

Standard terms & conditions for the supply of timber frame products

Interpretation:

- 1.1. If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, these Conditions shall continue to be valid as to their other provisions and the remainder of the affected provision.
- 1.2. "Supplier" means any party who offers to provide Goods in accordance with these Conditions.
- 1.3. "Buyer" means any party who offers to purchase Goods in accordance with these Conditions.
- 1.4. "the Contract" means the Quotation of the Supplier and all documents referred to therein, together with any other documents appended to the Quotation after its issue, by the Supplier, to reflect any post Quotation negotiations and agreements.
- 1.5. "Goods" means the design and/or supply of goods as detailed or referred to in the Quotation and the term "Goods" will be interpreted accordingly.
- 1.6. "Place of Delivery" means the location for delivery of the Goods as stated in the Quotation or as otherwise agreed in writing between the Buyer and the Supplier.
- 1.7. "Delivery date" means the date for delivery of the Goods which is stated in the Quotation.
- 1.8. "Specification" means any document or documents prepared by the Supplier relative to the design and/or describing the Goods.
- 1.9. "Quotation" means the offer made in writing by the Supplier to supply Goods for the lump sum price, or the rates and prices stated in that offer.
- 1.10. "Price" means either the lump sum price as adjusted in accordance with the Contract.
- 1.11. "Validity Period" means the period stated in the Quotation during which the rates and prices for the supply of the Goods will remain fixed in accordance with the Quotation.

Basis of contract:

- 2.1. No variations of these Conditions are permitted unless expressly permitted by a Director of the Supplier or other authorised person in writing.
- 2.2. By accepting the Quotation the Buyer accepts these Conditions. Nothing proffered by the Buyer will amend or vary these Conditions unless it has been expressly included within the Contract.
- 2.3. Unless previously withdrawn by the Supplier the Quotation is open for acceptance within the period stated therein or, when no such period is so stated, within 90 days after the date of issue of the Quotation.
- 2.4. Any typographical, clerical or other error or omission in any sales literature, Quotation, price list or acceptance of offer, invoice or other document or information issued by the Supplier shall, at the Supplier's election, be subject to correction without liability on the part of the Supplier. If the corrected document is part of the Contract, it will be treated as if it was always included within the Contract in its corrected form.

Price of the goods:

- 3.1. The price stated in the Quotation or any price subsequently submitted by the Supplier is based on materials and wage rates applicable at the date of the Quotation or variation quotation on the understanding that the supply of the Goods will be completed within the Validity Period. Should completion be delayed beyond the Validity Period as a result of any fault of the Buyer or any other reason out with the control of the Supplier, the Supplier reserves the right to adjust the price stated in the Quotation or variation quotation in line with the increased costs of materials,





labour or manufacturing incurred by the Supplier. Any such adjustment will be notified to the Buyer as soon as practicable in writing after the expiry of the Validity Period.

- 3.2 The Supplier reserves the right to increase the price stated in the Quotation or any variation quotation by an amount equivalent to any additional costs, taxation or levies imposed on or affecting the cost to the Supplier of providing the Goods after the date of the Quotation or any variation quotation by virtue of any statute, regulations or orders issued by Government Department or any other duly constituted authority, including (without limiting the generality of the foregoing) any statutory changes in taxation of fuel required to deliver Goods.
- 3.3 A variation includes any change to the Contract, howsoever arising, whether it is driven by the Buyer, or arises as a result of something outside of the Supplier's control. A variation may be instructed by the Buyer, or notified by the Supplier to the Buyer, if the Supplier becomes aware of a variation which has not been instructed by the Buyer.
- 3.4 The Supplier is not obliged to accept from the Buyer a variation to the Contract. If the Supplier is prepared to accept any such variation, as soon as practical after receiving full details of any such proposed variation, or if the Supplier becomes aware of a variation not notified/proposed by the Buyer, the Supplier, will issue a variation quotation. Variations will be valued by using the lump sums detailed in the Quotation, where these are applicable; the lump sums detailed in the quotation adjusted to take account of changes to the basis of the lump sums where applicable and fair and reasonable rates where applicable. The Supplier will not be required to implement any such variation unless the Buyer accepts the variation quotation in writing. Where not rejected in writing within 7 days, the variation quotation will be deemed accepted. For the avoidance of doubt (and without prejudice to clause 4.2) where the variation consists of a reduction in the quantities of any Goods, the Supplier will be entitled to take account of all losses and expenses that are incurred by the Supplier in returning excess Goods, and/or terminating a and/or renegotiating any contractual arrangements with suppliers to the Supplier of any goods, materials, plant and equipment or other services that are no longer required in connection with the Goods. The Supplier will be entitled to payment of overheads and profit on the reduced work/Goods.

