

LBS BUILDERS' MERCHANTS LIMITED ("the Company")

TERMS OF TRADING & CONDITIONS OF SALE

1. GENERAL

Unless otherwise agreed in writing by a Director acting on behalf of the Company the Company's conditions herein set out shall be deemed incorporated in any order placed by the buyer and any acceptance of a Buyer's order by the Company shall be deemed subject to the acceptance by the Buyer of these conditions. In the event of any conflict arising between these conditions and any condition which the Buyer might additionally seek to impose in relation to his order these conditions shall prevail.

These conditions override and replace any other conditions of the Company and no Agent or Representative of the Company has any authority to vary or omit these conditions or any of them.

2. ACCEPTANCE AND VARIATION OF PRICE

(i) All quotations whether verbal or in writing do not constitute offers. A contract in respect of the goods ("the Contract") shall not be effected until the Company sends to the buyer its confirmation in writing in respect of such goods.

(ii) All prices quoted or listed by the Company are based on the prices of the Company's suppliers at the time of quotation or listing and are subject to adjustment prior to dispatch to cover any increase in taxation or duty which might take place prior to delivery and such prices are exclusive of packaging carriage and VAT.

(iii) Where goods are to be imported the Company reserves the right to vary the price quoted to reflect the rate of exchange for purchase of the relevant currency in pounds sterling.

3. TERMS OF PAYMENT

(a) All accounts are for settlement (net of discount) in advance unless alternative terms are agreed in writing on behalf of the Company. Failure to make due payments in respect of deliveries or installments under this or any other Contract between the Buyer and the Company shall entitle the company to delay, suspend or cancel deliveries in whole or in part at its option.

(b) If credit is given the settlement of the account is to be made within thirty days of the end of the month of dispatch or collection of the goods unless otherwise agreed in writing by a Director of the Company.

(c) Any payment or part payment thereof remaining unpaid after such period of 30 days shall in the absolute discretion of the Company carry interest thereon at the rate of three and a half (3½) per cent per annum above Barclays Bank plc's base rate prevailing during the period such unpaid amount remains unpaid and shall be added to the said amount due from the Buyer to the Company and calculated on a daily basis subject to the right of the company in its absolute discretion to add a credit charge (payable by the Buyer) to all accounts which the Buyer may deduct if the account is duly settled pursuant to paragraph (b) of this clause.

(d) Payment shall be due whether or not property in goods has passed by virtue of Clause B hereof and the Company shall (without prejudice to any other right or remedy) accordingly be entitled to sue for the price once the same is due even if property in goods has not passed.

(e) If payment shall be made by cheque and such cheque shall not (for any reason) be paid by the Bank upon which drawn then the Buyer shall indemnify the company in respect of all Bank Charges incurred by the Company directly or indirectly consequent upon such non-payment including the cost of representation where applicable.

4. DELIVERY AND TRANSPORT

(a) Unless otherwise agreed in writing on behalf of the Company the Company reserves the right to charge the buyer the cost of transportation (which unless otherwise stated will be by road) and packaging (including cases and materials) of the goods to the destination which appears on the Buyer's order. Transportation will be undertaken by the Company or by an authorized Carrier of the Company unless it is otherwise agreed in writing by a Director of the Company and the Buyer shall collect the goods or arrange for them to be collected by an authorized Carrier of the Buyer. In all cases the Buyer warrants that in cases where delivery is to be made by road transport by the Company or by its carrier sufficient and suitable access to the said destination including a road surface capable of withstanding the weight and size of the transport and loads involved is available. In the event of any additional costs or expenses being incurred by the Company directly or indirectly through its Carrier the full amount thereof will be payable on demand by the Buyer to the Company.

(b) Whilst every effort is made to deliver goods on the dates at the time and within the periods mentioned in the contract such dates, times or periods shall be deemed to be for information purposes only and shall not form part of the terms and conditions of the Contract unless specifically agreed in writing by a Director of the Company to be "of the essence of the Contract" and in the absence of such special agreement the Company accepts no liability whatever for any loss or damage of whatsoever nature and howsoever arising which may be suffered by the Buyer as a result of any failure on the part of the Company or its carrier to deliver goods on or within the dates, times or periods mentioned in the Contract for any reasons whatsoever.

(c) The Buyer agrees to provide at his expense prompt assistance to drivers of the Company or its Carriers in off-loading heavier items.

(d) (i) Where the goods are transported by the Company or by its carrier they shall be deemed to be delivered when they are handed over at the destination appearing on the Buyers order.

(ii) Where the Buyer's Carrier transports the goods they shall be deemed to be delivered when handed over to the Carrier.

(iii) Where the goods are collected by the Buyer they shall be deemed to be delivered when handed over to the Buyer.

