

TERMS AND CONDITIONS OF TRADE SALES

In these Terms and Conditions "Company" means Rory J Holbrook Limited, registered office Roudham Road, East Harling, Norfolk NR16 2QN, registered number 4494452, and its trading divisions. "Customer" means the person, firm or company purchasing the goods and/or accepting services from the Company under the contract between the Company and the Customer. "Contract" means the contract made between the Company and the Customer. "Goods" means the goods or services (including samples, where relevant) the subject matter of the Contract. A "Consumer" shall mean a consumer as defined by the Unfair Contract Terms Act 1977 (as amended) or Unfair Terms in Consumer Contract Regulations 1999 (as amended). The statutory rights of a Customer who is a Consumer are not affected by these Terms and Conditions.

1. Acceptance of Order

- a) All orders are accepted by the Company subject to these Terms and Conditions which override any terms and conditions stipulated, incorporated, or referred to by the Customer whether in its order or any negotiations.
- b) No variation or addition to these Terms and Conditions shall be incorporated into the Contract unless such variations or additions and the Company's agreement thereto are both expressly agreed in writing.
- c) Any order placed by the Customer with any Of the Company's salesmen or other employees or representatives shall only be subject to prior written acceptance by the Company.

2. Estimates/Quotations

- a) Any estimates given by the Company or its representatives in respect of quantities needed will be treated as such without obligation on the part of the Company and the Customer will be entirely responsible for ascertaining the quantities required.
- b) Quotations are for the supply of goods and/or materials on these Terms and Conditions only.
- c) Any quotation given by the Company is not an offer and the Company reserves the right to withdraw or amend any quotation at any time prior to the Company's acceptance Of the Customer's order.
- d) Where fine or specific tolerances are required in the goods supplied beyond those generally in the building trade no liability will attach to the Company unless such fine tolerances are notified in writing to the Company at the time of order and the Company has acknowledged in writing that it is prepared to accept such fine tolerances.
- e) The Company shall be entitled without notice to the Customer reasonably to alter any specification, description, design, drawing, illustration and/or other particulars relating to goods and to supply the goods as so altered in performance of the Contract and shall also be entitled to substitute similar goods of equivalent type and to supply such goods in performance of the Contract.

3. Return / Cancellations

- a) The Company may in its sole discretion accept or refuse the return of any goods which have been incorrectly ordered. If the Company decides to accept the return of such goods acceptance shall be upon such terms as the Company may determine and the Company reserves the rights to charge for the carriage and handling of such goods, being 25% (minimum £5.00) of the invoiced value of the said goods.
- b) Orders for goods that are to be specially made or obtained may not be cancelled once such orders have been accepted by the Company nor will any allowance be made in respect of such goods where they are subsequently returned.

4. Prices

- a) The price of the goods shall be the Company's quoted price which shall be binding upon the Company subject to conditions (4(b), (c) and provided that the Customer shall accept the Company's quotation within 30 days. For the avoidance of doubt where no price has been quoted (or a quoted price is no longer valid) the price of the goods shall be the price listed in the Company's published price list at the time of delivery.

- b) The Company may by giving notice to the Customer at any time up to 7 days before delivery increase the price of the goods to reflect any increase in the cost to the Company which is due to factors occurring after the making of the Contract which are beyond the reasonable control of the Company (including without limitation foreign exchange fluctuations, taxes and duties and the cost of labour, materials and manufacturing costs) provided that the Customer may cancel the Contract within 7 days of any such notice from the Company.
- c) All prices quoted are exclusive of Value Added Tax unless otherwise stated.
- d) When goods are sent by rail or carrier a charge will be made unless otherwise stated.

