

# Terms & Conditions of Sale

## Alumasc Exterior Building Products Ltd



### 1. DEFINITIONS

In these Terms and Conditions of sale of Goods and/or Services by the Company to the Customer, the defined terms shall have the meaning given to them in the Order Acknowledgement. In the absence of either an Order Acknowledgement or use of a defined term in the Order Acknowledgement, these Terms and Conditions shall be interpreted using the following defined terms:

**"Acknowledgement Number"** means the reference (usually stated in the Order Acknowledgement) used to identify the commercial terms agreed by the parties (written or otherwise) in respect of the sale of the Goods and/or Services by the Company;

**"Agreement"** shall mean together the Order Acknowledgement (including any schedules to it) and the Terms and Conditions (together with any Special Terms) or, in the absence of a Purchase Order, these Terms and Conditions alone;

**"Applicable Anti-Bribery Law"** means any bribery, fraud, kickback, or other similar anti-corruption law or regulation of any relevant country, including the Bribery Act and the US Foreign Corrupt Practices Act 1977;

**"Associated Person"** means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors;

**"Bribery Act"** means the UK Bribery Act 2010 (as amended from time to time);

**"Company"** shall mean Alumasc Exterior Building Products Limited, whose registered office is Burton Latimer, Kettering, Northamptonshire, NN15 5JP (company registration number 2992960),

**"Customer"** shall mean the company, firm or person buying (or who has requested to buy) the Goods and/or Services from the Company;

**"Expected Due Date"** shall mean the date when the Goods are expected to be delivered by;

**"Goods"** shall mean any goods supplied or to be supplied by the Company;

**"Order Acknowledgement"** means the document referred to as "order acknowledgement" and in a form provided by the Company, which sets out the commercial terms agreed by the parties relating to the sale of Goods and/or Services by the Company to the Customer;

**"Expected Performance Date"** shall mean the date when the Services are expected to be performed by;

**"Premises"** shall mean the delivery address to which the Goods are to be delivered or the premises where the Services are to be performed;

**"Price"** shall mean the price of the Goods and/or Services which shall be inclusive of all packaging and exclusive of value added and other taxes and all freight, off-loading, carriage, insurance and delivery charges (unless agreed otherwise in the Order Acknowledgement and subject at all times to the application of haulage charges set out at clause 7);

**"Quote"** shall mean any information or estimate (written or oral) provided by the Company to the Customer in respect of Goods and/or Services requested to be provided by the Company to the Customer, prior to the issue of an Order Acknowledgement by the Company in respect of such goods and/or Services;

**"Services"** shall mean any services supplied or to be supplied to the Customer by the Company;

**"Special Terms"** shall mean any terms and conditions agreed in writing by the parties to apply in addition to, or in substitution of the Terms and Conditions; and

**"Terms and Conditions"** shall mean the standard terms and conditions of sale set out herein.

### 2. APPLICATION OF TERMS AND CONDITIONS

2.1 All Goods and Services supplied by the Company are supplied on these Terms and Conditions. Any contract for the sale of Goods and/or Services shall not be subject to (and the Company specifically excludes) any other terms and conditions which the Customer may seek to impose whether or not the Customer's terms and conditions are contained or referred to in any offer, acceptance or counter offer made by the Customer.

2.2 No variation to an Agreement (subject to these Terms and Conditions) shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

2.3 This Agreement contains the whole agreement between the Company and the Customer and supersedes all prior representations, arrangements, understandings, agreements and terms and conditions of sale and/or purchase between the Company and the Customer relating to the subject matter hereof. The Parties have not relied upon, and will have no remedy in respect of, any warranty, statement, representation or understanding made by any party unless it is expressly set out in this Agreement. The only remedy available to either Party in respect of any such statement, representation, warranty or understanding shall be damages for breach of contract under the terms of this Agreement and neither Party shall have the right to rescind for negligent or innocent misrepresentation in relation to this Agreement. Nothing in this Agreement shall restrict or exclude either Party's liability for fraudulent misrepresentation.

2.4 This Agreement and any warranty given in writing by the Company relating to the Goods and/or Services contains the whole agreement between the Company and the Customer. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law.

