

Terms & Conditions

Definitions

- 1.1 In these Conditions: - "Buyer" means the Person who accepts a quotation of the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller. "Conditions" means the standard terms and conditions of sale set out herein and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller and specified herein or overleaf. "Contract" means the contract for the purchase and sale of the Goods including the Conditions. "Force Majeure" means any cause beyond the Seller's reasonable control including but not limited to any strike, any lack of available transport or materials, any restriction, regulation or decree by any local or municipal authority or government department or by any strike, commotion, riot, act of God. "Goods" means the goods (including any instalment of the Goods or any parts of them) which the Seller is to supply in accordance with these Conditions from time to time. "Person" means an individual or a body corporate or unincorporated or a partnership and "Persons" shall be construed accordingly. "Seller" means EBP Building Products Limited (registered in England under number 00241566). "Writing" shall have the ordinary meaning ascribed to it, including type written documents or communications and shall include facsimile transmissions, e-mail and corporate means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 Except where the context otherwise requires words herein denoting the singular include the plural and vice versa; words denoting any one gender include all genders.
- 1.4 References to clauses are, unless the context otherwise permits, references to clauses of these Conditions.
- 1.5 Clause headings herein are for reference only and do not affect the construction of these Conditions or the Contract.

2 Parties

- 2.1 The parties to these Conditions are the Seller and the Buyer. All transactions as between the Seller and the Buyer are as between principal and principal and are subject to the following express conditions.

3 Variation

- 3.1 The Contract between the Seller and the Buyer cannot be varied, altered or excluded unless such variation, alteration or exclusion is signed between the parties in Writing between the authorised representatives of the Seller and the Buyer (being the case of the Seller a director of the Seller) and signed by the parties to be bound.

4 Waiver

- 4.1 Any concession, latitude or waiver allowed by the Seller at any time shall only apply to the extent specifically covered by such concession, latitude or waiver and shall not prevent the Seller otherwise exercising its full rights under the Contract and these Conditions.

5 Acceptance of Orders

- 5.1 The contract between the Seller and the Buyer shall only become binding upon the confirmation acknowledgement of any order in Writing by the Seller acting through its authorized representative and all quotation or tenders made and price or product lists supplied by the Seller shall be treated as invitations to treat only.
- 5.2 The Seller reserves the right to accept or refuse orders. The Seller also reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of the Seller being unable to fulfil any of its commitments under the Contract for any reason whatsoever or in the event that the Buyer's commitments (including in particular, without limitation, the payment on the due dates for Goods delivered) with the Seller not being met. The Seller reserves the right to refuse, modify or negotiate orders in the event of changes in HM Government's trade policy pertaining to imports, tariffs, surcharges, pound sterling exchange rate fluctuations and other conditions affecting the charges, quotes or procedures the Seller is obliged to follow. If an order is cancelled by the Seller in the aforementioned circumstances then the Buyer shall be liable to indemnify the Seller against all loss, costs (including the cost of all labour and materials used and overheads incurred), damages, charges and expenses arising out of the orders and the cancellation thereof (the Seller giving credit for the value of any such materials sold or utilised for other purposes).
- 5.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.

- 5.4 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 5.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other Person which results from the Seller's use of the Buyer's specification.
- 5.6 The Seller 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 Seller's specification, which do not materially affect their quality or performance.
- 5.7 In relation to any order by the Buyer of any generic product from the product range of the Seller and where the Buyer does not specify in such order any particular type or brand of such product, then the Seller reserves the right to supply such alternative product as the Seller acting reasonably sees fit without notice to the Buyer.

6 Representations

- 6.1 The Seller's employees or agents are not authorised to make a legally binding representation concerning the Goods or this Contract and no representations shall bind the Seller unless the same shall have been specifically authorised by a director of the Seller.
- 6.2 In entering into this Contract, the Buyer acknowledges that it does not rely on and waives any claim for breach of any representations which are not confirmed in Writing as provided for in clause 6.1.
- 6.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents 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, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 6.4 All illustrations, drawings and general descriptions accompanying any tender or quotation from the Seller or contained in the Seller's pricelists, advertisements or other literature (including but not limited to the Internet) or otherwise provided to the Buyer are intended for general guidance only and shall not be binding on the Seller and are only approximate indications of the type, size or colour of Goods quoted for and sales of such Goods shall not be reference thereto. Any typographical, clerical or other error or omission in any sales literature, tender, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

7 Carriage and Packaging

- 7.1 Unless expressly stated in Writing by the Seller all prices quoted are ex works and carriage is not included.
- 7.2 The packaging of the Goods is at the sole discretion of the Seller who shall have the right to pack the Goods in such manner and with such materials as it thinks fit.
- 7.3 All costs of carriage, packing and insurance will be payable by the Buyer.

