



TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions, the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"Buyer" means the customer named overleaf;

"Contract" means a contract that arises on the Seller's acceptance of a Purchase Order submitted by the Buyer, comprising the relevant Purchase Order and these Conditions;

"Conditions" means the terms and conditions set out below;

"Due Date" means the date for payment of sums due pursuant to condition 6.2;

"Goods" means the goods (including any instalments or parts) which the Seller is to supply;

"Insolvency" means, in relation to the Buyer, any of the following (as relevant):

- (a) the appointment of any nominee, trustee, supervisor, administrator, administrative receiver, receiver or liquidator pursuant to the Insolvency Act 1986 (as amended, re-enacted or replaced from time to time);
- (b) the entry into of any compromise or arrangement with its creditors;
- (c) if it commits any act of bankruptcy;
- (d) if an order is made or effective resolution is passed for its winding up (except for the purposes of a solvent amalgamation or reconstruction); or
- (e) the occurrence or sufferance of anything equivalent to the above under any jurisdiction other than England or Wales.

(and **"Insolvent"** shall be construed accordingly).

"Party" means either the Buyer or the Seller and **"Parties"** shall be construed accordingly;

"Price" means the Seller's quoted price for the Goods and the Services or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of supply;

"Purchase Order" means a purchase order submitted for the Goods and/or Services by Buyer under these Conditions and accepted by Seller;

"Sales Taxes" means any value added taxes, goods taxes or other sales taxes which may at any time be chargeable in respect of the sale or supply of Goods or Services;

"Seller" means Frameclad Limited registered in England (under number 07084030) at Building 40 Third Avenue, Pensnett Trading Estate, Kingswinford, West Midlands, England, DY6 7UP;

"Services" the services (including any repair work or instalments) which the Seller is to perform.

1.2 In these Conditions:

- (a) any gender includes any other gender;
- (b) a reference to a statutory provision includes a reference to that provision as extended, applied, amended or enacted from time to time and includes any subordinate legislation;
- (c) references to "the Goods", "the Contract", "the Services", "the Purchase Order" "the Price" or any payment includes any part of them.

2. BASIS OF THE SALE

- 2.1 The Seller shall sell and the Buyer shall buy the Goods and the Services subject to these Conditions, which supersede any other terms and which govern the Contract to the exclusion of any terms and conditions which the Buyer purports to apply or which are implied by trade, custom or course of dealing.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's order or other document will form part of the Contract simply as a result of such document being delivered to the Seller or referred to in the Contract.
- 2.3 Each Purchase Order submitted by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase Goods and Services subject to these Conditions.
- 2.4 Any variation to these Conditions is of no effect unless agreed in writing by an authorised representative of the Seller.
- 2.5 These Conditions constitute the entire agreement between Buyer and Seller for the supply of the Goods and the Services.
- 2.6 The Seller's employees or agents are not authorised to make any representation concerning the Goods or Services unless confirmed by the Seller in writing, and the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).
- 2.7 Any advice or recommendation given by the Seller or its employees or agents to the Buyer as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk.
- 2.8 Any typographical, clerical or other error or omission in any document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. QUOTATIONS, PURCHASE ORDERS AND SPECIFICATIONS

- 3.1 A quotation by the Seller is not an offer. Quotations are subject to withdrawal or revision at any time before acceptance of the Buyer's order by the Seller.
- 3.2 No Purchase Order submitted by the Buyer is accepted by the Seller until the Seller confirms its acceptance (orally or in writing) or (if earlier) the Seller delivers the Goods or supplies the Services to the Buyer.