2.5 The Company's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Company in writing. In entering into the Agreement, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representation, arrangement, understanding or agreement (whether written or oral) not expressly set out referred to in this Agreement. Nothing in this Agreement shall limit or exclude liability for fraudulent statements.

2.6 Acceptance of the Goods by the Customer or the signature of a representative of the Customer on any Quote, invoice or other document which expressly refers to this Agreement shall be conclusive evidence before any court or arbiter that these Terms and Conditions apply. Previous dealings between the Company and the Customer shall not vary or replace these terms or be deemed in any circumstance whatsoever to do so. Clause headings appearing in these Terms and Conditions are for convenience only and shall not be construed as forming part of these Terms and Conditions or taken into account in the interpretation thereof.

2.7 Any reference in these Terms and 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.

### 3. QUOTES AND FORMATION

3.1 All Quotes from the Company are estimates only and a binding Agreement will only be formed following:

3.1.1 receipt of an order for Goods and/or Services (pursuant to a Quote or not, as the case may be); and

3.1.2 issue of an Order Acknowledgement by the Company or (if sooner) the Company procuring the Goods or commencing the Service provision, at which point the Customer's offer will have been accepted and the Agreement will be formed.

3.2 In circumstances when the Goods and/or Services are of a bespoke or non-standard nature:

3.2.1 requiring the approval of drawings by the Customer, a failure of the Customer to provide such approval in a timely manner may result in delays to the Expected Due Date; and

3.2.2 without prejudice to any of its other rights under this Agreement, the Company reserves the right to obtain a letter of intent from the Customer in relation to any costs and expenses it will incur prior to the issue of an Order Acknowledgement.

3.3 All such acceptances by the Company are subject to the availability of the necessary materials and to the Company being able to obtain any necessary authorisation and/or licences and to the same remaining valid.

3.4 Any lead times referred to in any Quote are provided for estimate purposes only.

### 4. ACCURACY

4.1 The Agreement is not a contract for sale of goods by description. All descriptive matter, specifications, calculations, drawings, particulars of weights, dimensions, coverage rates submitted or issued by the Company or otherwise contained in the Company's price lists or other published matter or advertising are approximate only and none of these shall form part of the Agreement or give rise to any independent or collateral liability upon the Company being intended merely to present a general idea of the Goods and Services as described therein.

4.2 The Company may modify the specification of Goods or Services without notice provided that such modification does not materially affect the performance of the Services or the Goods.

### 5. PRICE

5.1 All prices quoted in the Quote are the Company's current prices at the time of providing the Quote. The price payable for the Goods or performance of Services shall be the Price ruling at the date of despatch or performance and the Company shall be entitled to adjust the Price of the Goods and/or Services at any time between the date of the Order Acknowledgement and the date of delivery of the Goods or performance of the Services, to take account of any increase in costs incurred by the Company (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), changes to its price lists or any change in delivery dates, quantities or specifications for the Goods or Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions. All prices are quoted "Ex Works" (as defined in the edition of Incoterms applicable at the date of the Order Acknowledgement) save as expressly varied hereby and exclusive of VAT, purchase or other taxes and subject to clause 7, any costs of carriage and insurance where applicable, which shall be added at the rate in force at the time the Goods and Services are invoiced.

5.2 Special orders and non-standard colours will be subject to a manufacturer's premium; such premium will be detailed in the Quote and/or Order Acknowledgement.

5.3 If the Company discovers a typographical error in the Price, it will inform the Customer as soon as possible and give the Customer the option of reconfirming its order at the correct price or cancelling it, without liability for cancellation set out at clause 22.2. If the Customer cancels in such circumstances and has already paid the Price, the Company will provide a full refund of this.

### 6. DELIVERY AND PERFORMANCE

6.1 Delivery shall be made by the Company immediately following notification to the Customer that the Goods are ready for collection at the Company's premises. Delivery by the Company to a carrier for the purpose of transmission to the Customer shall be deemed to be delivery to the Customer. Section 32(2) of the Sale of Goods Act 1979 shall not apply.

6.2 Expected Due Dates and Expected Performance Dates are given and included in good faith but are an estimate only. Time for delivery of Goods and/or provisions of Services is not of the essence and the Company shall not (subject to clause 14.1.1) be liable for any loss (including loss of profit), damage, costs, charges or expenses caused directly or indirectly by failure (for any reason) to meet the Expected Due Dates and Expected Performance Dates (even if caused by the Company's own negligence), and further, the Customer shall have no right to cancel the Agreement in the event of such a failure.