5. Accounts and payments

- a) Credit accounts may be opened at the discretion of the Company subject to satisfactory credit references being obtained. Payment for goods supplied on credit accounts, unless otherwise stated in writing by the Company, shall become due and payable not later than the last day of the month following the month of delivery of the goods.
- b) For non-credit transactions, the Company shall be entitled to invoice the Customer for the price of the goods at the sooner of the acceptance of the order or delivery of the goods and the Customer shall pay the price of the goods at the time of the rendering of the Company's invoice, unless expressly agreed otherwise on the Company's order acknowledgement or acceptance of order.
- c) Without prejudice to the Company's rights to enforce payment, if the Customer fails to make payment as herein provided for in Conditions 5(a) and 5(b) the Company shall be entitled to charge interest on any balance outstanding from the date the same became due for payment at the annual rate of 8% above the base lending rate from time to time of National Westminster Bank plc until payment is made, whether before or after any judgment. The Company reserves the right (where applicable and in any event only in respect of Customers who are not Consumers) to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- d) Interest shall become due and payable pursuant to Condition 5(c) notwithstanding the fact that a portion of the account or invoice is the subject of any dispute or query.
- e) If at any time the Customer being a credit account customer alters its constitution (being a company) or (being a sole trader or partnership) becomes incorporated or amalgamated with others, the Customer shall give prior written notice to the Company of the intended change should the Customer wish to continue credit account facilities following the intended change. The Company may commence trading with the changed entity at its sole discretion and will not be deemed to do so until a written acknowledgement and acceptance is issued by the Company.
- f) If the Customer shall pay any account or any part thereof by cheque and should such a cheque be subsequently dishonoured the Company reserves the right to debit the Customer's account with the Company with any charge levied by the Company's bankers relating to the handling of such dishonoured cheque and the charge shall be immediately due and payable.
- g) If in the case of any sale involving more than one delivery the Company becomes entitled to determine the Contract under Condition 14 (a) and the Company may without prejudice to its other rights suspend any further deliveries.
- h) If the Company becomes entitled to determine the Contract under Condition 14 (a) the Company may demand immediate payment of all sums then payable, including such sums not yet due.
- i) The Company may accept payment by credit card subject to a 2.5% surcharge.

6. Delivery and Dispatch

- a) Delivery of the goods shall be made by the Customer collecting the goods at the Company's premises at any time after the Company has notified the Customer that the goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the goods to that place.

- b) Risk of damage to or loss to the goods shall pass to the Customer i) in the case of goods to be delivered at the Company's premises at the time when the Company notified the Customer that the goods are available for collection or ii) in the case of goods to be delivered otherwise than at the Company's premises on delivery or if the Customer wrongfully fails to take delivery of the goods at the time when the Company has tendered delivery of the goods.
- c) Where the goods are delivered by or on behalf of the Company otherwise than at the Company's premises, the Company accepts no liability whatsoever for loss of or damage to goods in transit unless notified in writing of the details within seven days following dispatch.
- d) The Customer will give to the Company its servants and workmen, unrestricted access to any relevant working area at all reasonable times and shall provide the necessary labour and equipment so that the Company may complete the delivery in accordance with the Contract. Return visits because of the Customer's failure to take delivery of the goods for whatever reason will be on a chargeable basis.
- e) Any stated time or date for delivery is an estimate only and the Company does not bind itself to make delivery at such time or date. Accordingly, the Company shall not i) be liable for failure to deliver by such time or date and 2) for any loss or damage arising directly or indirectly from such failure. Nor shall the Customer be entitled to refuse to accept the goods or treat the Contract as repudiated because of late delivery whether in whole or in instalments by any time or date.
- f) If the Customer fails to take delivery of the goods or fails to give the Company adequate instructions for delivery without prejudice to any other right or remedy available to the Company, the Company may i) store the goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage or ii) sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price stated in the Contract or charge the Customer for any shortfall below the price stated in the Contract.
- g) If, in the case of any sale involving more than one delivery, the Company becomes entitled to determine the Contract under Condition 14(a), i) where delivery is agreed to be made by instalments each instalment shall be deemed to be a separate and distinct contract and no default by the Company in respect of any one or more instalments shall entitle the Customer to reject or withhold payment in respect of any other instalment or instalments, ii) on request the Company shall within three months of delivery provide evidence of delivery of goods ordered such as a delivery note, and iii) if the Customer does not raise any query about delivery within such period goods shall be deemed to have been delivered in accordance with the Customer's order.

7. Performance

- a) It shall be the responsibility of the Customer to ensure that the goods are sufficiently suitable and fit for the purpose or purposes intended and that its premises are safe and suitable for the delivery, installation, use or operation of the goods, and comply both before and after such delivery, installation, or operation with all relevant legislation (including without limitation safety legislation).
- b) Where the Customer provides any item of equipment which relates to the installation or operation of the goods or which is ancillary to and/or for use in connection with the goods, it shall be the Customer's responsibility to ensure that the use of any such item does not adversely affect the suitability or fitness for purpose of the goods.
- c) It shall be the responsibility of the Customer to ensure that all requirements applicable to the goods, whether statutory, regulatory, municipal and/or otherwise, are duly complied with.

