

## MPS BUILDERS MERCHANTS LIMITED

### CONDITIONS FOR THE PURCHASE OF GOODS

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this Condition apply in these Conditions.

**Business Days:** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory, public or bank holiday in England and Wales;

**Company:** MPS Builders Merchants Limited (registered number 03068183) whose registered office is at Highdown House, 11 Highdown Road, Sydenham, Leamington Spa CV31 1XT;

**Consultation:** or any cognate expression, means any correspondence or communication of any kind between the Supplier and any Customer;

**Contract:** the Order and the Supplier's acceptance of the Order and all terms contained herein;

**Customer:** any person, firm or company which places an order with the Company for the supply of Goods which the Company procures from the Supplier under the terms of these Conditions;

**Goods:** any goods agreed in the Contract to be bought by the Company from the Supplier (including any part or parts of them);

**Order:** the Company's instruction to buy the Goods, including any specification, and or patterns of or for the Goods, incorporating these Conditions as further set out in Condition 3;

**Supplier:** the person, firm or company whose details are set out in the Contract Term Sheet and who accepts the Company's Order;

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these Conditions.

#### 2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.4, these Conditions are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

- 2.2 Each Order for Goods by the Company from the Supplier shall be deemed to be an offer by the Company to buy Goods subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part, accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of an Order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all of the Company's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company.

3. **ORDER**

- 3.1 The Supplier shall supply Goods in accordance with the Company's Orders.
- 3.2 Each Order shall:
- 3.2.1 be given orally by telephone and shall be confirmed in writing within 5 Business Days;
  - 3.2.2 specify the type and quantity of Goods ordered, and the Goods' code numbers; and
  - 3.2.3 unless the parties agree that the Company may specify the delivery date and delivery location after placing the Order, specify the date on which the Order is to be delivered (**Delivery Date**), and the delivery location (**Delivery Location**). If the Delivery Date and/or Delivery Location are to be specified after the placing of an Order, the Company shall give the Supplier reasonable advance notice of the relevant information.
- 3.3 The Supplier shall assign an Order Number to each Order received from the Company and notify such Order Numbers to the Company. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.
- 3.4 The Company may within 10 working days of placing an Order amend or cancel an Order by written notice to the Supplier. If the Company amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under these Conditions the Company shall have no liability to the Supplier in respect of it.

4. **QUALITY AND DEFECTS**

- 4.1 Upon request by the Company, the Supplier shall Consult directly with the Customer and shall ascertain on behalf of the Customer the quantity, quality, description and specification of any Goods required by the Customer.
- 4.2 The Supplier shall supply Goods which shall be without fault, of the best available design, of the best quality, material and workmanship, and, where applicable, shall conform to the appropriate British Standard as defined by [www.standardsuk.com](http://www.standardsuk.com) and shall conform in all respects with the Order and the specification and/or patterns agreed between the Supplier and Customer directly or supplied or advised by the Company (if any) to the Supplier.
- 4.3 The Supplier shall at all times maintain sufficient stocks of raw materials, packaging, and Goods to enable it to meet the Company's Orders from time to time.
- 4.4 The Supplier shall pack, secure and supply the Goods:
- 4.4.1 in accordance with all applicable industry standards and practices that are applicable; and
- 4.4.2 in such manner as to enable them to reach their destination in good condition.
- 4.5 The Goods supplied to the Company by the Supplier under these Conditions shall conform to all applicable statutory and regulatory requirements.
- 4.6 At any time prior to delivery of the Goods to the Company the Company shall have the right (but not the obligation) to inspect and test the Goods at all times.
- 4.7 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or any specifications and/or patterns supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 4.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under any Contract or these Conditions.
- 4.9 If any of the Goods fail to comply with the provisions set out in this Condition 4 the Company shall be entitled to avail itself of any one or more remedies listed in Condition 12.
- 4.10 The Company's rights under these Conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.
- 4.11 The Supplier shall, for the benefit of the Company's Customers, procure the manufacturer's guarantee (or, if the Supplier is the manufacturer, provide its own

guarantee in favour of the Customer) in respect of all Goods supplied to the Company under any Contract.

