

TERMS AND CONDITIONS OF SALE

1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:-

Company - means Powell Gee Ltd, registered in England and Wales with company number 00689940.

Contract - means any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these Conditions and the Company's quotation or other document identifying the Specification and Price of the Goods.

Customer - means the person(s) firm or company who purchases the Goods from the Company.

Goods - means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

Price - the Price agreed between the parties for the Goods, as stated in the Company's quotation or in default, from the Company's relevant current price list.

Site - the location at which the Goods are to be delivered and/or installed, as specified in the Contract, or in default of agreement, the Customer's normal UK trading address.

Specification - the specification of the Goods to be provided under the Contract set out in the quotation or other agreed document.

2 APPLICATION OF TERMS

2.1 The Company agrees to supply the Goods to the Customer and the Customer agrees to pay the Price in accordance with the terms of the Contract.

2.2 These terms and conditions shall apply to all contracts for the provision of goods and/or services by the Company to the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or other document. In the case of any conflict or ambiguity between the Customer's original specification and the Specification set out on this document, the latter shall prevail.

2.3 No variation to these Conditions shall have effect unless expressly agreed in writing and signed by a duly authorised representative of the Company.

2.4 Acceptance of delivery of Goods shall constitute acceptance of these Conditions where acceptance has not previously been communicated expressly by the Customer to the Company.

2.5 Any tender or quotation provided by the Company shall:-

2.5.1 be subject to these Conditions;

2.5.2 not constitute a contractual offer, and a Contract shall only be formed on acceptance by the Company of the Customer's order;

2.5.3 be valid for 30 days and may be altered or revoked by the Company at any time.

2.6 Any reference in this Contract 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.

3 DESCRIPTION AND INFORMATION

3.1 The description of the Goods shall be as set out in the Company's quotation (if any).

3.2 Any information, illustrations and all other technical data in advertising sales and technical literature issued by the Company are provided for general guidance only. No such information or data shall form part of the Contract.

3.3 The Company reserves the right to make any changes in the Specification of the Goods which are required to conform with any applicable legal, statutory or E.U. requirements or which do not materially affect their quality or performance.

4 CUSTOMER'S RESPONSIBILITIES

4.1 The Customer must ensure that the terms of its order and any applicable specification supplied by it to the Company are complete and accurate.

4.2 The Customer will promptly provide the Company (and where applicable, its sub-contractors) with the following, in each case without charge:-

4.2.1 such information, drawings, designs and specifications as it may reasonably need concerning the Goods and any alleged failure of the Goods and answers to queries, decisions and approvals which may be reasonably necessary for the Company to perform the Contract. The Customer is responsible for ensuring that such material and answers are accurate and complete;

4.2.2 access to the Site and reasonable facilities to inspect the Goods, both for purposes of delivery and in the event of alleged failure (where requested);

4.2.3 access to the Customer's employees and to employees of the occupants of the Site and any other relevant parties, for information purposes;

4.2.4 all electric power, lighting, heating and other services, materials and facilities reasonably needed by the Company to perform the Contract, if any.

4.3 Where relevant, the Customer will ensure that the Site is prepared and conforms with any requirements or description specified to it by the Company prior to commencement of installation of the Goods.

4.4 The Customer will obtain all necessary licences or authorities which may be needed in connection with the Goods and the Site.

4.5 The Customer shall follow any instructions of the Company as to use and maintenance of the Goods set out in the user manual or elsewhere.

4.6 The Customer shall be responsible for ensuring that the Goods are fit for the purpose for which it or any third party intends to use them, and covenants that the Goods will only be used for purposes for which they are sufficient and suitable.

4.7 The Customer warrants that any specification, design, instruction or material given by it to the Company will not infringe any intellectual property or other rights of any third party, nor will such be defamatory or otherwise unlawful, and the Customer will indemnify the Company in respect of any claim relating to such infringement.

5 DELIVERY

5.1 Delivery of the Goods shall be to the Site, unless otherwise agreed.

5.2 The Company will be responsible at the Customer's cost for the delivery of the Goods to the Site, unless otherwise agreed.

5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

5.4 Any dates agreed or specified by the Company for delivery of the Goods are intended to be an estimate. If no dates are so specified, delivery will be within a reasonable time.

5.5 Subject to the other provisions of these Conditions, the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence) nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 30 days.

5.6 If for any reason the Customer will not accept delivery of any of the Goods when they are tendered for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate access, facilities, instructions, documents, licences or authorisations or is not ready to receive them:-

5.6.1 the Goods will be deemed to have been delivered;

5.6.2 risk in the Goods will pass to the Customer in any event; and

5.6.3 the Company may store the Goods until rearranged delivery, and the Customer will be liable for all related costs and expenses (including, without limitation storage and insurance costs).

