

ELLIOTT GROUP LIMITED
TERMS AND CONDITIONS OF SALE

Your attention is drawn in particular to Condition 8 which contains limitations on liability

1. INTERPRETATION

1.1 The following definitions apply in these conditions.

"You" or "your" means the person, firm or company who purchases Goods from us.

"We", "us" or "our" means Elliott Group Limited (registered in England and Wales with Company No. 147207).

"Contract" means any contract between us and you for the sale and purchase of the Goods, incorporating these conditions.

"Goods" means any goods agreed in the Contract to be supplied to you by us (including any part or parts of them and any services rendered in respect of them).

1.2 References to delivery include installation and other related services where these are specified in our written acknowledgement of order as being included in the Contract, unless the context requires otherwise.

1.3 Condition headings do not affect the interpretation of these conditions.

1.4 A reference to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. APPLICATION OF TERMS

2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any which you purport to apply under any document). No variation shall have effect unless expressly agreed in writing and signed by our authorised representative.

2.2 You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf which is not set out in the Contract.

2.3 Each order or acceptance of a quotation for Goods by you shall be deemed to be an offer by you to buy Goods subject to these conditions. Quotations and orders are subject to the availability of the Goods.

2.4 No order placed or acceptance of a quotation by you shall be deemed to be accepted by us until a written acknowledgement of order is issued by us or (if earlier) we deliver the Goods.

2.5 Once we have accepted your order you may not amend or cancel it or any part of it without our prior written consent and on terms acceptable to us, which may include you indemnifying us against any loss or costs that we incur.

2.6 The Contract is not subject to the obtaining of planning permission or any other consent in respect of the Goods, which shall be your sole responsibility.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in our quotation or acknowledgement of order.

3.2 All samples, descriptions or illustrations are for illustrative purposes only. They shall not form part of the Contract. This is not a sale by sample.

3.3 You shall ensure that the terms of your order and any applicable specification are complete and accurate. You will give us any information that we request relating to the Goods in sufficient time to enable us to comply with our obligations under the Contract.

3.4 We reserve the right to make any changes in the specification of the Goods which do not materially affect their quality or performance.

3.5 Unless otherwise provided in our acknowledgement of order, you are responsible for preparing the site where the Goods are to be installed in accordance with our requirements; failure to do so prior to the delivery date will result in delay and additional costs. You must also ensure that access to and over the place of delivery is in every respect suitable for the vehicles and any other equipment that will be used to deliver, offload and install the Goods. You acknowledge that some damage may occur to your property in obtaining access and in effecting delivery, installation and/or those other services; we shall have no liability in respect of any such damage.

4. PRICE

4.1 The price for the Goods shall be the price set out in our acknowledgement of order. The price shall be exclusive of any value added tax which you shall pay in addition when you are due to pay for the Goods.

4.2 Where delivery, installation and/or other services are included in the Contract, the prices for delivery of the Goods to the location stated in our order acknowledgment and the price for installation of the Goods at that location and/or the price for those other services are those prices stated in respect of them in our order acknowledgment.

4.3 We reserve the right, by giving you notice at any time before delivery of the Goods, to increase the price of the Goods to reflect any increase in our costs which is due to:

(a) any factor beyond our reasonable control (such as but not limited to foreign exchange rate fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture);

- (b) any change in delivery date, quantities or specifications for the Goods which is requested by you and accepted by us; or
- (c) any delay in you providing us with information or not giving us adequate information or instruction.

5. PAYMENT

- 5.1 We shall be entitled to invoice the full price on or any time after we deliver or are ready to deliver the Goods. Unless we agree otherwise in writing, payment is due in pounds sterling in cleared funds not later than 30 days after the date of our invoice.
- 5.2 Time for payment shall be of the essence.
- 5.3 You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 5.4 If you fail to pay us any sum due pursuant to the Contract on the due date for payment, we shall be entitled, without prejudice to any other rights and remedies:
 - (a) to charge, and you shall be liable to pay us, interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment; and
 - (b) to appropriate any payment made by you to such of the Goods or to any other contract between you and us as we may determine, notwithstanding any purported appropriation by you.

6. DELIVERY

- 6.1 Delivery shall take place as set out in our quotation or acknowledgement of order.
- 6.2 Any dates specified by us for delivery are intended to be an estimate; you shall not be entitled to make time of the essence by notice or otherwise. If no dates are specified, delivery shall be within a reasonable time. We may deliver in advance of the quoted date on giving you reasonable notice.
- 6.3 If for any reason you fail to accept delivery of any of the Goods, or we are unable to deliver the Goods on time because you have not provided appropriate instructions, documents, licences, authorisations or access or have not properly prepared the site:
 - (a) risk in the Goods shall pass to you (including for loss or damage caused by our negligence);
 - (b) the Goods shall be deemed to have been delivered by us for the purposes of the Contract;