6.3 The Company shall be entitled to make delivery of the Goods listed in an Order Acknowledgement by instalments and to invoice separately for each instalment,

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- including in relation to bulk call off orders. Where delivery of the Services is made by instalments, the Services may be performed in sections in any sequence. Deliveries of further instalments and performance of further sections may be withheld until the Goods and/or Services comprised in earlier instalments and/or sections have been paid for in full.
- 6.4 Where the Company has agreed to deferred deliveries, such deliveries shall be accepted by the Customer within three months from the date of the Order Acknowledgement. If the Customer fails to take delivery within such period, the risk shall pass to the Customer and the balance remaining undelivered together with storage costs shall be invoiced to the Customer and payment shall become immediately due.
- 6.5 Goods which the Customer agrees to collect Ex Works must be collected within three days of the Company notifying the Customer that the Goods are ready (or such shorter period if agreed by the parties). If the Goods are not collected within this period the Company shall be entitled to:
- 6.5.1 invoice the Customer for the Goods and to charge for storage of the Goods, the Goods being held at the Customer's risk; and/or
- 6.5.2 sell such Goods after 28 days after such failure or refusal and deduct any monies payable to the Company by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall below the Price.
- 6.6 Upon delivery to the Customer, all Goods should be examined. Deviations in quantity of the Goods delivered from those stated in the Order Acknowledgement shall not give the Customer the right to repudiate this Agreement, to reject the Goods (save insofar as they materially exceed the amount ordered) or to claim damages for breach of contract and the Customer shall be obliged to accept and pay at the Price for the quantity delivered (except insofar as the Customer has the right to reject the Goods under this clause 6.5.1).
- 7. HAULAGE CHARGES**
- 7.1 The haulage charges for Goods will be as detailed in the Company's "Schedule of Carriage Charges" in force at the date of despatch.
- 7.2 Small loads or express deliveries of Goods will be charged on an individual basis.
- 8. PAYMENT**
- Where the Agreement is a "construction contract" as defined in the Housing Grants Construction and Regeneration Act 1996 or any replacement thereof, then the following clauses marked 8A shall apply, and in all other cases, the clauses marked 8B shall apply:
- 8A.1 The full Price (including VAT) of the Goods and Services as invoiced shall be paid to the Company on the 28th day of the month following the month of delivery of the Goods and/or performance of the Services. This is the final date for payment. The due date for payment of any invoice shall be ten days after its issue.
- 8A.2 Not later than seven days before the final date for payment of an amount due pursuant to any invoice, the Customer may give a written notice to the Company which shall specify any amount proposed to be properly withheld and/or deducted from that due amount, the substantiated ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground and, subject thereto, the Customer shall be entitled to make such withholding and/or deduction.
- 8A.3 The Company may bring an action for the Price of the Goods even though the property in them may not have passed to the Customer.
- 8A.4 Time for payment of the Price shall be of the essence.
- 8A.5 The Customer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts.
- 8A.6 Interest shall be payable by the Customer on overdue amounts. The Company reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.
- 8A.7 The Company shall be entitled to suspend its obligations under this Agreement to deliver Goods to and/or perform Services for the Customer until such time as all sums due from the Customer to the Company which have passed the final date for payment, including interest as aforesaid, have been paid in full. Should the Company decide to exercise this option of suspension, it shall give the Customer seven days notice of its intention to do so.
- 8A.8 A cheque given by the Customer shall not be treated as payment until it has been cleared.
- 8A.9 The Company shall at any time be entitled to appropriate any payment made by the Customer in respect of any Goods in settlement of such invoices as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer.
- 8B.1 Where the Customer does not have a credit facility with the Company, the full Price (including VAT) of the Goods and Services shall be paid to the Company as invoiced at the same time as placing an order.
- 8B.2 Where the Customer has been granted credit terms by the Company (in its sole discretion), the full Price (including VAT) of the Goods and Services shall be paid as invoiced to the Company on the 28th day of the month following the month of delivery of the Goods and/or performance of the Services. This shall be the final date for payment. The Company may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice and without liability for any losses that the Customer may suffer as a result of such withdrawal and upon such withdrawal all amounts due or accruing to the Company (under the Agreement or otherwise) shall become immediately payable notwithstanding any other clause.
- 8B.3 Payment shall be made in full without deduction, set off or abatement on any grounds. The Company may bring an action for the Price of the Goods even if property in them may not have passed to the Customer.