8 Price and Payment

- 8.1 All prices shall be exclusive to Value Added Tax and any other taxes from time to time in force and shall be such prices as stated by the Seller as provided in clause 8.2.
- 8.2 The price for the Goods shall be such price as stated by the Seller in the Contract and 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 acceptance of the order.
- 8.3 All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 8.4 The Seller reserves the right, by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, 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 Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 8.5 The Seller reserves the right to impose such minimum item and invoice charges as notified to the Buyer in Writing from time to time.

9 Payment

- 9.1 The Seller will invoice the Buyer immediately upon dispatch of ordered Goods. Save where otherwise indicated on the invoice in writing the total invoice value must be paid by the Buyer to the Seller within thirty days from month-end of the date of the Seller's invoice notwithstanding that delivery may not have taken place and property in the Goods has not passed to the Buyer. Receipt for payment will only be issued upon request.

- 9.2 Where the goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 9.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to : – 9.3.1 cancel the Contract and/or suspend any further deliveries to the Buyer; and/or 9.3.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or 9.3.3 charge the Buyer interest (both before and after any judgement) on the amount paid, at the rate of 5% per annum above Lloyds Bank plc 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).

10 Collection

- 10.1 If the recovery of any sums outstanding from the Buyer to the Seller is passed to a debt collection agency, the Buyer shall pay the Seller's costs incurred on an indemnity basis in instructing the said debt collection agency and all legal and other costs ancillary thereto.

11 Delivery

- 11.1 Save where the Buyer collects the Goods from the Seller's premises (in which case delivery shall take place at the Seller's premises) delivery shall take place at the Buyer's premises or such other actual location of which the Buyer shall have previously notified the Seller in Writing. In the event that the Buyer wrongfully fails to take delivery of the Goods for whatever reason the Seller will be deemed to have tendered delivery of the Goods upon notification to the Buyer that the Goods are ready for collection at the Seller's premises.
- 11.2 The Buyer shall provide at its own expense such assistance as the Seller considers to be adequate for unloading Goods at its place of delivery within a reasonable time from the arrival of the delivery vehicle. In default the Buyer shall be liable to the Seller for any additional costs of delivery or redelivery thereby occasioned.
- 11.3 The Seller will endeavour to complete on any delivery dates stipulated, but such dates are only estimated and the Seller but will not be liable to the Buyer for any loss, damage, injury, penalty, claim or any other matter of whatsoever nature arising from any delay in delivery and time for delivery shall not be the essence of the Contract unless previously agreed by the Seller in Writing. The Goods (or part thereof) may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 11.4 The Seller shall be entitled to deliver Goods by instalments. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver 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 instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 11.5 The Seller reserves the right to withhold delivery of goods to the Buyer at any time when the Buyer is exceeding or upon delivery would exceed any credit limit or credit terms with the Seller either in relation to such Goods or otherwise.
- 11.6 A delivery or collection note signed by or on behalf of the Buyer or of the Buyer's Buyer or the duly authorised agent of either of them is deemed to be evidence of delivery or collection of the Goods specified therein.

12 Demurrage

- 12.1 Where the unloading of Goods is for any reason delayed the Buyer shall indemnify the Seller in respect of any loss or damage which it may sustain in consequence thereof.

13 Storage

- 13.1 If the Buyer fails to take delivery of all or part of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may: –
- 13.1.1 Take back and store the Goods until actual delivery and levy a restocking charge on the Buyer equivalent to 25% of the value of the Goods in question plus other reasonable costs incurred by the Seller including but not limited to haulage and insurance costs; or
- 13.1.2 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.

14 Warranties and Liability

- 14.1 The Buyer shall examine the goods at time of delivery/collection and record any discrepancies on the carrier's copy of the delivery/collection note. Damages or shortages must be notified in Writing to the Seller on same day of delivery/collection. In the event of non-delivery, the Buyer shall notify the Seller and the carrier (if known) in Writing of the Goods in question alleged to be non-delivered within 5 days of the date of despatch of the said Goods as stated in the Seller's advice note or invoice.