5.7 The Customer will provide at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

5.8 The Customer shall take delivery of the Goods and shall not be entitled to reject them or any part of them, notwithstanding that the quantity delivered is greater or less than that contained in the Specification, provided that:-

5.8.1 such discrepancy shall not exceed 10% upwards or downwards;

5.8.2 the Company shall at its discretion either make up any shortfall or adjust the Price pro rata to the discrepancy (upwards or downwards), provided that in the case of a shortfall, it is notified in writing within 7 days of delivery and in any event, the Customer shall give the Company the opportunity, if required, to examine the Goods at the Site before they are used or resold by the Customer.

5.9 The Company may deliver the Goods by separate instalments. Each separate instalment may be invoiced separately and, if so, shall be paid for in accordance with the Contract.

5.10 Where the Goods delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver 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 instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.

5.11 The Company shall not be obliged to wait for any delivery to be accepted at the required delivery address for in excess of 30 minutes.

5.12 Without prejudice to any other right or remedy of the Company, if the Customer is in breach of any of the terms of this Contract the Company may without notice determine any contract with the Customer or may suspend performance of its obligations until the Customer's default is made good.

5.13 The Company shall not be liable for any claim for loss or damage to the Goods in transit unless such claim is notified in writing both to the Company and the carrier within 7 days of delivery of the Goods. Where the Customer accepts the Goods from the carrier without checking, the Company shall not be liable for such claim unless the Customer has marked the delivery note "not examined".

5.14 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.15 In the case of Goods intended for export from the UK:-

5.15.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms (being the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made) shall have the same meaning in this Contract, but if there is any conflict between the provisions of Incoterms and this Contract, the latter shall prevail;

5.15.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them;

5.15.3 Unless otherwise agreed in writing between the Customer and the Company, the Goods shall be delivered FOB the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;

5.15.4 The Customer shall be responsible for arranging for any testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit;

5.15.5 Unless otherwise required by the Company, payment of all amounts due to the Company shall be made by an irrevocable letter of credit, or in such other form, acceptable to the Company, to be opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company within 14 days after the Contract is concluded.

5.16 The Company may, at its entire discretion, be prepared to accept return of unwanted Goods from the Customer. Approval of returns, shall in any event depend on the Goods being standard goods which are capable of resale, and not manufactured or ordered on a bespoke basis to the Customer. If the Customer wishes to return any or all of the Goods (and save where there is a valid warranty claim under clause 9):-

5.16.1 it shall notify the Company in writing within 60 days of the delivery of the Goods;

5.16.2 upon receipt of such notification, the Company shall confirm within 7 days whether it will accept such return;

5.16.3 if accepted, the Company shall arrange for the Goods to be collected at the Customer's expense (or at the Company's discretion, it may require the Customer to return the Goods to the Company's premises);

5.16.4 the Goods must be returned in their original condition without modification or deterioration and in their original packaging;

5.16.5 on return of the Goods in accordance with this clause 5.16, then the Company shall credit such part of any invoices as relate to the returned Goods (or shall reimburse such part of the Price as has already been paid in respect of them), less a sum equivalent to 15% of that Price (plus any applicable VAT) to reflect the additional storage, administration and other expenses of the Company and less any transit costs borne by the Company (if any). In any event, the Company shall on such return credit any invoice raised in respect of the Price, less the 15% charge described above which shall remain due. The Company may demand such 15% charge as a pre-condition of accepting return of any Goods.

6 RISK/TITLE

6.1 The Goods shall be at the Customer's risk as from delivery to the Site (including deemed delivery), or in the case of collection by the Customer, from the date and time of such collection, save for later damage caused to the Goods by any negligent act of the Company or any of its sub-contractors and the Customer will be responsible for insuring the Goods from the time risk passes.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Price for the Goods;

6.2.2 and all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer must:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 maintain the Goods in satisfactory condition and store them (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