- 8B.4 Not later than seven days before the final date for payment of an amount due pursuant to any invoice, the Customer may give a written notice to the Company which shall specify any amount proposed to be properly withheld and/or deducted from that due amount, the substantiated ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground and, subject thereto, the Customer shall be entitled to make such withholding and/or deduction.
- 8B.5 Time for payment of the Price shall be of the essence.
- 8B.6 The Customer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts.
- 8B.7 Interest shall be payable by the Customer on overdue amounts. The Company reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.
- 8B.8 Without prejudice to any other rights the company may have, the Company shall be entitled to suspend the obligations under this Agreement to deliver Goods to and/or perform Services without liability for any losses that the Customer may suffer as a result of such suspension until such time as all sums due from the Customer to the Company which have passed the final date for payment, including interest as aforesaid, have been paid full.
- 8B.9 A cheque given by the Customer shall not be treated as payment until it has been cleared.
- 8B.10 The Company shall at any time be entitled to appropriate any payment made by the Customer in respect of any Goods in settlement of such invoices as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer.
- 9. TERMINATION**
- Without prejudice to any of its other rights the Company shall, at its option, be entitled by notice to terminate this Agreement immediately in whole or in part and demand payment of any amount due or accruing to the Company (whether under this Agreement or otherwise), re-sell the Goods and/or withhold or cancel any deliveries and the Customer shall keep the Company indemnified against all costs, demands, expenses and losses suffered by the Company if any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) occurs or is likely to occur:
- 9.1 (a) the Customer has a bankruptcy petition presented against him or a bankruptcy order is made; (b) the Customer makes or seeks to make any composition or arrangement with his creditors; (c) the Customer passes a resolution for its winding up or makes a proposal to its creditors for a voluntary arrangement or applies for any interim order (within the meaning of Section 268 Insolvency Act 1986); (d) an encumbrance takes possession of any of the Customer's assets, or any of the Customer's property is taken in execution or process of law; (e) a petition is presented or an order is made or a resolution is passed for the winding-up of the Customer; (f) a petition is presented or an order is made for an administration order to be made in relation to the Customer; (g) the Customer's directors make a proposal for a voluntary arrangement with the Customer's creditors; (h) the Customer is unable to pay its debts (within the meaning of Section 123 Insolvency Act 1986); or (i) a receiver or administrative receiver is appointed over any of the Customer's assets; or
- 9.2 the Customer fails to make any payment owed to the Company in accordance with clause 8;
- 9.3 the Customer fails to take delivery or to collect the Goods within 28 days of being notified by the Company that they are to be delivered or are ready to be collected; or
- 9.4 the Customer is in breach of any of its obligations under this Agreement which, if capable of remedy, the Customer has not remedied within 30 days of receiving written notice from the Company. For the purpose of this clause 9.4 "the Company" shall be deemed to include any other company which is a subsidiary of The Alumasc Group plc, and "the Customer" shall be deemed to include, where it is a member of a group of companies, any other company in that group.
- 10. RISK**
- Risk of damage to or loss of the Goods (or in each instalment of the Goods where the Company has elected to make deliveries by instalment pursuant to clause 6.3) shall pass to the Customer when the Goods are delivered, in accordance with the terms of clause 6.1. Section 20(2) Sale of Goods Act 1979 shall not apply.
- 11. PROPERTY**
- Notwithstanding the passing of risk under clause 10 above, unless and until full payment with cleared funds of all monies due from the Customer shall have been made to the Company in respect of all the Goods delivered or to be delivered to the Customer and comprised in the Agreement and in respect of all and any Goods supplied or to be supplied by the Company under this Agreement, property in and title in such Goods (both legal and equitable) shall remain with the Company and the following provisions of this clause shall be applicable:
- 11.1 Until title to the Goods passes to the Customer, the Customer shall keep the Goods in good and substantial repair and condition and the Goods shall be protected and stored in such a way as to be clearly identifiable as belonging to the Company. The Customer must not destroy or deface any identifying marks on the Goods or their packaging; and must keep the Goods insured on the Company's behalf for the full Price of the Goods against "all risks" to the reasonable satisfaction of the Company and produce the policy of insurance to the Company upon request and must hold all proceeds of such insurance on trust for the Company and shall not mix them with any other money nor pay the proceeds into an overdrawn bank account.
- 11.2 Insofar as Goods may be delivered to the Customer prior to the time when payment is received by the Company, the Customer shall hold the same in the capacity of a fiduciary for and on behalf of the Company (as its bailee) until the time when payment is received by the Company in accordance with clause 8 hereof and in such capacity and until such time shall remain liable to account to the Company for the same or if the same shall be sold by the Customer, in accordance with the next paragraph of this clause for that part of the proceeds of