(e) In the case of delivery of goods by installments the Buyer will not be entitled to treat the delivery of faulty goods in any one installment or the late delivery or the non-delivery of any one installment as a repudiation or as grounds for rescission by the Buyer of the whole Contract.

(f) If the Buyer fails to give delivery instructions within 14 days of the Buyer being notified that the goods are ready for delivery the Company shall (without prejudice to any other rights or remedies available to it) be entitled (but not bound) to store the goods at any available place at the Buyer's expense.

(g) If the Buyer shall for any reason not accept delivery of goods after delivery arrangements have been confirmed in writing by the Company the Company shall (without prejudice to any other rights or remedies available to it) be entitled to charge the Buyer with all packing, unpacking, loading and unloading, and transportation costs incurred in such an abortive delivery.

5. DEFECTS AND REPLACEMENT

(a) In the event of omissions from the delivery or loss or damage occurring to goods during transit where the goods are transported by the Company or its Carrier the Buyer must give written notice thereof to the Company within three working days of the dates of delivery and further where such goods are consigned by a Carrier of the Company the Buyer must in addition comply with all respects with that Carrier's conditions of carriage for notification for omissions from the delivery or loss or damage in transit. The Buyer must give written notice to the Company within three working days of receipt of delivery note or invoice whichever is received earlier if the goods have not been delivered by the Company or its Carrier to the destination agreed in the contract. Failure to give written notice pursuant to this sub-clause shall mean that the Buyer shall be deemed to have accepted the goods as being in good order and in conformity with the Contract.

(b) The Buyer shall inspect the goods on delivery. The Company will make good at its option by repair or replacement any defects in the goods due solely to defective workmanship or materials or which fail to comply with the specification laid down in the Contract subject however to the following conditions:

(i) The aforesaid obligation on the Company shall not extend to such defects or non-compliance caused by any willful act or negligence (other than by servants or agents of the Company) incorrect storage or application movement installation abuse or defects caused by fair wear and tear.

(ii) In the event of such defect or non-compliance not discoverable by or on behalf of the Buyer on reasonable inspection the Buyer must give written notice thereof to the Company within three working days from the date of delivery of the goods.

(iii) In the event of such defect or non-compliance not discoverable on reasonable inspection the Buyer must give written notice thereof to the Company within three working days on the defect or non-compliance complained to the attention of the Buyer and/or his servants or agents but in any event notice of complaint must be given to the Company by the Buyer within two weeks of delivery of the goods.

- (iv) If the requisite notice contained in conditions 5(a) and 5(b) above is not given by the Buyer or it is not given within the specified time limits the goods shall be deemed to have been accepted by the Buyer as being in good order and in conformity within the contract.
- (v) In all cases the Company must be given a reasonable opportunity following notice of complaint of examining the relevant goods.
- (c) Save as herein set out and for liability for death or personal injury resulting in negligence on the part of the Company and save for breach of the Company's statutory implied undertakings as to title all express or implied conditions representations or warranties as to quality or fitness of the goods or otherwise are expressly excluded.
- (d) Save for liability for death or personal injury resulting from negligence of the Company the Company accepts no liability under any claims howsoever arising (be it by negligence or otherwise) for any loss over the figure of £1,000,000 or such greater figure as is from time to time the limit of liability is laid down by the Company's insurers in respect of such claims PROVIDED THAT the Company shall not be liable for any consequential loss or loss of profits or of contracts whatsoever.
- (e) IF THE BUYER IS A CONSUMER HIS ATTENTION IS SPECIFICALLY REFERRED TO CLAUSE 10(b) BELOW.