- 3.3 The Buyer must ensure that the terms of any Purchase Order (including any specification) are complete and accurate and that it gives to the Seller any necessary information relating to the Goods and Services within a sufficient time to enable the Seller duly to perform the Contract.
- 3.4 Where the Goods are manufactured or where standard goods of the Seller are altered in either case in accordance with information, drawings or instructions supplied by the Buyer;
- (a) no guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods;
 - (b) the Buyer shall indemnify the Seller against all liability incurred by the Seller as a result of;
 - (i) the Goods infringing any intellectual property right or any statutory provision;
 - (ii) any impracticability, inefficiency, lack of safety or defect in the Goods where any of these is due wholly or partly to faults or omissions in any such information, drawings or instructions;
 - (c) all work (including design drawings) and any idea, invention or improvement made by or on behalf of the Seller pursuant to the Buyer's commission and all intellectual property rights therein (including any design right in a design created by the Seller) belong to the Seller; and
 - (d) the Seller shall not be liable to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer if any Goods infringe any intellectual property right.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods or Services which are required for the Goods or Services to conform with any applicable safety or other statutory or EU requirements or which do not materially affect their quality or performance.

4. DESCRIPTION

All descriptions, samples and illustrations issued by the Seller are intended merely to present a general idea of the Goods and Services described and do not form part of the Contract.

5. CANCELLATION AND DELAY

- 5.1 No Purchase Order may be cancelled by the Buyer except with the Seller's written agreement and on terms that the Buyer shall indemnify the Seller against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 5.2 If the Buyer extends or delays the Contract or fails to take delivery of any Goods at the agreed time or (if no time is agreed) within a reasonable time then the Buyer shall indemnify the Seller against all expense, liability, loss (including loss of profit), costs (including the cost of storage and all labour and materials used), demands, charges or claim or proceedings made against or incurred by the Seller by reason of any default or breach, whether by an act or omission, by the Buyer or any persons or third party employed, engaged or authorised by the Buyer including its servants and/or agents. .
- 5.3 The Seller reserves the right to defer the date of delivery or performance, to cancel the Contract or reduce the volume of Goods ordered without liability to the Buyer if it is prevented from or delayed in carrying on its business by any cause beyond the Seller's reasonable control (which includes Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether

involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery). In such circumstances, the Buyer may also give written notice to cancel the Contract if the cause in question continues for a continuous period in excess of (one hundred and eighty) 180 days but in any event shall remain liable to pay for Goods or Services delivered or supplied prior to such cancellation by the Seller or the Buyer.

6. COSTS AND PAYMENT

- 6.1 The Price is exclusive of all Sales Taxes, which the Buyer shall pay at the rate prevailing at the date of the Seller's invoice. The Seller reserves the right at any time before delivery or performance to amend the Price to take into account any variation in cost to the Seller. Any Price quoted by the Seller is exclusive of the cost of delivery to the Buyer (including transport, packaging, insurance and any taxes, duties or surcharges).
- 6.2 Payment of the Price is due within thirty (30) days from the end of the month following invoice date (the "**Due Date**"). Time of payment is of the essence. Payment by the Buyer shall be made without any deduction or set off. For the purposes of these Conditions, payment is received when the Seller receives it in cleared funds.
- 6.3 The Seller reserves the right to claim interest and compensation from the Due Date for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.
- 6.4 Despite any provision allowing credit, payment of the Price is due and payable to the Seller immediately upon cancellation or termination of the Contract.
- 6.5 If the Buyer fails to make any payment on the Due Date then the Price shall be immediately due and payable without demand and the Seller may;
- (a) cancel the Contract or suspend deliveries or performance to the Buyer; and/or
 - (b) appropriate any payment made by the Buyer to such of the Goods or Services (or the goods or services supplied under any other contract between the Buyer and the Seller) as the Seller thinks fit.
- 6.6 The Seller is entitled to set off sums owed by the Seller to the Buyer against sums owed by the Buyer to the Seller.

7. DELIVERY

- 7.1 Delivery of the Goods shall be within the time agreed and if no time is agreed, within a reasonable time by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place at the Buyer's cost. The Seller may make delivery by instalments. Any dates for delivery and/or performance are approximate only and time of delivery and/or performance is not of the essence.
- 7.2 No claim for damage or shortages will be considered unless the Seller is given written notice within seven (7) days after delivery. If no such notice is received by the Seller, the Buyer is deemed to have accepted the Goods. No claim for non-delivery will be considered unless the Seller is given written notice within seven (7) days of the date when the Goods would in the ordinary course of events have been received. Any claim for damage, shortages or non-delivery must also be notified to the carrier by the Buyer in the manner and within the appropriate time limits prescribed by the carrier's terms and conditions. In the event of failure by the Buyer to give the appropriate notices as specified any claim by the Buyer is deemed to have been waived.