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- sale thereof (the "Company's part of the proceeds") which is equivalent to the Price at which the same were invoked by the Company to the Customer
- 11.3 The Customer shall not resell, exchange or barter the Goods in any way whatsoever, other than in the normal course of its business and providing that the Customer shall pay the Company's part of the proceeds of such a sale into a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Company by the Customer acting in a fiduciary capacity. The entire proceeds arising by virtue of any such sale, use or disposal shall be held in trust for the Company and shall not be mixed with any other monies or paid into any other overdrawn bank account and shall at all times be identifiable as monies belonging to the Company.
- 11.4 Upon request, the Customer shall assign forthwith to the Company the benefit of any agreement whether written or oral under which the Goods have been sold to a third party notwithstanding and contrary to clause 11.3 above including but not limited to any claim for the Price thereof or their recovery or value; thereafter, the Company shall be entitled to pursue any remedy open to the Customer and shall be entitled to retain any sum or property recovered at payment of a sum owing to the Company by the Customer.
- 11.5 The Company reserves the right to repossess any Goods sold hereunder to the Customer in respect of which payment is overdue and can re-sell the same and for this purpose the Customer hereby grants an irrevocable right and license to the Company (or its successors in title) through its servants and agents to enter with or without vehicles upon all or any Premises on which such Goods may be situated and to take possession of any such Goods (the cost of which shall be borne by the Customer) where appropriate detaching them from any new objects of which they have become part or with which they have become mixed without liability to the Customer for any consequential damage to the said objects. These rights shall continue to subsist notwithstanding the termination of this Agreement whether through the happening of any events specified in clause 9 or otherwise and without prejudice to any accrued right of the Company hereunder.
- 11.6 The Company shall be entitled to seek a court injunction (at any time before title passes) to prevent the Customer from selling, transferring or otherwise disposing of the Goods.
- 11.7 The Company shall be entitled to recover the price of Goods notwithstanding that the property in Goods has not passed to the Customer.
- 12. INSPECTION/SHORTAGES**
- 12.1 The Customer shall inspect the Goods on delivery or on collection as the case may be.
- 12.2 In all cases where the Customer complains of defects or shortages, the Company shall without prejudice to the question of liability generally be under no liability in any event if it has not been given a reasonable opportunity to inspect the Goods before they have been used by the Customer.
- 12.3 In respect of damage to all or part of the Goods or loss or non-delivery of part of the Goods comprised in this Agreement, notification must be made to the Company in writing within seven working days of delivery of the Goods or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery (or when the Buyer ought reasonably have discovered) the defect or failure.
- 12.4 Subject to clause 16, and save for any Services provided by the Company, the Customer is relying on its own skill and judgement in relation to the Goods irrespective of any knowledge of the Company or its servants, agents or employees or as to the purpose for which the Goods are supplied or their suitability.
- 13. WARRANTY**
- 13.1 The Company warrants that it has title to and the right to sell the Goods and provide the Services.
- 13.2 No representation or warranty is given by the Company as to suitability or fitness of the Goods for any or any particular purpose and the Customer shall satisfy itself in this respect and is totally responsible therefore.
- 13.3 In no event shall the Company have any liability:
- 13.3.1 where the defect complained of arises from any specification, instruction, drawing, design or other material or information supplied by or on behalf of the Customer or arises from fair wear and tear, wilful damage, the Customer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without the Company's approval or from failure to follow the Company's instructions (whether oral or in writing or whether relating without limit to the fabrication, installation, operation, use or maintenance of the Goods), or misuse or alteration or repair of the Goods without the Company's approval;
- 13.3.2 if the total Price for the Goods or Services has not been paid by the final date for payment;
- 13.3.3 for any parts, materials or equipment not wholly manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Company.
- 14. LIABILITY/EXCLUSIONS**
- 14.1 Introduction**
- 14.1.1 Nothing in this Agreement shall exclude or limit the Company's liability for fraud or fraudulent misrepresentation, death or personal injury caused by the negligence of the Company or for any other matters which cannot be excluded or limited by law.
- 14.1.2 The Company is only willing to undertake liability additional to that provided for by this clause in exchange for a higher price, such higher liability (if any) being that which is set out in the Special Terms section of the Order Acknowledgement.