Goods and materials:

- 4.1 The Supplier reserves the right to alter the Specification provided such alteration does not have a materially detrimental effect on the overall performance or integrity of the Goods.
- 4.2 Goods / materials are deemed to be purchased / produced on a bespoke basis and cannot be accepted for return by the supplier.

Terms of payment:

- 5.1 The Supplier reserves the right at its discretion and any time to demand payment in part or in full before continuing with the design or delivery of any Goods. This exercise of this clause is not limited to circumstances in which the supply of Goods would cause the Buyer's credit limit with the Supplier to be exceeded.
- 5.2 In all cases credit, if offered by the Supplier at all, will only be offered by the Supplier subject to such security or trading references and guarantees as the Supplier in its absolute discretion may require.
- 5.3 All rates and prices, are as stated in the Quotation, and are exclusive of Value Added Tax or any similar or other taxes, levies or duties.
- 5.4 Subject to the exercise of clauses 5.1 and 5.2 above, payments shall become due to the Supplier as follows:
- 5.4.1 The Price shall be due as progress payments i) on the due dates for progress payment included in any payment schedule included in the Quotation, or ii) at the end of each month. Each progress payment shall be for a sum equivalent to the value of:
- 5.4.1.1 Any deposit(s) or pro-forma payment(s) agreed by the parties
- 5.4.1.2 The design work which has been carried out
- 5.4.1.3 The Goods delivered to the Buyer at the Place of Delivery
- 5.4.1.4 All Goods that are ready for delivery to the Buyer at the Place of Delivery in accordance with any delivery date agreed by the Supplier in the Quotation (or otherwise agreed) notwithstanding that the Buyer does not accept delivery of any such Goods in circumstances where the Supplier is ready to deliver such Goods
- 5.4.1.4 Less deduction of progress payments previously made to the Supplier.
- 5.5 The Supplier shall make monthly applications for progress payments and may make additional applications where there is an agreement. These applications are due and payable 7 days after the receipt of the application by the Buyer. Applications for payment are deemed to have been received within 24 hours if submitted by email or fax or within 48 hours if submitted by post.
- 5.6 For the avoidance of doubt, the Buyer will not be entitled to make any deductions (whether by way of retention or otherwise) from any payment due under the Contract to the Supplier.
- 5.7 Interest shall be charged on all overdue amounts from the final date when payment was due until actually made at the rate of five percent above the Bank of England base rate operating during the period of delay in payment by the Buyer.





Delivery and returns:

- 6.1 Delivery of the Goods shall be made by the Supplier to the Place of Delivery.
- 6.2 The delivery date specified in the contract is a genuine forecast but is given without commitment. Time of delivery is not of the essence but every effort will be made to ensure it is met.
- 6.3 The Supplier shall not be liable for any delay in delivery howsoever caused. Delivery of the Goods after the Delivery date does not entitle the Buyer to treat the Contract as being breached and/or to any remedy.
- 6.4 The Supplier reserves the right to make delivery of the Goods by installments. Failure by the Supplier to deliver the Goods in a single installment does not constitute a breach.
- 6.5 Deviations in quantity of the Goods delivered from that stated in the Buyer's order shall not amount to a breach by the Supplier.
- 6.6 Where a failed delivery takes place and additional delivery, storage or other costs are incurred as a result, all additional costs will be passed on to the Buyer.
- 6.7 Additional delivery and storage charges will also be levied to the Buyer when the Buyer gives insufficient warning of a delivery rearrangement.
- 6.8 The Supplier reserves the right to charge the Buyer for the costs incurred by the Supplier in re-programming any production or manufacturing run.
- 6.9 Unless stated to the contrary in the Quotation, the Supplier shall deliver Goods to the Place of Delivery on 45ft articulated lorries. The Buyer is liable for any costs resulting from access to the Place of Delivery being unsuitable. A maximum of 1 hours is included for offloading the Goods and the Supplier reserves the right to charge any additional costs incurred should this time be exceeded. All pallets and packaging used during transportation will become the property of the Buyer unless specifically stated in the Quotation.
- 6.10 Goods are deemed to be purchased / produced on a bespoke basis and cannot be accepted for return by the Supplier.

Delay to the delivery or completion:

- 7.1 If, due to circumstances outside the control of the Supplier, the Buyer cannot accept delivery of any of the Goods on the Delivery Date, or is otherwise unable to grant access to the Supplier to the Place for Delivery for the purpose of delivery of the Goods, the Supplier reserves the right to recover any costs incurred by the delay and/or to continue to manufacture Goods and deliver them to storage in accordance with Clause 8. The value of Goods not delivered as a result of delays by the Buyer or reasons outside the control of the Supplier will be included in a subsequent Application for Payment.
- 7.2 The Supplier shall not be liable for any delay or for any consequences of any delay in the production or delivery of any of the Goods. It will, however be entitled to compensation if it is delayed and/or disrupted by matters outside of its control.
- 7.3 Notwithstanding any other provision of the Contract, the Supplier shall not be liable to the Buyer by way of indemnity or by reason of any breach of the Contract or statutory duty or by reason of delict/tort (including but not limited to negligence) for any loss of profit or income or for any indirect or consequential loss or damage whatsoever which may be suffered by the Buyer.

Storage:

- 8.1 Where the Buyer is unable to accept delivery of all or any of the Goods on the Delivery Date, it is the responsibility of the Buyer to arrange for suitable storage at the sole cost of the Buyer. If the Supplier has sufficient and appropriate facilities for those purposes it may offer to store the Goods at the Buyer's risk and expense.

Risk and property:

- 9.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership and title of all Goods sent to the Buyer remains the Supplier's and will not pass to the Buyer until:
 - 9.1.1 All applications made by the Supplier which are due for payment have been paid





- 9.1.2 The Buyer does not owe money to the Supplier under this or any other contract.
- 9.2 Where Goods are attached to or incorporated in other Goods or are altered by the Buyer, ownership of Goods shall not pass to the Buyer purely by virtue of the attachment, incorporation or alteration if the Goods remain identifiable and, where attached to or incorporated in other Goods, can be detached or removed from them. Until such time as the ownership and title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Supplier's property,
- 9.3 The Buyer must allow the Supplier or the Suppliers agents' entry onto its premises for the purposes of exercising its rights.
- 9.4 If the Buyer fails to pay the Supplier for any Goods by the final date for payment of any progress payment, the Supplier shall be entitled, without prejudice to any other remedy which the Supplier may have at law or otherwise, at any time to require the Buyer to deliver up the Goods to the Supplier and, if the Buyer fails to do so forthwith to enter the premises where the Goods are held and remove them. The Buyer shall not in any way dispose of the Goods supplied by the Supplier in respect of which payment has not been received in full by the Supplier.
- 9.5 All Goods shall be at the sole risk of the Buyer from the time that they are delivered to the Place of Delivery whether or not accepted by the Buyer. In the event that risk in the Goods has passed to the Buyer in accordance with the terms of the Contract then notwithstanding any other of its provisions such risk shall not in any circumstances be passed back to the Supplier.
- 9.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain in the ownership of the Supplier, but if the Buyer does so all moneys owing by the Buyer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 9.7 The Supplier withholds the right to maintain possession of Engineers calculations until the point that any outstanding account and monies have been settled in full.