8. Liability and Risk

- a) Nothing in these terms shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from its negligence or for fraudulent misrepresentation.
- b) The Company accepts liability for any breach on its part of any undertaking as to title implied by Section 12 of the Sale of Goods Act 1979 (as amended) or by Section 8 of the Supply of Goods (Implied Terms) Act 1973 (as amended).

- c) The Company does not accept liability for shortages in quantities delivered unless the Customer notifies the Company of any claim for short delivery of the goods within two of the delivery to the Customer in such circumstances the Company's liability be restricted to making good the shortage. Any delivery book or note marked NOT EXAMINED will not prevent the operation of these clauses nor constitute express or implied notice in writing of any potential or actual shortage.
- d) Subject to Conditions 8(a) and (b) the Company agrees to repair or replace free of charge any goods which in the reasonable opinion of the Company are defective due to manufacturing fault but only if the default is reported to the Company in writing within seven days of delivery and the Company will not be responsible either for the cost of removing or the cost of re-installing any repaired or replacement goods unless the same has been previously agreed in writing by the Company.
- e) Subject to Conditions 8(a) and (b) i) the Company's total aggregate liability under or in connection with the Contract (howsoever such liability arises) shall be limited to the value of the goods supplied under the Contract and ii) the Company shall not be liable for any indirect or consequential loss or damage or for of profit or business or depletion of goodwill which arises out of or in connection with the Contract.
- f) Where the Company sells goods to a Customer who is a Consumer and the Customer sells those goods directly or indirectly to a person who is such a Consumer without prejudice to its rights under the Contract the Customer shall indemnify the Company against any liability or loss whatsoever arising directly or indirectly pursuant to the Consumer Protection Act 1987.
- g) These Terms and Conditions set out the Company's entire liability in respect of the goods and rights granted under them are in lieu and to the exclusion of all other warranties, conditions and other terms express or implied by Statute or common law except for any which cannot legally be excluded.

9. Misrepresentation

- a) The Company shall not be liable in respect of any misrepresentation made by the Company its servants or agents to the Customer its servants or agents as to the condition of the goods, their fitness for any purpose, or as to quantity or measurements unless the representation is made or confirmed in writing by the Company and/or is fraudulent.
- b) Without prejudice to Clause 9(a), whilst the Company takes every precaution in the preparation of its literature, these documents are for the Customer's general guidance only and statements made therein (in the absence of fraud on the part of the Company) shall not constitute representations by the Company and the Company shall not be bound by them.

10. Ownership

- a) Notwithstanding that risk in the goods may have passed in accordance with the Contract, ownership of the goods shall not pass to the Customer until the earliest of
 - i) the Company receives payment for all amounts payable to it under the Contract and for all monies outstanding from the Customer to the Company in respect of other goods, products or services provided by the Company or
 - ii) the Customer sells the goods in the ordinary course of business in which case ownership of the goods will pass to the Customer immediately before title in the goods as needed to pass to the Customer's buyer; or
 - iii) the Company transfers ownership in respect of specified goods by separate written agreement with the Customer.
- b) Before ownership has passed the Customer holds the goods as mere bailee and the Company reserves the right to repossess any of the goods in respect of which payment is outstanding and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and license to the Company's servants and agents to enter upon or any of its premises with or without vehicles and tools of the trade during normal business hours to recover said goods or other Customer assets to the value of the goods supplied. This right shall continue to subsist notwithstanding the termination of the Contract through

the happening of any of the events specified in Condition 13 or otherwise and is without prejudice to any accrued rights to of the Company thereunder.

- c) The Customer's license to sell in Condition 10 a) ii and iii is immediately revoked where the Customer becomes insolvent (as defined in Condition 14).

11. Sizes and Weights etc.

- a) All sizes stated by the Company, or a manufacturer, are subject to dimensional tolerances in accordance with the appropriate BSS.
- b) The Company may deliver to the Customer an excess and/or deficiency of up to 10% of weight or volume agreed to be delivered without any liability to the Customer whatsoever save that the price payable by the Customer shall be adjusted accordingly.

12. Pallets and Packaging

- a) A charge will be made by the Company at its discretion for packaging to cover the cost of labour and materials.
- b) Crates and cases will be charged for, but charges will be credited in full when returnable empties are returned to the Company carriage paid and in good condition and capable of reuse within twenty-eight days of delivery to the Customer.
- c) Pallets and aggregate bags will be charged for, but charges will be credited in full if returned to the Company carriage paid in good condition and capable of reuse within twenty-eight days of delivery to the customer.
- d) Polythene sacks will be non-returnable.
- e) The Customer shall be solely responsible for the disposal of any waste arising from the goods once delivered and will comply with all applicable laws, regulations and waste management licenses relating to such waste. The Customer shall indemnify the Company against all costs, claims, liabilities, and expenses which it incurs arising from or in connection with any breach by the Customer of this clause 12(e).