### 14.2 Defects

- 14.2.1 The obligations of the Company under this Agreement are limited such that the Company will only be obliged (and shall have no further liability in contract, negligence or otherwise) at its option to either (i) repair, replace or rectify the faulty Goods or Services if any defects which the Company is reasonably satisfied are caused by faulty design, manufacture, materials or workmanship are discovered within three months from the date of dispatch or (ii) credit the Price (if already paid) attributable to the faulty Goods or Services. The Company shall not be liable for defects caused by abnormal use, incorrect installation, incorrect specification or design provided by the Customer, misuse or neglect or any matter relating to defective fitting or affixing.
- 14.2.2 The Customer may only claim the benefit of this clause 14 if he informs the Company of the relevant defect in writing within seven days of discovering it and, where it concerns Goods alone, he returns the Goods to the Company at his own expense.

### 14.3 Exclusion of Loss

- 14.3.1 Without prejudice to clause 14.1.1, the Company shall not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise, even if the Company was advised of the possibility of them in advance, howsoever and whatever the cause thereof for any: (a) economic loss; (b) loss of profits; (c) loss of contracts, revenues or anticipated savings; (d) damage to the Customer's reputation or goodwill; (e) damage to property of the Customer or anyone else whatsoever; or (f) loss resulting from any claim made by any third party; or (g) special, indirect or consequential loss or damage of any nature whatsoever. For the avoidance of doubt, the sub-clauses in this clause 14.3.1 are intended by the parties to be severable.

### 14.4 Limitation

Subject to any express warranties which are referred to in the Special Terms and without prejudice to clauses 14.1.1, 14.2 and 14.3, the Company's total liability in contract, misrepresentation, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Agreement (including without limit from the Company's negligence, breach of statutory duty or otherwise) shall not in any event exceed the Price payable for the Goods and/or Services which are the subject of the claim.

### 15. INDEMNITY

The Customer shall keep the Company fully indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties caused in whole or in part or arising out of any act or omission of the Customer in connection with the use or storage or sale of the Goods and/or the provision of the Services.

### 16. DESIGN

- 16.1 Where the Goods are made to a specification, instruction, drawing, design or other material or information supplied on or on behalf of the Customer to the Company pursuant to this Agreement:
- 16.1.1 the Customer is responsible for the suitability and accuracy of the specification, instruction, design or drawing (even where finally produced by the Company);
- 16.1.2 the Customer warrants that the use by the Company shall not infringe any third party's intellectual property rights. If any claim is brought or threatened against the Company in respect of such an infringement, the Company shall be entitled to suspend carrying out further work for the Customer, and the Customer shall indemnify the Company against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Company as a result of any such claim or threatened claim brought against the Company.

- 16.2 Nothing in this Agreement shall be construed as a representation or warranty by the Company that the design, manufacture, use or sale of the Goods or the provisions of the Services is not an infringement of any third party's intellectual property rights.

### 17. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 17.1 Subject to payment of all invoices by the final date for payment, the Company grants and agrees to grant to the Customer a non-exclusive licence to copy and use the documents prepared by the Company for the Customer in accordance with this Agreement and to reproduce the works and inventions of the Company contained in them for all purposes relating to or connected with the purpose for which they were prepared provided that the Company shall not be liable or responsible for any use of any of the documents prepared for the Customer in accordance with this Agreement for any purpose other than that for which the same were originally prepared and provided by the Company. The intellectual property rights in such documents shall at all times remain vested in the Company.
- 17.2 Where the Goods are not manufactured by the Company, the Company gives no assurance or guarantee that the sale or use of the Goods will not infringe the intellectual property rights of any third party.
- 17.3 The Customer shall keep confidential and not use, without the prior written consent of the Company, all or any information supplied by the Company to the Customer or disclosed to or obtained by the Company pursuant to or as a result of this Agreement, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Customer, or disclosure of the same is required by law or by any other governmental or other regulatory body.