Lien and stoppage:

- 10.1 Until the title in the Goods has passed to the Buyer the Supplier has the right to withhold delivery if the Buyer (being a Company) has a petition presented for its winding-up or for an administration order under the Insolvency Act 1986 or passes a resolution for voluntary winding-up other than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law.

Inspection/defects:

- 11.1 It is a condition precedent to making any claim for defects that the Buyer must inspect the Goods and inform the Supplier within 24 hours of delivery of any defect. This is to be accompanied by evidence of the defect.
- 11.2 In all cases where defects are complained of the Supplier shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Supplier before any use is made thereof or any alteration or modification is made thereto by the Buyer.

Warranty:

- 12.1 The Supplier warrants that it has title to and the unencumbered right to sell the Goods.
- 12.2 It is the Buyer's responsibility to ensure that the Goods are suitable for the purpose to which they are intended to be used.
- 12.3 No representation or warranty is given as to the suitability or fitness of the Goods for any particular purpose and the Buyer shall satisfy itself in this respect and shall be totally responsible therefore.

Limitation of liability:

- 13.1 Subject to the other clauses in these Conditions, the Supplier hereby undertakes to make good any defects in the Goods arising (within one year from the date of delivery) due to any design, workmanship or materials carried out or supplied by the Supplier not being in accordance with the Contract and which is not due to ordinary wear and tear or to improper use or care by any other party other than the Supplier.





- 13.2 The liability of the Supplier under this clause shall constitute its sole liability (save in respect of death or personal injury caused by the negligence of the Supplier) whether in contract, delict/tort (including negligence) or otherwise in respect of any defects in the Goods and any warranties or conditions implied by law are hereby expressly excluded to the fullest extent possible. For the avoidance of doubt, the liability of the Supplier shall be capped at the Contract Price.
- 13.3 The Buyer shall not be entitled to assign the benefit of this Contract without first receiving the prior written agreement of the Supplier.
- 13.4 Save in respect of death or personal injury caused by the negligence of the Supplier it shall not be liable for any loss and/or damage caused by or arising from the use of any Goods incorporated into any land or structure of the Buyer or any 3rd party and shall not, in any event, be liable for any loss arising out of any cause beyond its reasonable control.
- 13.5 The Supplier reserves the right to sub-contract part or all of the provision of the Goods.
- 13.6 Notwithstanding any other provision of the Contract, the Supplier shall not be liable to the Buyer by way of indemnity or by reason of any breach of the Contract or statutory duty or by reason of delict/tort (including but not limited to negligence) for any loss of profit or income or for any indirect or consequential loss or damage whatsoever which may be suffered by the Buyer.
- 13.7 Any goods manufactured to the design or specification of the Buyer or his agents or to details taken off plans supplied by the Buyer are manufactured and delivered without warranty of any kind except their compliance with such design (but subject to clause 13.8) or specification. The Buyer will unconditionally, fully and effectively indemnify the Supplier in respect of any claims, costs or expenses, losses or demands resulting there from including the infringement of any patent, copyright, design, trademark or any other industrial or intellectual property rights resulting from the Supplier's use of such design or specification.
- 13.8 Where the Supplier undertakes any design, the Supplier's liability for that design is limited to a duty to carry out that design with reasonable skill and care.

Imported materials:

- 14.1 The Price, where appropriate, allows for the cost of importing materials based upon the rates of exchange, tax or duty prevailing at the date of the Quotation or variation quotation as applicable. In the event of any adjustment in such rates of exchange etc, after the date of the Quotation or variation quotation as applicable, the Supplier reserves the right to make an appropriate adjustment to the Price to compensate the Supplier for any increased cost.