13. Force Majeure

The Company shall be under no liability for any loss (including consequential loss or loss of profit) damage or delay, or expenses of any kind whatsoever caused wholly or in part by an Act of God, outbreak of war, civil commotion, government policies or restrictions or control including restrictions on export or import or other licenses, trade or industrial disputes of whatever nature, whether or not such dispute involves the Company, its servants or agents, or by any other contingency whatsoever which is beyond the control of the Company.

14. Default

- a) If the Customer becomes insolvent or commits any breach of the contract the Company may i) stop any goods in transit and/or ii) suspend further deliveries and iii) by notice in writing to the Customer may forthwith determine the Contract without prejudice to the provisions of Condition 10 (b) and iv) to any existing claim.
- b) For the purposes of Condition 14(a) insolvent shall mean i) the Customer becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or ii) the levying of the threat of execution or distress on any property of the Customer, or iii) the appointment of a receiver or administrative receiver over all or any part of the Customer's property, or iv) a proposal for a voluntary arrangement or compromise between the Customer and its creditors whether pursuant to the Insolvency Act 1986 or otherwise, or v) the passing of a resolution of voluntary winding-up or summoning a meeting to pass such a resolution other than for the purposes of a bona fide amalgamation or reconstruction, or vi) the presentation of a petition for the winding-up of the Customer or an administration order in relation to the Customer, or vii) the Customer ceasing or threatening to cease to carry on its business.

15. Patent and Trade Marks

- a) No representation is made, or warranty given, that any goods supplied do not infringe any letters patent, trademarks, registered designs, or similar industrial or intellectual property rights.
- b) The Customer will unconditionally fully and effectively indemnify the Company against all losses damages costs on an indemnity basis and expenses awarded against or incurred by the Company i) in connection with, or ii) paid or agreed to be paid by the Company, as a consequence of the Company supplying goods to specifications or designs provided by or on behalf of the Customer, including in settlement of any claim for infringement of any patents, copyright, design trademark, or any other industrial or intellectual property rights of any other person.

16. Notices

Any notice under or in connection with the Contract shall be in permanent readable form and shall be deemed property delivered if addressed to the party concerned as its principal place of business or last known address and sent by first class prepaid post. Such notice shall be deemed to be delivered 48 hours after posting,

17. Disputes and Set-Off

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Customer of all its obligations under these Conditions and the Customer shall not be entitled to withhold or delay payment or exercise any rights of set-off whatsoever and howsoever arising which might otherwise be available to it.

18. Waiver

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof. No single or partial exercise of any right under the Contract shall preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Customer of any of its obligations under this Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

19. Health & Safety

Certain products supplied by the Company could give rise to risks to health and safety. Information in respect of such products is available from the Company. The Customer undertakes that it shall ensure compliance so far as is reasonably practicable by its employees, agents, licensees and customers

- i) with any instructions given by the Company or the manufacturer for the purpose of ensuring that the goods will be safe and without risk to health when properly used and
- ii) will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of persons handling using or disposing of them.

20. Severability

Each obligation contained in these Terms and Conditions shall be treated as a separate obligation. If any provision of these Terms and Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining Terms and Conditions and the remainder of such provision shall continue in full force and effect.

21. Headings

The Cause headings in these Terms and Conditions are for convenience only and shall not in any way affect the interpretation of the Contract.

22. Governing Law

The Contract shall be governed by and construed in accordance with English law and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the English Courts

23. Credit Search

The Company may i) do a search with a Credit Reference Agency, ii) keep a record of that search, and iii) may share that information with other businesses. In some instances, the Company may also make a search on the personal credit file of sole traders, partners, and directors of the Customer. Should it become necessary to review a trade account then a further credit reference may be sought and a record kept. The Customer acknowledges that the Company may monitor and record information relating to the trade performance of the Customer and such records will be available to Credit Reference Agencies who will share that information with other businesses when assessing applications for credit and fraud prevention.

24. Assignment

The Customer shall not be entitled to assign the Contract without the prior written consent of the Company.

The Company may assign the Contract or any part of it to any person, firm or company.

25. No Rights to Third parties

The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.