

TERMS & CONDITIONS OF SALE

WARNING: These Terms and Conditions contain exclusion clauses and limitation on liability

1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions means the terms and conditions set out in this document [as amended from time to time in accordance with **clause 12.6**].

Contract means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Contract Documentation means any Order, Order acknowledgement, quotation and any Specification and these Documents.

Customer means the person or firm who purchases the Goods from the Supplier.

Force Majeure Event means has the meaning given in **clause 11**.

Goods means the scaffolding materials, tubes and fittings, boards, ladders, systems etc, or any part of them, or any Second Hand Goods as set out in the Order.

Order means the Customer's order for the Goods, to the Supplier (whether both written or oral).

Price means the price for the Goods, as defined in Condition 7.1.

Second Hand Goods means Goods which the Customer has hired from the Supplier and then wishes to purchase from the Supplier, or Goods which the Supplier has bought as second hand to re-sell, where the Goods have been used by third parties, prior to the sale to the Customer under these Conditions.

Specification means any specification for the Goods, including any data sheet that is agreed in writing by the Customer and the Supplier.

Supplier means TRAD Hire and Sales Limited (registered in England and Wales with company number 03491083), whose registered office is at TRAD House, Imperial Street, Bromley by Bow, London, E3 3ED.

1.2 **Construction.** In these Conditions, the following rules apply:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to writing or written includes faxes and e-mails.

2 BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification (submitted by the Customer) are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 28 Days from its date of issue. Prices quoted verbally are only valid for the day on which they are quoted.

3 GOODS

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This **clause 3.2** shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

3.4 Where the Goods are to be supplied from existing stock of the Supplier, the Customer acknowledges that any such supply will be subject to availability of the Goods at the date of delivery. The Supplier shall have no liability to the Customer for any non-delivery or failure to deliver due to non-availability of Goods from stock items.

3.5 Where the Goods are Second Hand Goods, they are sold on an "as seen" basis, without any specification or warranty and the Customer shall inspect such Second Hand Goods prior to purchase and the Supplier shall have no liability for any default in the Second Hand Goods, save where the Customer identifies any broken items on such initial inspection prior to delivery or collection.

4 DELIVERY

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a dated delivery note, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable);

(b) the cost of pallets and containers will be charged to the Customer in addition to the Price of the Goods. However, if the pallets and containers are returned to the Supplier undamaged within 14 days of the delivery of the Goods, then the Supplier will give the Customer credit against such charges.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be complete on the Goods' arrival at the Delivery Location or, where it is agreed that the Customer may collect the Goods from the Supplier, delivery will be completed at the point of loading of the Goods onto the Customer's vehicle.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract, the Supplier may at its sole discretion:

(a) store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and

(b) resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered. Goods will be deemed to be delivered in conformity with the Contract, unless the Customer notifies the Supplier in writing within seven Business Days (or three calendar weeks in respect of delivery outside the United Kingdom) of any defect. The Supplier shall be entitled to inspect the Goods to verify the Order delivered and if in its reasonable opinion it considers that the Goods delivered were incomplete, damaged or defective, the Supplier will in its sole discretion make good any shortfall or replace any Goods damaged in transit and this shall be the sole liability of the Supplier.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 WARRANTY

5.1 The Supplier warrants that on delivery, and, (save for Second Hand Goods), for a period of 3 months from the date of delivery (warranty period), the Goods shall:

(a) conform in all material respects with their description and any applicable Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Supplier.

5.2 Where the Goods are Second Hand Goods, the Supplier is selling such Goods on an "as is" basis and is not giving any warranty in respect of such Second Hand Goods and shall have no liability to the Customer for any defect or fault in their design, material and workmanship, save for the obligation to replace any item with a similar second hand item as described in Condition 3.5.

5.3 Subject to **clause 5.4**, if:

(a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in **clause 5.1**;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in **clause 5.1** in any of the following events:

(a) the Customer makes any further use of such Goods after giving notice in accordance with **clause 5.2**;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 The Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in **clause 5.1**.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6 TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

(a) the Goods; and

(b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as the Supplier's bailee;

(b) store the Goods separately (at the Customer's cost and expense) from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(c) not remove, deface or obscure any Supplier's identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured (at the Customer's sole cost and expense) against all risks for their full price from the date of delivery;

(e) notify the Supplier immediately if it becomes subject to any of the events listed in **clause 9.2**; and

(f) give the Supplier such information (including documentary evidence regarding insurances required under Condition 6.3(d)) relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in **clause 9.2**, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 PRICE OF GOODS

7.1 Subject to Condition 4.7, the price of the Goods shall be the price set out in the quotation (whether written or verbal), or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. Prices quoted are ex-works unless otherwise stated by the Supplier.

7.2 The Supplier may, by giving written notice to the Customer at any time before delivery, increase the Price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8 PAYMENT TERMS

8.1 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

8.2 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Time of payment is of the essence.

8.3 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8½% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.4 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9 CUSTOMER'S INSOLVENCY OR INCAPACITY

9.1 If the Customer becomes subject to any of the events listed in **clause 9.2**, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

9.2 For the purposes of **clause 9.1**, the relevant events are:

(a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

(b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(d) (being an individual) the Customer is the subject of a bankruptcy petition or order;

(e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

(g) (being a company) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

(i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (a)-(g) which is clause 9.2(h) (inclusive);

(j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

(k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10 LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(d) defective products under the Consumer Protection Act 1987; or

(e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to **clause 10.1**:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, special or consequential loss arising under or in connection with the Contract; and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price of the Goods, and where the Goods are delivered in instalments the Supplier's total liability shall be capped at the Price of the Goods delivered under the instalment under which the liability arose.

11 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12 GENERAL

12.1 **Assignment and other dealings.**

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 **Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail, save where sending a notice of termination which shall be sent by post or courier.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause **12.2(a)**; if sent by pre-paid first class post or other next working day delivery service, at [9.00 am] on the [second] Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax [or e-mail], one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 **Severance.**

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

12.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).