 working days of it being discovered.
 - c) unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are used fixed or in any way interfered with We acknowledge that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub clause shall not apply to any works affecting the Goods which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.
 - d) if the Defect arises from fair wear and tear; and/or
 - e) if the Defect arises from your negligence misuse alteration or repair of the Goods storage of the Goods in unsuitable conditions or abnormal working conditions.
- 8.6 If the Goods are not manufactured by Us or have been processed by a third party whether at Our or Your request Our liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.
- 8.7 If the Goods are supplied to a drawing design measurement or specification provided in writing by Us then subject to Clause 8.2 of these Terms We shall not be under any liability for damages whatsoever under Clause 8.4 of these Terms except in the proportion and to the extent that such damages have resulted primarily from Our breach of contract or negligence.
- 8.8 We will not be liable under Clause 8.7 if:
- a) material information is withheld concealed or misrepresented by Us; and/or
 - b) the drawing design measurement or specification provided by Us is not in writing.
- 8.9 If the Goods are supplied manufactured or processed to the drawing design measurement or specification of You then:
- 8.9.1 Subject to Clause 8.2 of these Terms We shall not be under any liability for damages whatsoever or under Clause 8.4 of these Terms as the case may be except in the event of:
- a) fraudulent misrepresentation by Us
 - b) misrepresentation where the representation was made or confirmed in writing by a Company Signatory
 - c) non-compliance with such drawing design measurement or specification; or
 - d) breach of a written warranty signed by a Company Signatory that the Goods are fit for that purpose.
- 8.9.2 You will unconditionally fully and effectively indemnify Us against all losses damages costs and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim:
- a) or infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person; and/or
 - b) arising from any such manufacturing or processing including but not limited to any Defect in the Goods.
- This indemnity will be reduced in proportion to the extent that such losses damages costs and expenses are due to our negligence
- 8.10 Subject to Clause 8.2 We shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever cause thereof for:
- a) any loss of profit, business, contract revenues or anticipated savings; and/or
 - b) any special, indirect or consequential damage of any nature whatsoever.
- 8.11 You will unconditionally fully and effectively indemnify Us against all losses damages penalties costs and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by a third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence.
- 8.12 Without prejudice to any other provisions of these Terms in any event Our total liability for any one claim or for the total of all claims arising from any one act of default on Our part (whether arising from Our negligence or otherwise) shall not exceed the limit of liability laid down by Our insurers in respect of such claim.

DEFAULT & TERMINATION

- 9.1 'Insolvent' means You becoming unable to pay Your debts within meanings of Section 123 (Company) or section 268 (individual) of the insolvency Act 1986 or You ceasing to pay your debts in the ordinary course of business unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.
- 9.2 'Associated Company' means Your subsidiary or holding company as defined in Section 736 and Section 736A of the Companies Act 1985 or a subsidiary or holding company, or any company over which Your directors or shareholders have control as defined in Section 840 of the Income and Corporation Taxes Act 1988.
- 9.3 If You fail to pay any invoice or any sum due to Us or to Our sister Company under any contract on the due date or Your credit limit is exceeded or You or Your Associated Company becomes insolvent or there is a material change in You or Your Associated Company's constitution or you commit a material breach of this Contract and fail to remedy that breach after being requested to do so all sums outstanding between You and Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have)
- a) Require payment in cleared funds in advance of further deliveries of Goods
 - b) Charge interest on the monies outstanding at the rate of 8 per cent above the Bank of England Official Dealing Rate in force from time to time from the due date until the date of payment or later as well as below judgement.
 - c) suspend or cancel any further deliveries of Goods to You under any contract without liability on Our part
 - d) without prejudice to the generality of Clause 7 of these Terms exercise any of Our rights pursuant to that clause, and/or
 - e) terminate this or any other contract with You or any Associated Company without liability on Our part.
- 9.4 You shall reimburse Us costs including legal costs on an indemnity basis which we incur in enforcing Our rights under this Contract including but not limited to recovery of any sums due.

GENERAL

- 10.1 The contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.
- 10.2 Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended extended or re-enacted.
- 10.3 The headings in these terms are for convenience only and shall not affect their interpretation.
- 10.4 Except as provided otherwise in these Terms We shall not be deemed to be in breach of contract nor liable for any delays or failure to perform any of Our obligations under this contract under any cause beyond Our reasonable control including but not limited to industrial action, import or export regulations or embargoes, difficulties in obtaining materials, parts, components, labour or fuel, power failure or breakdown in machinery. Should any such event occur We reserve the right to cancel or suspend, all or any part of the Contract without incurring any liability.
- 10.5 The Waiver by Us of any breach or default of these Terms shall not be construed as continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 10.6 If any clause or sub-clause of these terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 10.7 If the Housing Grants Construction Regeneration Act 1996 Part 11 applies to this contract the scheme under that Act shall apply and take precedence in the event of conflict between the scheme and these terms.
- 10.8 This contract is personal to You and it may not be assigned.
- 10.9 Termination of the Contract shall not affect rights and obligations which have already accrued at the time of termination.
- 10.10 Nothing in these Terms was intended to or will create any benefit for or right to enforce any of the terms to any Third Party.