- 14.2 In default of the written notification referred to in clause 14.1 the Seller shall be deemed conclusively to have properly performed its obligations under the Contract.
- 14.3 The Buyer acknowledges that :- 14.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising whether directly or indirectly from any drawing, design or specification made, supplied, furnished or specified by the Buyer; 14.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, any discolouration of slates or tiles (which being a natural product can be subject to discolouration) willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), failure to install the Goods in accordance with the relevant code of practice, or misuse or alteration or repair of the Goods without the Seller's approval in Writing; 14.3.3 the Seller shall be under no liability if the total price of the Goods has not been paid by the due date for repayment.
- 14.4 Subject as expressly provided herein all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. This provision shall also apply to any samples provided by the Seller to the Buyer for any reason.
- 14.5 Any claim by the Buyer 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 Buyer) be notified to the Seller within 7 working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 14.6 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 correspond with specification shall be notified to the Seller in accordance with these Conditions, the Seller will not be liable to the Buyer for any consequential loss howsoever caused and the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer. In any event the Seller shall not incur any liability whatsoever in respect of any defective Goods after a period of 3 calendar months from the date of delivery of the said Goods.
- 14.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer 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 whatsoever (and whether caused by the negligence of the Seller, 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 Buyer, except as expressly provided in these Conditions.
- 14.8 The Seller shall not be liable to the Buyer 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 Seller's obligations in relation to the Goods, if the delay or failure was due to Force Majeure.
- 14.9 The Seller shall not be liable or held responsible for any damages, costs, charges or expenses awarded against or any liabilities incurred by the Buyer arising out of any infringement of any patent belonging to third parties.
- 14.10 In the event of a successful claim by the Buyer, settlement will be limited to the value of the Goods defectively processed and will in no way extend to consequential loss howsoever caused.
- 14.11 All Goods must be stored by the Buyer in suitable conditions and the Seller will not be liable to the Buyer for any defects brought about by the Buyer storing the Goods in unsuitable conditions.
- 14.12 Goods supplied to the Buyer may not be returned without the Seller's consent in Writing. The Seller reserves the right to refuse Goods so returned. If returned Goods are accepted by the Seller then the provisions of clause 13.1 shall apply.

15 Risk and Property

- 15.1 The Buyer acknowledges that before entering into the Contract for the purchase of the Goods from the Seller, it has expressly represented and warranted to the Seller that it is not insolvent and there are no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or administrator or entitle any person to petition for its winding up or exercise any other right over or against the Buyer or its assets.
- 15.2 Notwithstanding delivery and the passing of risk, legal ownership of the Goods shall not pass from the Seller to the Buyer until the Seller has received payment in full of the price for the Goods. Furthermore, title in the Goods shall remain vested in the Seller and shall not pass to the Buyer unless and until the full price of any other delivered goods the subject of any other business transaction between the Buyer and the Seller has been paid in full either by way of cash or cleared funds.
- 15.3 Risk of damage to or loss of the Goods shall pass to the Buyer:- 15.3.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or 15.3.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has deemed to have tendered delivery of the Goods.
- 15.4 Until such time as the ownership in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods properly protected and insured and identified as the Seller's property.
- 15.5 Until such time as the legal ownership in the Goods passes to the Buyer, the Seller may at any time enter upon any of the Buyer's premises or any other premises where the Goods are held (as the case may be) and remove the Goods there from and the Buyer permits the Seller access to the said premises to do so. The Buyer shall indemnify the Seller on a full indemnity basis against all loss, damage, costs or expenses so arising including in particular, without limitation, loss, damage, costs or expenses in respect of third party claims.
- 15.6 The Buyer 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

- 15.7 The Buyer may attach or fix the Goods to other property belonging to the Buyer or other third parties, but provided that the Goods may be removed without causing damage (other than superficial damage) to the property of the Buyer or such third party such attaching or fixing shall not affect the ownership of the Goods.
- 15.8 In the event that the price for the Goods is not paid by the due date the Seller shall at its absolute discretion be at liberty either to recover the Goods or maintain an action for the price of the Goods and/or damages.
- 15.9 No provision of these Conditions shall prejudice the Seller's rights to exercise any alternate remedies whatsoever in default of payment by the Buyer or any other breach of contract.
- 15.10 Each of the preceding clauses shall be construed and take effect separately and in the event of one or more such clauses being held ineffective this shall not affect the validity of the remaining clauses.

16 Consignment Stock

- 16.1 Where Goods are supplied to the Buyer as consignment stock the Buyer: – 16.1.1 will store the Goods separate and in such a way to make them readily identifiable as consignment stock belonging to the Seller; 16.1.2 will deliver up the Goods to the Seller on demand; 16.1.3 will take good care of the Goods and be responsible for all losses however suffered; 16.1.4 will insure the Goods with a reputable company against damage by fire or other insurable risks and loss by theft or otherwise and produce written particulars of such insurance upon request; and 16.1.5 will make the Goods available for inspection at any time by the Seller's representatives.

