

ELLIOTT GROUP LIMITED

CONDITIONS OF SALE

1 Interpretation:

1.1 In these Conditions:

“Company” means ELLIOTT GROUP LIMITED whose registered office is at Manor Drive, Peterborough, PE4 7AP (registered number 147207)

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company

“Contract” means the contract for the purchase and sale of the Goods

“Customer” means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company

“Goods” means any materials equipment plant or services (including any instalment of the same or any parts for them) which the Company is to supply in accordance with these Conditions

“Handover” means as defined in clause 6.6

“Writing” includes telex cable facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as reference to that provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of the sale

2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Customer or any written order of the Customer which is accepted by the Company subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Customer.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company.

2.3 The Company’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed

2.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customers own risk

and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed

- 2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance or offer invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3 Orders and specifications

- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative
- 3.2 Acceptance of ordered is subject to the receipt of Satisfactory references
- 3.3 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms
- 3.4 The quantity quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company)
- 3.5 Any descriptive specifications drawings particulars and dimensions submitted in connection with the Company's quotations are approximate only. Descriptions and illustrations contained in catalogues price lists and other advertisement matter of the Company are only intended to present a general idea of the goods described therein and shall not form part of any contract. All drawings calculations and descriptive matter furnished by the Company to the Customer in connection with quotations remain the property of the Company and must not be copied and/or shown to any third party without the Company's consent in writing.
- 3.6 If the Goods are to be manufactured or any process to be applied to the Goods by the Company in accordance with a specification submitted by the Customer the Customer shall indemnify the Company against all loss damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim or infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification
- 3.7 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or where the Goods are to be supplied to the Company's specification which do not materially affect their quality or performance or when the components or materials stipulated are not readily available
- 3.8 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company

and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Company as a result of cancellation

- 3.9 Goods sold by the Company are where practicable submitted to standard tests before despatch. If other tests are required by the Customer these unless otherwise agreed must be made at the Company's premises or at a place nominated by the Company and such tests shall be at the cost of the Customer. Any figures or particulars of performance given by the Company are based upon experience and are such as the Company would generally expect to obtain but the Company accepts no liability if such performance is not obtained in any particular case.

4 Price of the goods

- 4.1 The price of the Goods shall be the Company's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Company's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer after which time they may be altered by the Company without giving notice to the Customer
- 4.2 The Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as without limitation any foreign exchange fluctuation currency regulation insurance overhead charges alteration of duties significant increase in the costs of labour materials or other costs of manufacture) any change in delivery dates quantities or specifications for the Goods which is requested by the Customer or any delay caused by any act omission or instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company and unless otherwise agreed in writing between the Customer and the Company all prices are given by the Company on an ex works basis and where the Company agrees to deliver the Goods otherwise than at the Company's premises the Customer shall be liable to pay the Company's charges for transport packaging installation and insurance.
- 4.4 The price is exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to the Company.
- 4.5 Unless otherwise stated in the Company's quotation all packing cases crates skids drums and other packing materials are non-returnable and chargeable.

5 Terms of payment

- 5.1 Subject to any special terms agreed in writing between the Customer and the Company the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 5.2 The Customer shall pay the price of the Goods within 14 days of the date of the Company's invoice or the issue of interim valuations notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Customer
 - 5.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer) and
 - 5.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of 4 per cent per annum above Barclays Bank base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

6 Delivery

- 6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place. All unloading facilities required for delivery including any special equipment shall be provided by the Customer and at his own expense
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer
- 6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to delivery any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more

instalments shall not entitle the Customer to treat the Contract as a whole as repudiated

- 6.4 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is accordingly liable to the Customer the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) or similar goods to replace those not delivered over the price of the Goods
- 6.5 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company the Company may:
 - 6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract
- 6.6 When delivery of the Goods involved the Company working on the Customer's premises in order to fit out a building forming part of the Goods then Practical Completion of the Contract or part of the Contract ("Handover") shall occur upon the following:
 - 6.6.1 acceptance of completion of the Goods on site by the Customer his employee or representatives
 - 6.6.2 any of the Customer's employees or invitees agents or representative entering the building storing materials or equipment in the building or carrying out any work whatsoever in the building
 - 6.6.3 the Customer by his actions or delay prevents the Handover
 - 6.6.4 the Company informing the Customer in writing of Handover whether or not the Customer has occupied the building

7 Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer:
 - 7.1.1 in the case of Goods collected by the Customer from the Company's premises, when the Goods leave the Company's premises
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises at the time of the delivery or Handover or if the Customer wrongfully fails to take delivery of the Goods at the time when the Company has tendered delivery or Handover of the Goods
- 7.2 Notwithstanding delivery and the passing of the risk in the Goods at any other provision of these Conditions the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other

goods agreed to be sold by the Company to the Customer for which payment is then due

- 7.3 Until such time as the property in the Goods passes to the Customer the Customer shall hold the goods at the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and in the case of tangible proceeds properly stored protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable

8 Erection of Goods

The Company's quotation assumes that the site will be easy for access for all vehicles cranes tools materials and tackle necessary to carry out the installation and continuous performance of the work during the normal working hours. Access to site must be suitable for such vehicle transporting the Goods to enter the site. The Customer must provide suitable hardstanding for off-loading the Goods adjacent to the foundations. The Company is not responsible for any supporting structure or foundation work not designed and constructed by the Company and accepts no responsibility direct or indirect which may be incurred due to any insufficient or unsuitable structure or foundation. Where foundations are installed by the Customer, the Customer must accept responsibility for the accuracy of the setting out, dimensions, levels and where applicable, pockets and sole plate.