Prevention or frustration:

- 15.1 If the Contract becomes impossible to perform or is otherwise frustrated the Buyer shall be liable to pay the Supplier all reasonable costs, expenses, overheads and all loss of profit which the Supplier, his suppliers or sub-contractors incur as a result of such frustration or impossibility of performance.

Patents and intellectual property rights:

- 16.1 The Buyer warrants that any design or instruction furnished or given by him shall not cause the Supplier to infringe any letter patent, registered design or trademark in the execution of the Goods, nor have an adverse impact on any intellectual property rights.
- 16.2 The exclusive property and copyright in all designs and documents produced by the Supplier in connection with the Contract (whether before, on or after the date thereof) is fully reserved and remains exclusively the property of the Supplier and it is acknowledged that such documents are supplied to the Buyer in confidence for the sole purpose of the Contract. It is an express condition of the Contract that the contents of such documents (or any part of them) shall not be used or communicated in any manner to any other person, firm or company without the Supplier's prior written consent and shall not be used by the Buyer other than for the purposes of the Contract.

Determination:

- 17.1 The Supplier shall be entitled to determine its employment under the Contract where
- 17.1.1 The Buyer is in material or continuing breach of any of its obligations (including any obligation to pay any sums due to the Supplier) under the Contract and fails to remedy such breach within 7 days of the receipt of written notification from the Supplier of such breach; and/or
- 17.1.2 The Buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or a receiver or administrative receiver is appointed over the whole or a substantial part of the assets and undertaking of the Buyer, or an encumbrancer otherwise takes such possession of, any property or assets of the Buyer or the Buyer ceases or threatens to cease to carry on business or the Buyer generally becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 17.2 The Supplier shall in both such circumstances prepare and submit to the Buyer within 14 days of the date of determination, an account setting out the total value of the Goods supplied inclusive of design, and manufacture costs (as the case may be), together with any sums due to the





Supplier arising out of or in connection with the termination, and any other sums which are due pursuant to this Contract, less deduction of all sums previously paid to the Supplier by the Buyer.

17.3 The account will be deemed an application for the purposes of payment and the payment terms set out at Clause 5 will apply.

Law and jurisdiction:

18.1 The Contract shall be governed by and construed in accordance with the laws of England and Wales unless the Place of Delivery is within Scotland, in which case the laws of Scotland will apply.

Arbitration:

19.1 Any dispute or difference arising out of or in connection with this Contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators. The seat of the arbitration shall be England and Wales.

Entire agreement:

20.1 The Contract constitutes the entire agreement between the Buyer and the Supplier. It supersedes any previous agreement (whether written or oral) between the parties. The parties have not relied on any representations, including pre-contractual representations, other than those which are set out in the contract. This clause does not exclude liability for fraud.

Exclusions:

21.1 The Quotation excludes the following items:

21.1.1 Those specified in the Quotation which, unless agreed in writing, it shall be the Buyer's responsibility to provide to the Supplier's requirement.

21.1.2 Whilst the Supplier will endeavour to comply with all relevant statutory provisions and Codes of Practice applicable to the provision by the Supplier of the Goods, the Supplier will have no responsibility to obtain any consents or permissions necessary for the supply of the Goods.

21.1.3 Any costs incurred by the Supplier associated with the production and issue to any party on the instructions of the Buyer of structural calculations relating to the Goods.

21.1.4 The provision of a Collateral Warranty Agreement, unless otherwise agreed in the Quotation. In the event that a Collateral Warranty is to be provided as per the Quotation, it is on the basis that

21.1.4.1 The wording is in a form that is agreeable to the Supplier.

21.1.4.2 It will not be valid unless and until the agreed final application has been paid in full.

21.1.5 The provision of a Performance Bond unless otherwise agreed in the Quotation. In the event that a Performance Bond is provided for by the Quotation, it shall guarantee secondary obligations only and not be an on demand bond.

