

# Conditions of Sale

I/We accept and agree to and have read and understood the terms and conditions below.

## 1. THE AGREEMENT

- 1.1 These Conditions of Sale, and the Seller's quotation form on the reverse side of this document ("the Quotation"), constitute the entire agreement between the parties which excludes (to the extent permitted by law) all representations, promises, undertakings and statutory conditions and warranties ("this agreement").
- 1.2 Once the Quotation is accepted by the Buyer and Guarantor (if any), there shall be a binding contract with the Seller which may be varied or cancelled only with the written agreement of the parties.

## 2. SUPPLY

- 2.1 Any Supply date given is an estimate only, and the Seller may Supply the Goods in installments before and after that date.
- 2.2 Unless otherwise agreed in writing, Supply At Seller's Premises of the Goods, or of any installment of the Goods, shall be complete immediately the Seller notifies (by phone, post or fax) the Buyer that the Goods are complete and available for removal from the Seller's premises. Upon uplifting the Goods, the Buyer shall transport them to the Installation Premises and keep them there unless uplifted by the Seller. If the Buyer fails within 5 working days of Supply to uplift the Goods, the Seller may, at its sole discretion, store the Goods or transport them to the Installation Premises charging all associated storage or transportation costs to the Buyer.
- 2.3 Supply To Installation Premises shall be complete upon the Goods, or any installment of the Goods, being unloaded at those Premises.
- 2.4 Supply By Installation at Installation Premises shall be complete upon the Goods, or any installment of the Goods, having been installed in a proper and tradesmanlike manner.

## 3. SPECIFICATIONS, PRICE AND PAYMENT

- 3.1 The Total Price is calculated using costs at date of Quotation, and is subject to any increases or decreases in those costs and in any applicable taxes or duties arising between the date of Quotation and the date of Supply ("Total Price").
- 3.2 Unless the Seller has already measured the structure, the measurements in the Quotation are based on specifications supplied by the Buyer and if the Seller finds any inaccuracy in those specifications, the Seller may recalculate the Net Quotation and the Total Price on the same basis as used with the specifications.
- 3.3 Before manufacture of the Goods begins, the Buyer may request an alteration to the specifications provided that the alteration will not (in the Seller's sole opinion) unreasonably interfere with the Seller's manufacturing programme and the Seller may recalculate the Net Quotation and the Total Price on the same basis as used with the original specifications.
- 3.4 In the event of any disagreement regarding any recalculation of the Net Quotation or the Total Price, a certificate given by the general manager of the Seller shall, in any proceedings, arbitration, mediation or discussion, be conclusive evidence of the Total Price to be paid by the Buyer.
- 3.5 The Total Price, or where the Buyer is obliged to pay in installments, each installment of the Total Price, shall be paid by the Buyer by the payment date or dates (as the case may be) specified in the Quotation, and if the Total Price or any installment is late, then the Discount will not apply and the Total Price due shall be the sum of the Net Quotation plus GST on the Net Quotation. Where any amount payable under this Agreement is not paid upon due date, the amount which is consequently owing shall immediately incur interest on a daily basis (at the same rate for which the Seller would be liable to its principal trading bank if it were to exceed its overdraft limit) which shall accrue before as well as after judgment.
- 3.6 The Buyer shall be liable to pay all expenses and legal costs of the Seller (including those calculated as between solicitor and client) in recovering any outstanding payment and interest. All amounts owing by the Buyer to the Seller shall be paid without any set off or deduction for any reason whatsoever.
- 3.7 The terms of the Construction Contracts Act 2002 shall apply to payments by installments.

## 4. TITLE AND RISK

- 4.1 Until all amounts owing by the Buyer or any of the Buyer's Related Companies (as defined in the Companies Act 1993) to the Seller, have been paid (and all cheques cleared):
  - (a) All property in the Goods shall remain with the Seller.
  - (b) The Buyer (or its contractor) may install the Goods only to a temporary and incomplete extent and so as to allow removal without any damage to the Installation Premises.
  - (c) The Buyer shall procure that the Seller may enter the Installation Premises at any time and remove the Goods. The Buyer indemnifies the Seller against all liabilities, expenses and costs (including solicitor-client) arising from such entry.
- 4.2 If at any time the Seller believes that the Buyer cannot or will not pay on due date, the Seller may delay manufacture until the Buyer pays a deposit of 50% of the Total Price, and the terms of Supply shall be ex factory and clause 2.2 shall apply notwithstanding anything else in this Agreement.
- 4.3 Immediately Supply has occurred, risk of any loss, damage or deterioration of or to the Goods Supplied shall pass to the Buyer.