9 Limitations of liability

- 9.1 9.1.1 The Company shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Customer
- 9.1.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear willful damage negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) misuse or alteration

modification adjustments or repair of the Goods or to the use of the Goods without the Company's written approval

- 9.2 Where the Goods are used second hand or reconditioned they are sold as seen and approved by the Customer and the Company does not in any way warrant such goods to be fit for any particular purpose express or implied
- 9.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions Restrictions on Statements order 1976) the statutory rights of the Customer are not affected by these Conditions
- 9.5 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company immediately upon delivery or (where the defect or failure was not apparent on inspection or upon delivery) immediately upon discovery of the defect or failure. If delivery is not refused and the Customer does not notify the Company accordingly the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- 9.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions the Company shall be entitled to replace the Goods (or the part in question) free of charge or at the Company's sole discretion refund to the Customer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Customer
- 9.7 Except in respect of death or personal injury caused by the Company's negligence the Company shall not be liable to the Customer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation (and whether caused by the negligence of the Company its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer except as expressly provided in these Conditions
- 9.8 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of

the foregoing the following shall be regarded as causes beyond the Company's reasonable control:

- 9.8.1 Act of God explosion flood tempest fire nuclear fall-out or accident
- 9.8.2 War or threat of war sabotage insurrection civil disturbance or requisition
- 9.8.3 Acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority
- 9.8.4 Strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party)
- 9.8.5 Difficulties in obtaining supplies of the Goods raw materials labour fuel parts or machinery (whether involving the Company or a third party)
- 9.8.6 Power failure or breakdown in machinery
- 9.9 Whilst the Company endeavours to ensure the Goods are not affected by patent copyright design trade mark or other industrial or intellectual property rights of any other person the Company does not warrant that they do not infringe such patent design trade mark or other industrial or intellectual property rights and shall not be responsible for any damage penalties costs and expenses suffered by any person by reason of such infringement.

10 Insolvency of buyer

This clause applies if

- 10.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or
- 10.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer or
- 10.1.3 the Customer ceases or threatens to cease to carry on business or
- 10.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly
- 10.2 If this clause applies then without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

11 Insurance

Immediately upon Handover responsibility for insuring against fire storm flood and theft lies with the Customer and is to include all of the Company's materials on site where the Company undertakes to carry out work to provide

services of any kind on premises other than their own. The Company shall be under no liability whatsoever for any loss or damage occasioned to the Customer his contractors servants employees invitees or otherwise arising from any cause connected in any way with the execution of such works or provision of such services and the Customer shall indemnify the Company against any claim by third parties.

12 Health and Safety

Where the Goods are supplied to the Customer's specification or design the Customer shall be responsible for ensuring that so far as is reasonably practicable the Goods are so designed as to be safe and without risk to health when properly used that such testing and examination is carried out as may be necessary for ensuring that the Goods are so designed and that adequate information will be available in connection with the use of the Goods at work about the use for which they are designed and have been tested and about any condition necessary to ensure that when put to that use the goods will be safe and without risk to health and the Customer shall indemnify the Company against any claims which may be made against the Company whether under the Health and Safety at Work Act 1974 or the regulations made thereunder or otherwise arising out of any failure on the part of the Customer to carry out the foregoing responsibilities of the Customer and for all costs and expenses incurred by the Company in dealing with any such claims and rectifying any defects in the goods.

13 Statutory and Local Government Regulations

Acceptance of this quotation constitutes a warranty and representation by the Customer that he has complied with every applicable statute order or council regulation or direction bye law or other lawful requirement or instruction whether of the Government or any local or other lawful authority and in particular that he has lawfully obtained every necessary licence permit or authority that may be required in connection with the work

14 General

- 14.1 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company
- 14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice
- 14.3 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision
- 14.4 If any provision of these Conditions held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby

- 14.5 All disputes arising out of or in connection with this present Agreement including those considered such by only one of the parties shall be determined by an independent Chartered Surveyor to be nominated by the Company and the Customer or (if they fail to agree on a nomination) by the President for the time being of The Royal Institute of Chartered Surveyors in England and Wales on the application of either party. Such Surveyor (whose fees shall be borne equally by the parties) shall act as an expert and not as an arbitrator and his determination shall be final and binding on both the parties hereto
- 14.6 The Contract shall be governed and be construed in accordance with the laws of England for the time being in force and be subject to the non-exclusive jurisdiction of the English courts.