### 18. EXPORT SALES

Notwithstanding any other clauses in this Agreement, where Goods are sold for export outside the UK:

- 18.1 the Uniform Laws on International Sales Act 1967 shall not apply and the Company shall be under no obligation to give notice under Section 32(3) of the Sales of Goods Act 1979;

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- 18.2 section 26(3) of the Unfair Contract Terms Act 1977 shall apply and notwithstanding clause 14.1.1 all liabilities for injury or death arising directly from the use of the Goods are expressly excluded;
- 18.3 unless otherwise agreed in writing by the Company the currency will be pounds sterling; and
- 18.4 the Customer shall be responsible for complying with any legislation or regulations governing the export of the Goods from the United Kingdom and governing the importation of the Goods into the country of destination and for the payment of any duties or taxes on them.
- 19. CONSUMER PROTECTION ACT 1987 ("THE ACT")**  
If the Customer incorporates Goods with or uses Goods ancillary to any composite or other products to be produced, manufactured, processed or supplied by the Customer then the Customer:
- 19.1 shall forthwith on demand provide the Company with copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said composite or other products, (provided that such right of or actual inspection shall not constitute acceptance or approval by the Company of such instructions, information or warnings); and
- 19.2 shall indemnify the Company against all actions, claims, costs, demands, expenses and damages (including without limit for legal actions) of whatsoever nature suffered or incurred by the Company in the event that any claim or claims are made against the Company pursuant to the Act or otherwise relating to the said composite or other products of the Customer in circumstances in which the Goods were:
- 19.2.1 not the defective part of the said composite product;
- 19.2.2 rendered the defective part or became a defective product by reason of an act or omission of the Customer or by reason of instructions or warnings given by the Customer or other supplier of the said composite or other products; and
- 19.2.3 supplied in accordance with a specification and/or drawings furnished by, or on behalf of, the Customer; and
- 19.3 hereby acknowledges its duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by the Company with the Goods.
- For the purposes of this clause 19 only, the word "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Act.
- 20. ASSIGNMENT**  
The Customer shall not be entitled to assign nor transfer (nor purport to assign or transfer) its rights or obligations under this Agreement (in whole or in part) to any other company or person, without the prior written consent of the Company. The Company may assign, license or sub-contract all or any part of its rights or obligation under this Agreement without the Customer's consent.
- 21. FORCE MAJEURE**  
The Company shall be relieved of its obligations and shall not be liable for any failure or delay in or from carrying out all or any of its obligations under the Agreement arising from circumstances outside the Company's control including but not limited to acts of God, war, riot, strike, lock out, trade dispute (including by and with the Company's own employees), or any other labour disturbance, power failure; inadequate performance of, failure of or incorrect processing by computer systems, fire, flood, difficulty in obtaining workmen, materials or transport, default of suppliers or sub-contractors or the consequences of hospitalisation or any Government interference or restriction, import or export regulations or any other circumstances whatsoever outside the Company's control. Furthermore the Company shall be entitled by written notice to determine or suspend this Agreement without incurring liability for any loss, expense or damage resulting to the Customer or any other party.
- 22. CANCELLATION/CHANGES**  
22.1 Order Acknowledgements may only be cancelled by the Customer with the prior written consent of a director of the Company. Cancellation and/or changes will not be accepted where the Goods have been made to the Customer's special order and if accepted by the directors of the Company, will only be made on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation and/or changes agreed.
- 22.2 In the event of cancellation by the Customer and/or changes agreed by the Company, the Customer will indemnify the Company against all expenses, losses (including loss of profit), costs, damages and charges incurred (directly or indirectly) incurred by the Company as a result of such cancellation or any change.
- 23. RETURNS**  
23.1 Save for returns due to defects in the Goods, Goods returned to the Company will be accepted only at the director's discretion. In the event of returns being accepted, a minimum restocking charge of 30% of the Price will be applied subject always to a minimum charge of £30.
- 23.2 Subject to the Customer's statutory rights, polyester powder coated Goods are supplied to order, so will not be accepted if returned.