## 5. DEFECTS

- 5.1 Subject to clause 1.2, the Seller's liability for defective Goods and loss (including consequential loss and loss of profits) howsoever caused by any defect in the Goods is limited, at the Seller's option, to either:
  - (a) Repairing or replacing the defective Goods; or
  - (b) Refunding the Total Price of the defective Goods.Subject to clause 1.2, no claim for any defect in the Goods shall be accepted unless the claim is notified to the Seller within 7 days of Supply of the Goods. The Seller shall be given reasonable access to investigate the claim, and may, at its discretion, remove the Goods to its premises.
- 5.2 The shade or colour of the Goods may differ from any colour which may have been advertised to, or inspected or specified by the Seller.

## 6. SURFACE COATING

The Buyer understands, acknowledges and accepts that:

- 6.1 Standard Powdercoat colours are made up of powders which have a 7 year warranty for fading and chalking. Higher performance powders are available in request on a made to order basis.
- 6.2 Compared to other colours, dark and bright colours fade and "chalk" within shorter time periods. The Seller does not recommend bright colours for aluminium joinery (bright colours include bright reds, yellows, oranges and pinks. A full listing of these bright colours is available from the Seller).
- 6.3 The durability and colour retentive qualities of the powdercoat surface are improved by adherence to a maintenance programme of cleaning recommended by the Seller. In this regard, aluminium joinery should be cleaned every 3 to 6 months depending on the environment (i.e. 3 months in coastal, geothermal or industrial environments and 6 months in other cases. Cleaning should be undertaken with a mild neutral detergent and rinsed with clean water and dried immediately afterwards with a clean cloth.) Adherence to such cleaning programmes is a condition of all powdercoat guarantees.
- 6.4 Powdercoat surface finish defects and blemishes which are readily apparent to the naked eye at a distance of two metres are considered acceptable.
- 6.5 It is the Buyer's responsibility to obtain from the Seller all relevant information on the varying grades and qualities of powdercoat available and to specify to the Seller in writing the grade and quality of powdercoat the Buyer requires. If the Buyer does not specify the grade and quality of powdercoat required the Buyer shall be deemed to have specified 'Polyester Powdercoat' rather than 'High Performance Polyester Powdercoat'. It is the Buyer's responsibility to obtain from the Seller copies of all guarantees existing at the time of purchase.

## 7. GENERAL

- 7.1 The rights, powers and remedies provided in this Agreement are cumulative and do not prejudice or exclude any rights, powers and remedies provided by law.
- 7.2 If any provision, or any part of any provision, of this Agreement is, or becomes invalid or unenforceable, that invalidity or unenforceability shall not affect the other provisions, and part provisions (if any), of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable part of this Agreement.
- 7.3 All words defined in these conditions of sale shall bear the same meaning in the Quotation and vice versa.

## 8. SECURITY, GUARANTEE AND INDEMNITY

- 8.1 The Buyer will do all things and provide all further assurances reasonably required by the Seller to enable the Seller to register a financing statement under the Personal Property Securities Register, in respect of the Purchase Money Security Interest granted by this clause. In default of doing so, the Buyer in consideration of the provision of or agreement to provide credit appoints the Seller and every officer of the Seller its attorney to do all things and sign all documents required to enable registration of a financing statement.
- 8.2 Where the Buyer or the Guarantor (if any) is the owner of the land at the Installation Premises ("Owner"), the Owner agrees to mortgage all of the Owner's interest in the land comprising the Installation Premises to the Seller to secure all amounts payable under this Agreement and the Owner acknowledges and agrees that this Agreement creates a caveatable interest in that land in favour of the Seller.
- 8.3 The Guarantor (if any) guarantees the payment of all amounts due by the Buyer to the Seller under this Agreement. This liability constitutes a principal obligation which shall not be released or prejudiced by any granting of time, failure to take security, waiver or forbearance to sue by the Seller.
- 8.4 The Guarantor (if any) shall indemnify the Seller against all losses, damages and expenses suffered or incurred by the Seller arising out of the non payment of any amount by the Seller or any breach of any of its obligations in this Agreement.