

## LOTHIAN BUILDING SUPPLIES LIMITED

### TRADING TERMS AND CONDITIONS

#### Definitions

The term "the Company" shall mean Lothian Building Supplies Limited.

The term "Purchaser" shall mean the person, firm or Company so named in the purchase order.

The term "quotation" shall mean the tender or quotation issued by the Company for the supply of the goods including these conditions, the specification drawings or other documents annexed by the Company to the quotation.

The term "goods" shall mean the goods to be supplied by the Company as identified in the quotation.

The "contract" shall mean the contract between the Company and the purchaser consisting of the companies quotation, these conditions of sale, and the purchase order accepting the quotation, but not any terms and conditions of purchase, other than these conditions, incorporated in or referred to in the purchase order. No negotiations, communications, or course of dealing established between the Company and the Purchaser shall apply unless made in writing and signed by a Director of the Company.

The term "date for delivery" shall mean the firm date for delivery of any stated as such in the quotation.

The term "contract price" shall mean the sum stated in the quotation to be paid by the Purchaser to the Company for the supply of goods together with such other sums as may be payable to the company and these conditions of sale.

#### Payment

The Company shall be entitled to invoice for the goods on delivery. Unless otherwise agreed in writing, the Purchaser shall pay the Company invoice on last business day of the month following delivery. The company retains the right, at its absolute discretion, to withdraw any credit terms granted to the Purchaser.

If the Purchaser fails to pay the Seller's invoice on the due date of payment, the Seller will be entitled to terminate the contract and decline to deliver any further goods to be supplied under this contract or any other purchase order placed by the Purchaser with the company, until payment has been received in full of any amounts outstanding and payment has been made by the Purchaser in advance for any goods but not yet delivered, without thereby incurring any liability whatsoever to the Purchaser.

If the Purchaser fails to give all instructions reasonably required by the Company, promptly, and all necessary documents, licenses, consents and authorities for forwarding goods, or are unable to accept delivery of the goods at the time when the goods are due and ready to be dispatched or delivered by the Company, or shall otherwise cause or request delay, the Purchaser shall pay to the company all costs and expenses, including storage and insurance charges incurred or arising from such delay during which, at the Company's absolute discretion, if its storage facilities permit, the goods will be stored at the Purchaser's sole risk. The foregoing is wholly without prejudice to any other right of the company to seek payment or damages in respect of the Purchaser's failure to take delivery at the appropriate date.

Where goods are delivered in installments, each installment will rank as a separate contract and payment is to be made accordingly.

#### Delivery

Any date of period for delivery stated within the quotation shall be considered indicative only and not contractually binding on the company. Time shall not be considered to be of the essence and the Purchaser shall not have the right to reject the goods or terminate the contract by reason of any delay in delivery.

The risk of goods shall pass to the Purchaser on delivery to the delivery point stated in the quotation, carriage paid, provided that if in accordance with the quotation, the goods are to be given to a carrier for onward transmission to the purchaser, then delivery of the goods to the carrier shall constitute delivery to the buyer.

The signature of an employee, representative or agent of the Purchaser on the Company's delivery note shall be conclusive proof of delivery.

Any claim for non-delivery must be made in writing to the Company within 10 days of the receipt of the invoice or advice note whichever is the earlier.

Any claims in respect of goods damaged in transit or shortages in delivery must be made in writing to the company within 7 days of delivery. Shortages of delivery shall not give rise to a right to reject the goods delivered.

The Company shall be entitled to make partial deliveries or deliveries by installments and all the provisions of these terms shall apply to such deliveries.

#### Properties and Risk

(a) Property in the goods shall not pass to the Purchaser until payment has been received by the company, in full, for the goods and for any other goods supplied by the Company to the Purchaser.

(b) For the purposes of this clause the Purchaser undertakes until the Purchaser has made payment in accordance with the foregoing clause (a), not to remove, deface, or cover up any identification marks on the goods or marks indicating that the goods are the property of the Company to store the goods separately from those belonging to the purchaser or others.

(c) To allow the company unrestricted access to the purchaser's works or other place where the goods are stored for the purpose removal of the goods. Until payment due under all contracts between the company the purchaser has been made in full the company shall be entitled to trace all proceeds of sale received by the purchaser through any bank or other account maintained by the purchaser and to demand that said proceeds are paid to the Company.

(d) Until the Company has received in cash or cleared funds, payment in full of the price of the goods the buyer shall not be entitled to dispose of any property in the goods (by sale or otherwise) to the holding company of the purchaser or to any subsidiary of the purchaser or any such holding company.

#### Quotation and Acceptance

All quotations are given and all orders are accepted on these terms which shall apply to the exclusion of and shall override any other terms stipulated or referred to by the purchaser whether in its order or any other document, or in any other negotiations or communication or course dealing established between the company and the purchaser.

No modification or amendment of these terms or addition thereto shall be effective unless made in writing and signed by a Director of the Company.

#### Prices

Prices quoted by the company are those in effect at the date of quotation. Unless otherwise agreed in writing, the company reserves the right to increase prices when it accepts the purchaser's order so as to reflect one or more of the following:

Any variation that may have occurred in the costs of labour, materials, suppliers overheads and transport.

Any change in duty, tax, surcharge of levy of any kind whatsoever affecting the sale price of the goods.

Any cost to the company resulting from delay by the purchaser in giving in to the company information sufficient to enable it to supply the goods or provide the services or resulting from any alteration made at the request of the purchaser on the specification of the goods or in the place to which they are to be delivered or shipped.

Except where otherwise stated, prices are exclusive of value added tax.

#### Insolvency

If the buyer shall become bankrupt or insolvent or compound with creditors or in the event of resolution being passed or proceedings being commenced for the winding up of the purchaser or if a receiver, administrator or manager is appointed of the whole or any part of its assets or undertaking the company shall be entitled to cancel the contract in whole or by any part by notice in writing without prejudice to any right or remedy accrued or accruing to the company.

#### Indemnity as to industrial and property rights

The purchaser shall indemnify the company against all loss, damage costs and expenses suffered or incurred by the company or to which the company may become liable as a result of any work carried out in accordance with the purchaser's specification(s) which involves infringement or alleged infringement patent or registered design or other industrial property right.

If the purchaser uses or sells the goods in such a manner as to infringe any such rights the company shall not be responsible for such infringement and the purchaser agrees to indemnify the company from and against all liability arising therefrom.

#### Termination

The purchaser shall have the right forthwith to cancel the purchaser's order if any of the following events occur and subject to the enforcement of the company's rights to recover the goods and to receive payment of the price or damage, the contract shall be deemed to have terminated.

The purchaser commits any breach of its obligations to the company.

Any resolution is passed or petition presented to wind up the purchase.

Any distress or execution is levied upon any property of the purchaser.

The purchaser makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy of insolvency.

A receiver or administrator is appointed or any charge takes possession of all or any part of the undertaking or assets of the purchaser.

The purchaser stops payment or ceases or threatens to cease to carry on its business or to pay its debts as and when they fall due.

Any remittance for payment of the whole or any part of the purchase price is dishonoured by the company's bankers.

#### Force Majeure

The company shall be under no liability for any delay in carrying out, or for the non-performance of, any of its obligations under these terms caused by any circumstance (including, but not limited to, war, riot, accident, fire, storm, flood, industrial dispute and supplies or labour shortages) beyond its direct and reasonable control.

#### Law

These terms shall in all respects be construed and have effect according to Scottish law, and the parties agree to submit to the jurisdiction of the Scottish Courts.