- 7.3 Where the Goods are to be delivered or Services are to be performed in instalments, each delivery or performance shall be a separate contract and failure by the Seller to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.4 If the Buyer fails to take delivery of the Goods or the Seller is unable to deliver the Goods on time because the Buyer has not provided adequate instructions, documents, licences or authorisations, then the Goods are deemed delivered and the Seller may:
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

8. RISK AND PROPERTY

- 8.1 The Goods remain the property of the Seller until the full Price has been received by the Seller in cash or cleared funds.
- 8.2 In addition, the Goods remain the property of the Seller until all other sums which are or which become due from the Buyer on any account with the Seller have been received by the Seller in cash or cleared funds.
- 8.3 Irrespective of whether payments received from the Buyer are stated to refer to a particular invoice, the Seller may appropriate such payments to any outstanding invoice.
- 8.4 The Goods are at the risk of the Buyer from the time of delivery.
- 8.5 Until ownership of the Goods passes to the Buyer, the Buyer must:
- (a) store them at its own cost on its premises separately from any other goods and in a manner which makes them readily identifiable as the goods of the Seller;
 - (b) not destroy, deface or obscure any identifying mark or packaging of the Goods;
 - (c) maintain the Goods in a satisfactory condition insured on the Seller's behalf for their full price against all risks; and
 - (d) hold the proceeds of insurance referred to in condition 8.5(c) on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn account.
- 8.6 During the period following delivery of the Goods and prior to ownership having passed to the Buyer, the Buyer may use or sell the Goods to a bona fide purchaser in the ordinary course of the Buyer's business, subject always to compliance with condition 8.5 whilst the Goods remain under the control of the Buyer.
- 8.7 The Seller may at any time recover or resell such Goods in respect of which property remains with the Seller under condition 8.1 or condition 8.2. The Buyer agrees that the Seller shall be entitled by its employees and/or agents to enter any of the premises of the Buyer where the Goods are stored without notice for such purpose and undertakes to procure the right for the Seller, its employees and agents to enter any premises of any third party where the Goods are stored.
- 8.8 If the Goods shall be sold by the Buyer before payment for them has been made, that part of the proceeds of sale which represents or is equivalent to the amount owed by the Buyer to the Seller shall

be held by the Buyer upon trust for the Seller and shall be paid into a separate bank account designated for that purpose. The Seller shall be entitled to trace the proceeds of any such sale(s) into such bank account (or wherever such proceeds may in fact be located) and the Buyer authorises the Seller to make enquiries of its bankers (or otherwise as appropriate) relating to such proceeds.

8.9 This condition 8 (but not condition 8.6) shall survive expiry or termination of any Contract.

9. RESALE OF GOODS

9.1 It is the responsibility of the Buyer to ensure that no marking or label affixed to the Goods referring the user to the Seller's instructions and/or recommendations for use and packaging is removed, tampered with or disfigured in any way.

9.2 If any item comprised in the Goods is resold by the Buyer, the Buyer shall;

- (a) bring to the purchaser's attention all the Seller's instructions and/or recommendations for use which are packed with or appearing on the Goods or which the Seller has notified to the Buyer; and
- (b) be responsible for providing full and accurate translations in all relevant languages where the Goods go overseas.

10. DEFECTS

10.1 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with specification must (whether or not delivery is refused by the Buyer) be notified to the Seller and the Seller's carriers within seven days from the date of delivery or performance or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure.