17 Termination

- 17.1 Save as herein appears the Buyer shall have no right to cancel the whole or any part of the Contract and if notwithstanding this clause, the Buyer shall purport to cancel the whole or any part of the Contract, the Seller may, by notice in Writing to the Buyer, elect to treat the Contract as repudiated and the Buyer shall thereupon be liable to pay to the Seller by way of liquidated damages a sum equal to all the expenses incurred by the Seller in connection with the Contract including, in particular without limitation, an appropriate amount in respect of administrative overheads, costs and losses of profit.
- 17.2 The Seller's reasonable estimate of the expenses incurred by it on repudiation by the Buyer as referred to in clause 17.1 shall be final and binding on the parties.
- 17.3 If the Seller for whatever cause is unable to make delivery of the Goods on the delivery date set out in the Contract or if the Seller is unable to perform any of its other obligations under the Contract, the Seller may, by notice in Writing to the Buyer, terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer.
- 17.4 In addition to the right to cancel any uncompleted order or to suspend delivery thereof, pursuant to clause 5.2, the Seller shall have a similar right of cancellation of any uncompleted order or to suspend delivery in respect of any orders where the delivery of such Goods would result in the amount of monies outstanding to the Seller from the Buyer for those Goods and for any other Goods supplied by the Seller, would exceed the Seller's credit limit or credit terms agreed with the Buyer, as provided by the Seller's insurers.

18 Insolvency of Buyer

- 18.1 This clause applies if: – 18.1.1 the Buyer 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 purposes of amalgamation or reconstruction); or 18.1.2 an encumbrancer takes possession, or a receiver or administrator is appointed, of any of the property or assets of the Buyer; or 18.1.3 the Buyer ceases, or threatens to cease, to carry on business; or 18.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 18.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the contract without any liability to the Buyer, 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.

19 Samples and Displays

- 19.1 The Buyer shall be responsible to pay to the Seller for the cost of any samples and/or displays supplied by the Seller to the Buyer.

20 Force Majeure

- 20.1 Insofar as the performance of the Contract by the Seller may be affected by Force Majeure or for any other cause or reason of whatsoever nature beyond the Seller's control (which shall be construed without the ejusdem generis rule) the Seller may elect at its absolute discretion either:
 - 20.1.1 To terminate the Contract;
 - 20.1.2 To proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances and with such reasonable variation as the circumstances shall prevail.

21 Advice

- 21.1 The Seller shall be under no liability whatsoever in respect of any advice it has given or views it has expressed whether or not such advice is given or such views expressed at the Buyer's request.
- 21.2 Any suggestions or recommendations by the Seller for any Person to act as an installer of the goods are made in good faith but without any responsibility on the part of the Seller. No such installer shall be regarded as an agent for the Seller for any purposes whatsoever.

22 Consents

- 22.1 It shall be the responsibility of the Buyer (and not of the Seller) to obtain all consents necessary for the installation and storage of any Goods and to satisfy itself that the installation and storage of such Goods in accordance with the provision of any relevant by-laws, regulations or statutes.

23 Severability

- 23.1 Should any of these Conditions be found by a court or other competent authority to be void or unenforceable such provision shall be deemed to be deleted from these Conditions and the remaining Conditions shall continue in full force and effect.

24 Obligations

- 24.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group (if any), provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

25 Infringement

- 25.1 No warranty is given by the Seller that the use of the Goods for any purpose does not infringe any patent, copyright or other similar intellectual property right.

26 Notices

- 26.1 Save as hereinbefore otherwise provided, any notice required or permitted to be given by the Buyer under these Conditions shall be in Writing, addressed to the Seller at its trading address shown on the Contract. Any notice required or permitted to be given by the Seller to the Buyer under these Conditions shall be in Writing, addressed to the Buyer at the address shown for the Buyer herein.

27 Conflict

- 27.1 To the extent of any conflict between these Conditions and any terms and conditions of the Buyer either on the Buyer's order form or otherwise, the Conditions herein contained shall take precedence. The Seller shall not be bound by the Buyer's terms and conditions or any of them unless expressly agreed to in Writing by a Director of the Seller after the date of these Conditions.

28 Contracts (Rights of Third Parties) Act 1999

- 28.1 Except where expressly provided in the Contract a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the contract, but this does not affect the right or remedy of a third party which exists or is available apart from this Act.

29 Proper Law

- 29.1 These conditions and the Contract shall be construed according to the English Law and the parties hereto hereby submit to the exclusive jurisdiction of the Courts of England and Wales.