6. RISK AND TITLE TO GOODS

- (a) The risk in the goods passes to the Buyer upon delivery (howsoever effected) but property in the goods remains vested in the Company and shall only pass from the Company to the Buyer upon full payment being made by the buyer of all sums due on whatsoever account or grounds to the Company from the Buyer. In the event of the goods being sold by the Buyer in such manner as to pass a third party a valid title to the goods whilst any such sums are due as aforesaid, the Buyer shall be the Trustee for the Company of the proceeds and the Buyer shall place such proceeds in a separate bank account. The Company's rights under this sub-clause (a) shall attach to the proceeds of sale. Nothing herein contained or implied shall constitute the Buyer the Agent of the Company for the purposes of any such sub-sale.
- (b) The Buyer agrees that prior to full payment being made as aforesaid the Company may at any time by its servants or Agents enter upon the Buyer's premises without giving any prior notice and remove the goods therefrom (and dispose of the same in any manner it may decide) and that prior to such payment the Buyer shall keep such goods separate and identifiable for this purpose.
- (c) In the event of the goods becoming constituents of or being converted into other whilst sums are due as provided in sub-clause (2) hereof the Company shall have the ownership of and title to such other products as if they were the goods and accordingly this clause (b) shall so far as appropriate apply to such other products subject to the Buyer's right to the surplus of any monies realized by the said products in excess of those due to the Company as provided herein.
- (d) Any implied authority that the Buyer shall be entitled to sell the goods and pass property in the same to third parties in the normal course of its business or manufacture products out of the same or sell such products will continue until otherwise notified to the Buyer by the Company whereupon the happening of any of the following events such authority shall immediately be withdrawn and shall forthwith terminate and all such goods and products made therefrom shall immediately be delivered to the Company.
 - (i) Any distress execution or other legal process being levied upon any of the Buyer's assets.
 - (ii) Any notice to the Buyer that an Administrative Receiver or other Receiver is to be or has been appointed in respect of the Buyer's undertaking material part thereof or other property or assets.
 - (iii) Any notice to the Buyer that a petition for an Administration Order is to be or has been presented in respect of the Buyer.
 - (iv) Any notice to the Buyer that a petition to wind up the Buyer is to be or has been presented to the Buyer or any notice to the Buyer of a proposal to pass a Resolution to wind up the Buyer (including any proposal by the Buyer so to do).
 - (v) A decision by the Buyer or any proposal to the Buyer and the Buyer's to make a voluntary arrangement or Composition with its creditors.
 - (vi) Presentation of a petition for bankruptcy by the Buyer or notice to the Buyer that a petition for bankruptcy is to be or has been presented to the creditor(s) of the Buyer. Any upon the happening of any such events as stated in 6(d)(i) above the Buyer shall immediately notify of the Company

- (vii) On any one or more of the events referred to in Clause 6(d)(i) occurring the Company may at its option and without prejudice to any other rights and remedies it may have determine to the Buyer
- (viii) In the event of a determination by the Company of the Contract in accordance with sub-clause (vii) above the Company shall be entitled to recover as damages from the Buyer the following:
 - (a) The value including any work completed of goods manufactured at the date of determination.
 - (b) The value including any work begun or goods begun to be manufactured but not completed at the date of determination including the cost of materials, labour, overheads and profit in connection therewith.
 - (c) A sum representing any further profit which the Company would have made on the Contract but for its determination by the Company's Auditors whose decision shall be conclusive and binding on the Buyer.

7. SAFETY INSTRUCTIONS

The erection and/or installation and/or other use of the goods is the Buyer's responsibility. The Buyer undertakes with the Company that he will ensure compliance so far as reasonably practicable by the Buyer's servants agents licensees and customers with any instructions (where given) of the Company or the manufacture for the purpose of ensuring that the goods will be safe and without risk to health when properly used and will take any other steps or precautions as having regards to the nature of the goods are necessary to preserve the health and safety of persons handling using or disposing of them. Copies of instructions are enclosed with products. If not, it is the Buyer's responsibility to request them from the Company.

8. SET OFF

The Buyer shall not be entitled to withhold or set off payments or any amount due to the Company under the terms of the Contract against any claim of the Buyer in respect of faulty or defective goods or for any other reason.

9. FORCE MAJEURE

In the event of war invasion act or foreign enemy hostilities (whether war has been declared or not) civil war rebellion revolution insurrection or military or usurped power the Company shall be relieved of liabilities incurred under this contract wherever and to the extent to which the fulfilment of such obligations is prevented frustrated or impeded as a consequence of any such event or by any statute rule regulation order or requisition issued by any government department council or other duly constituted authority or from strikes lockouts breakdowns of plant or any other causes (whether or not of a like nature) beyond the Company's control.

10. CONSUMER TRANSACTION

In the case of a consumer transaction within the meaning of Article 4(a) of The Consumer Transaction (Restriction on statements (Amendment) order 1978 or any amendment or replacement thereof for the time being in force:

- (a) The Terms of Clause S thereof shall not apply to the extent that they would be rendered void by Section 6 or 20 of the Unfair Contract Terms Act 1977.
- (b) ANY STATEMENTS MADE HEREIN ABOUT THE RIGHTS THAT THE BUYER HAS AGAINST THE COMPANY OR ABOUT THE OBLIGATION TO THE BUYER ACCEPTED BY THE COMPANY IN RELATION TO THE GOODS BEINGS RIGHTS OR OBLIGATIONS THAT ARISE IF THE GOODS ARE DEFECTIVE OR ARE NOT FIT FOR A PURPOSE OR DO NOT AFFECT THE BUYER'S STATUTORY RIGHTS.

11. LEGAL INTERPRETATION

The Contract is governed by the Law of England and Wales. Any dispute arising out of or in connection with this contract shall be determined by the Courts of England and Wales.

12. SEVERANCE

In the event of any of the conditions being ineffective for any reason, the remainder thereof shall constitute the conditions binding upon the parties.