10.2 In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.

10.3 If the Buyer does not notify claims in accordance with condition 10.1 then;

- (a) the Buyer shall not be entitled to reject the Goods and/or Services; and
- (b) the Seller shall have no liability for such defect or failure; and
- (c) the Buyer shall be bound to pay the full price for the Goods and/or Services

10.4 In the event the Buyer has a valid claim which has been notified to the Seller pursuant to condition 10.1, the Seller shall be entitled to repair or replace the Goods or carry out the Services again (or the part or element in question) free of charge or, at the Seller's option, refund to the Buyer the price of the Goods or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

10.5 If the Buyer is entitled to reject the Goods because all or part of the Goods are defective, the Buyer must reject all of the Goods and cannot keep some of the Goods and reject the remainder.

11. LIMITATION OF LIABILITY

THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

11.1 The following sets out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Buyer in respect of any breach of these Conditions,

any representation or statement made or act or omission relating to or done in connection with the Contract and in respect of any contemplated performance or lack of performance including negligence and other tortious liability.

11.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to any implied condition that the Seller has or will have the right to sell the Goods when the property is to pass.

11.3 Nothing in these Conditions excludes or limits the Seller's liability for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation or excludes or limits any other liability to the extent such liability may not be excluded or limited as a matter of law.

11.4 Subject to conditions 11.2 and 11.3:

(a) the Seller shall not be liable to the Buyer for:

(i) any loss of profit, loss of production, depletion of goodwill; and

(ii) any indirect loss, damage, costs or expenses whatsoever

in each case which arise out of or in connection with the Contract or its contemplated performance or lack of performance; and

11.5 Subject to condition 11.2 and 11.3 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of the Contract shall be limited to the contract price.

12. TERMINATION

12.1 The Seller shall be entitled to terminate immediately upon the happening of any one or more of the following in any jurisdiction;

(a) the Buyer becomes Insolvent; or

(b) the Buyer ceases or threatens to cease to trade; or

(c) the Buyer is in breach of the Contract and the matter is not resolved within (7) days of written notice being issued to the Buyer setting out the particulars of the breach and requiring it to be.

12.2 Termination of the Contract shall not affect rights and duties accrued before termination and in particular shall not affect the Seller's rights contained in condition 8. However, the Buyer's rights contained in that condition shall immediately terminate.

13. HEALTH AND SAFETY

The Buyer agrees to:

(a) pay due regard to all information supplied by the Seller relating to the use of the Goods necessary to ensure the Goods will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work;

(b) comply with the General Product Safety Regulations 2005 if and to the extent that they are applicable to the Goods;

- (c) indemnify the Seller in respect of any and all claims arising from the Goods being unsafe as a result of the Buyer's activities;
- (d) monitor the safety of the Goods, to pass on to the Seller information as to the risks of the Goods and to co-operate in any action the Seller decides to take to avoid those risks; and
- (e) to keep records of the customers to whom the Goods are sold and to provide the Seller with copies of them as and when requested.

14. LIEN

The Seller shall have a general lien (together with a power of sale) on all property owned by the Buyer in the Seller's possession in satisfaction of any payment due or owing from the Buyer on any account.

15. ASSIGNMENT

- 15.1 The Seller may assign or subcontract the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 15.2 The Buyer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

16. MISCELLANEOUS

- 16.1 Clause headings are included for convenience only and shall not affect the interpretation of the Contract.
- 16.2 In the event there is any discrepancy or conflict in or between any Contract and these Conditions, these Conditions shall take precedence over any other terms and conditions unless otherwise agreed in writing between the Parties.
- 16.3 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller, whether or not under the Contract.
- 16.4 If any provision of the Contract (including any provision of condition 8) is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall continue in full force and effect
- 16.5 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 16.6 Any waiver by the Seller of any breach by the Buyer is not a waiver of any subsequent breach.
- 16.7 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.
- 16.8 Any notices required to be given in the Contract shall be in writing (and in the event of notice to the Contractor, marked for the attention of the Commercial Director) and delivered by special or recorded delivery post to the address of the relevant Party set out in the Contract or such other address as either Party may notify to the other, for that purpose from time to time. Notices delivered by special or recorded delivery post shall be deemed served at the time of delivery.
- 16.9 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.10 The law of England applies to this Contract and the English courts shall have exclusive jurisdiction over any dispute or difference between the Parties that arises out of or in connection with this Contract.