- 4.12 The Supplier shall obtain and maintain in force for the term all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with the terms of these Conditions.
- 4.13 Without prejudice to any of the forgoing, the Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture (if applicable), packing, packaging, marking, storage, handling and delivery of the Goods.
- 4.14 The Supplier represents, warrants and undertakes that in the event that the Supplier is required to Consult with the Customer in connection with any proposed Order, any quantity, quality, description and/or specification of the Goods supplied under any Order following such Consultation shall have been determined using a high level of skill, judgment and expertise. Without prejudice to the provisions of Condition 5.1.6 (c), the Supplier accepts full liability to the Company (and/or the Customer) in respect of any claim arising out of or in connection with any such quantity, quality, description and/or specification under any Order, including in the event of any infringement of the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.

## 5. **INDEMNITY**

5.1 The Supplier shall keep the Company indemnified in full against all:

- 5.1.1 direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss);
- 5.1.2 loss;
- 5.1.3 damages;
- 5.1.4 injury;
- 5.1.5 costs; and
- 5.1.6 expenses (including legal and other professional fees and expenses)

awarded against or incurred or paid by the Company as a result of or in connection with:

- (a) defective Goods or defective materials in the Goods;
- (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
- (c) any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any company, Customer or third party to the extent that

such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract or of these Conditions by the Supplier.

**6. DELIVERY**

- 6.1 The Goods shall be delivered on the Delivery Date, carriage paid, to the Delivery Location in accordance with Condition 3. The Supplier shall off-load the Goods at its own risk as directed by the Company.
- 6.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 30 Business Days of the Order being placed by the Company.
- 6.3 The Supplier shall invoice the Company upon, but separately from, despatch of the Goods to the Company.
- 6.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.5 Time for delivery shall be of the essence.
- 6.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.
- 6.7 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- 6.7.1 cancel the Contract in whole or in part;
  - 6.7.2 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 6.7.3 recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another Supplier; and
  - 6.7.4 claim damages for any additional costs, losses or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.
- 6.8 If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 6.9 Where the Company agrees in writing to accept delivery by instalments, the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by

the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.

- 6.10 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 6.11 The Company shall not be deemed to have accepted the Goods until it has had 30 Business Days to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for 30 Business Days after any latent defect in the Goods has become apparent.
- 6.12 The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company.

## 7. **PRICE**

- 7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.
- 7.2 No variation in the price nor extra charges shall be accepted by the Company after receipt by the Company of the Supplier's acceptance of the Order.

## 8. **PAYMENT**

- 8.1 Unless otherwise specified in the Order, the Company shall pay the price of the Goods within 60 Business Days of the date of receipt of the Supplier's invoice, but time for payment shall not be of the essence of the Contract.
- 8.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under the Contract.

## 9. **CONFIDENTIALITY**

The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business, its customers or its goods which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

## 10. **THE COMPANY'S PROPERTY**

Any materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in any drawings, specifications and data supplied by the Company to the

Supplier or not so supplied but used by the Supplier specifically in any manufacture of any Goods shall at all times be and remain the exclusive property of the Company but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

## 11. **TERMINATION**

- 11.1 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- 11.1.1 the Supplier commits a material or persistent breach of any of the terms and conditions of the Contract; or
  - 11.1.2 any distress, execution or other process is levied upon any of the assets of the Supplier; or
  - 11.1.3 the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its 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 the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
  - 11.1.4 the Supplier ceases or threatens to cease to carry on its business; or
  - 11.1.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## 12. REMEDIES

12.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

12.1.1 to rescind the Order;

12.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods (together with all associated costs, charges and expenses) so returned shall be paid forthwith by the Supplier;

12.1.3 at the Company's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

12.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;

12.1.5 to carry out, or procure the carrying out of, any work necessary to make the Goods comply with the Contract at the Supplier's expense; and

12.1.6 to claim such damages, costs, losses and expenses (including reasonable legal costs) as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

12.2 The Company shall be entitled at any time to cancel any Order by notice in writing or by telephone and, if applicable, return to the Supplier the Goods the subject of the Order. The Supplier shall refund the Company the price paid or payable in respect of the Goods less the cost of carriage within 5 Business Days of the Company's notice to cancel.

## 13. ASSIGNMENT

13.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13.2 The Company may assign the Contract or any part of it to any person, firm or company.

## 14. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, 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.

**15. GENERAL**

- 15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5 The Customer shall be entitled to enforce the provisions of Conditions 3, 4, 5, 6, 7, 11 and 12. Save as aforesaid, the parties to the Contract 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.
- 15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

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September 2009