- 24. TIME AND INDULGENCE**  
The whole rights and remedies of the Company in this Agreement or by law shall not constitute a waiver, be prejudiced or derogated from in any way by the failure or delay of the Company whether on one or more occasion(s) to exercise any of said rights and remedies, or by its agreement whether on one or more occasion not to exercise any of said rights and remedies.
- 25. ANTI-BRIBERY**  
25.1 The Customer shall not violate any Applicable Anti-Bribery Law.  
25.2 The Customer has and shall at all times implement adequate procedures designed to prevent it or any Associated Person from engaging in any activity which would constitute an offence under the Bribery Act if it were carried out in the UK, or violate any Applicable Anti-Bribery Law.
- 25.3 The Customer represents that, in connection with the Agreement, no financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by the Company or any third party) by or on behalf of the Customer or its Associated Persons, unless details of any such arrangement have been previously approved in writing by Company.
- 25.4 Breach of any of the provisions in this clause 25 or of any Applicable Anti-Bribery Law is a material breach of the Agreement and, without prejudice to any other right, relief or remedy, entitles Company to terminate the Agreement immediately.
- 25.5 The Customer shall promptly report to Company in writing upon becoming aware that it or any of its Associated Persons relevant to the Agreement (or to any agreement with Company):
- 25.5.1 have committed an actual or suspected breach of this clause 25 or of any Applicable Anti-Bribery Law;
- 25.5.2 are proposed for debarment or suspension from, or are ineligible for participation in, any government procurement programmes or contracts;
- 25.5.3 are the subject of any actual or threatened police, judicial or regulatory investigation or proceedings in relation to any suspected breach of any Applicable Anti-Bribery Law; or
- 25.5.4 have received any request or demand for any undue financial or other advantage in connection with the performance of the Agreement.
- 25.6 The Customer shall keep detailed up to date books, accounts, and records that accurately reflect its transactions relating to the Agreement, and the steps taken by it to comply with Applicable Anti-Bribery Law from the date of the Agreement, and such books, accounts and records shall be retained for a period of not less than six years after their creation;
- 25.7 The Customer shall from time to time, at the reasonable request of the Company:
- 25.7.1 confirm in writing that it has complied with its obligations under this clause 25 and must provide any information reasonably requested by the Company in support of such compliance;
- 25.7.2 permit the Company to have such access to its books, accounts, and records (and to take such copies thereof) as reasonably necessary in order to verify compliance with this clause 25, and to meet with those of its Associated Persons as are relevant to the Agreement to audit such compliance, for up to six years after termination or expiry of the Agreement; and
- 25.7.3 permit the Company to appoint, and the Customer shall cooperate with, an independent accounting or auditing firm to carry out such audit as Company reasonably requires in order to verify compliance with this clause 25 (including meeting with those of its Associated Persons as are relevant to the Agreement), for up to six years after termination or expiry of the Agreement.
- 25.8 The Customer must give reasonable assistance and cooperation to the Company in relation to any police, judicial or regulatory investigation or enquiry in relation to any suspected bribery or corruption, whether during the term of the Agreement or up to six years after its termination.
- 26. SEVERABILITY**  
In the event that any part of this Agreement shall be determined to be invalid, unlawful or unenforceable to any extent such clause or provision shall be severed from the remaining clauses which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 27. NOTICES**  
Any notice, consent, notification, acknowledgement, authority or agreement required or referred to in this Agreement shall be:
- 27.1 in writing and given to the party for whom it is intended at the address stated in the Order Acknowledgement (unless otherwise notified in writing from time to time), and
- 27.2 given by special or recorded delivery post or telefax and shall be deemed to have been, received 5 days after posting or 1 day after transmission as the case may be.
- 28. JURISDICTION**  
The Agreement shall be governed and be construed in accordance with English Law and all disputes arising in relation to this Agreement (including disputes based in tort) shall be submitted to the exclusive jurisdiction of the English courts. Where the Agreement is a "construction contract" as defined in the Housing Grants Construction and Regeneration Act 1996 or any replacement thereof then the Parties may refer any dispute to adjudication at any time.