- (c) you will be responsible for all costs, charges, expenses and liabilities arising including, but not limited to, the cost of taking the Goods away, the cost of storage and all costs in connection with their subsequent re-delivery and installation (in addition to the costs of the abortive delivery); and
 - (d) without prejudice to any other rights and remedies that we might have, we shall be entitled to sell the Goods at the best price reasonably and readily obtainable and (after deducting all reasonable expenses in connection with storing and selling the Goods) account to you for any excess over the Contract price or charge you for the amount of any shortfall below that price.
- 6.4 We may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract. No cancellation or termination of any one Contract relating to an instalment shall entitle you to repudiate or cancel any other Contract or instalment.
- 6.5 The delivery and installation services may be provided by our sub-contractors and will be provided by them to us under the standard terms and conditions of the Road Haulage Association and Contractors' Plant Association respectively. In those circumstances those standard terms shall apply in respect of the Contract in respect of the transport and lifting operations as if they were set out in full in the Contract, provided that if and to the extent that there are any inconsistencies or conflicts between those standard terms and these conditions, these conditions shall prevail.

7. RISK AND TITLE

- 7.1 The Goods are at your risk from the time of delivery or the time when delivery should have taken place as stated in condition 6.3.
- 7.2 Ownership of the Goods shall not pass to you until we have received in full (in cleared funds) all sums due to us in respect of:
- (a) the Goods; and
 - (b) all other sums which are or become due from you to us on any account.
- 7.3 Until ownership of the Goods has passed to you, you shall:
- (a) hold the Goods on a fiduciary basis as our bailee;
 - (b) store the Goods (at no cost to us) so that they remain readily identifiable as our property;
 - (c) maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks. On request you shall produce the insurance policy; and
 - (d) not sell or otherwise dispose of or deal with the Goods.

- 7.4 Your right to possession of the Goods shall terminate immediately if:
- (a) you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a formal or informal meeting of creditors, or enter into voluntary or compulsory liquidation except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for your winding-up or for granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or
 - (b) you suffer or allow any legal or equitable execution to be levied on your property or obtained against you, or fail to observe or perform any of your obligations under the Contract or any other contract between us and you, or are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease trading; or
 - (c) you pledge or in any way charge any of the Goods.
- 7.5 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.
- 7.6 You grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them.

8. QUALITY AND LIMITATION OF LIABILITY

- 8.1 The following provisions set out our entire liability to you in respect of:
- (a) any breach of the Contract;
 - (b) any use made of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 If there is any defect in the Goods we shall be given the opportunity to repair the defect or replace the Goods before you pursue any other remedy.

8.4 In respect of Goods located within mainland Britain, subject to condition 8.5 and the other provisions of these conditions, we will make good at our own cost defects in the Goods or the installation of them that are caused by defective materials or defective workmanship of which you give us notice within 6 months of the date of delivery. This shall be the full extent of our liability for any defect.

8.5 We shall not be liable for any defect, in any event, if:

- (a) you do not allow us to inspect the Goods that are alleged to be defective on reasonable notice; or
- (b) the defect arises because you failed to follow any instructions we have given relating to the Goods, their use or their maintenance and servicing or is caused by any misuse, misconnection or overloading of the Goods;
- (c) the defect is in respect of air conditioning or heating equipment and systems (these are supplied to us by third parties and our liability in respect of them shall be limited to and satisfied by us assigning to you any rights and warranties provided to us by the manufacturers);
- (d) you have not paid in full for the Goods; or
- (e) you alter or repair, or allow any person other than a person authorised by us, to alter or repair the Goods.

8.6 Nothing in these conditions excludes or limits our liability:

- (a) for death or personal injury caused by our negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for us to exclude or attempt to exclude our liability; or
- (d) for fraud or fraudulent misrepresentation.

8.7 Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.

8.8 We shall not be liable to you for loss of profit, loss of business or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation which arise out of or in connection with the Contract.

9. NON-PRIME GOODS

9.1 Where Goods are sold as non-prime (as stated in our acknowledgement of order) those Goods are sold in their actual state, as seen, without warranty and with all faults whether or not you have inspected the Goods prior to delivery. We will give you reasonable

opportunity to inspect the Goods prior to purchase but the onus shall be on you to satisfy yourself as to the state and condition of the Goods.

9.2 In the case of non-prime Goods, condition 8.4 shall not apply.

10. TERMINATION

We may terminate the Contract at any time prior to delivery if any of the events set out in condition 7.5 (a) or (b) occurs.

11. FORCE MAJEURE

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by you (without liability to you) and we will have no liability to you if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, breakdown of plant or equipment, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

12. GENERAL

12.1 Each of our rights or remedies under the Contract is without prejudice to any of our other rights or remedies whether under the Contract or not.

12.2 If any provision of the Contract is found by any court to be wholly or partly unenforceable it shall to the extent of such unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.3 Failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver. No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.4 You may not assign the Contract or any part of it without our prior written consent.

12.5 We may sub-contract all or any part of our obligations under the Contract.

12.6 You and we do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.7 The Contract shall be governed by English law and you and we submit to the exclusive jurisdiction of the English courts.