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| 6.3.3 | not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; | | weekly basis and also charge the Customer for all costs and expenses (including legal costs) incurred by the Company in the collection of any overdue amount; |
| 6.4 | The Customer may resell the Goods before ownership has passed to it solely on the following conditions: | 8.8.4 | appropriate any payment made by the Customer and set-off any monies due to the Customer, whether under this Contract or any other contract or otherwise (including any VAT applicable), to or against the unpaid invoice or invoices; |
| 6.4.1 | any sale shall be effected in the ordinary course of the Customer's business at full market value; | 8.8.5 | retain any property of the Customer then in its possession under a general lien for any such payment; |
| 6.4.2 | any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale. | 8.8.6 | cancel the Contract and any other contract between the Company and the Customer. |
| 6.5 | The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company. | 8.9 | Where payment is made by means of any bill of exchange, cheque or other negotiable instrument, payment shall not be treated as having been made until such instrument has been honoured on presentation for payment. |
| 6.6 | The Customer's right to possession of the Goods shall terminate immediately and automatically if: | | |
| 6.6.1 | the Customer has a bankruptcy order made against him or proposes or makes an arrangement or composition with his creditors, 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 and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or potential insolvency of the Customer; or | | |
| 6.6.2 | the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performance of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or | | |
| 6.6.3 | the Customer encumbers or in any way charges any of the Goods. | | |
| 6.7 | Until such time as title in the Goods passes to the Customer, and provided that the Customer is in default in payment of the Price or the Company in good faith on reasonable grounds believes the Customer is or may be insolvent, or that any of the grounds set out in clause 6.6 applies, the Customer shall on request deliver up such Goods as have not ceased to be in existence or resold, to the Company. On the making of such request the Customer's rights under clause 6.4 and any right to process or use the Goods shall cease. | | |
| 6.8 | The Customer grants the Company, its agents and employees an irrevocable licence at any time without notice to enter the Site and any other any premises owned, occupied or controlled by the Customer where the Goods are or may be stored, using only such force as may be necessary, in order to inspect them, or, where the Customer's right to possession has terminated under clause 6.6 or a demand under clause 6.7 remains unsatisfied, to recover them. The Company may enter into such premises | | |
| 6.9 | The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Customer does so all sums whatever owing by the Customer to the Company shall forthwith become due and payable. | | |
| 6.10 | The Customer shall insure and keep insured the Goods to the full Price against "all risks" to the reasonable satisfaction of the Company, from delivery or collection until the date that property in the Goods passes, and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Customer fails to do so all sums whatever owing by the Customer to the Company shall forthwith become due and payable. | | |
| 6.11 | Any intellectual property rights in the Goods or in any designs or specifications produced by the Company for the purpose of the Contract shall remain the property of the Company. No right or license is granted except the right to use or resell the Goods. | | |
| 7 | PRICE | | |
| 7.1 | Unless otherwise agreed by the Company in writing, the Price for the Goods shall be the Price set out in the Company's quotation or if no quotation has been given the Price for the Goods shall be the Price set out in the Company's price list or agreed terms published on the date of delivery or deemed delivery. | | |
| 7.2 | The Company reserves the right by giving notice to the Customer at any time before completion of its performance of the Contract to increase the Price if:- | | |
| 7.2.1 | the costs to the Company of providing such Services or Goods increase due to any factor beyond the control of the Company; | | |
| 7.2.2 | the Customer changes the Specification or agrees to any change to the Specification proposed by the Company; | | |
| 7.2.3 | the Customer causes any delay; | | |
| 7.2.4 | Goods are required by the Customer with exceptional urgency; | | |
| 7.2.5 | the Customer fails to give the Company adequate or accurate information, instructions or facilities or otherwise fails to meet its obligations under the Contract. | | |
| 7.3 | The Company may vary the content of any of its price lists, whether generic or specific to the Customer, at any time, either by publishing an updated list or by notice. Such changes shall not affect the Price applicable to any order already placed. | | |
| 7.4 | The Price for the Goods shall be exclusive of any value added tax or any similar sales tax, import or custom duties and all costs or charges in relation to carriage and insurance which the Customer will pay in addition when it is due to pay for the Goods. | | |
| 7.5 | The Price does not include carriage, packing or insurance unless expressly stated, and such sums may be added by the Company to the Price. | | |
| 8 | PAYMENT | | |
| 8.1 | Unless alternative payment provisions are agreed, the Company may submit an invoice or invoices at any time during or after performance of the Contract in respect of such part of the Goods delivered to that date. The Company may submit an invoice for any balance of the Price immediately on delivery of any balance of the Goods. Invoices shall be sent to the Customer's normal trading address recorded in this Contract, unless otherwise agreed. | | |
| 8.2 | Payment of the Price for Goods shall be in cleared funds and as due within 30 days of the end of the month in which Goods are delivered. The Company reserves the right to refuse or withdraw such or any credit terms for the Customer at any time, and to attach a pre-condition of advance payment or part-payment of the Price. | | |
| 8.3 | The Company may specify which currency and method of payment it requires the Customer to use and in default, payment shall be in £Sterling. | | |
| 8.4 | Time for payment shall be of the essence. | | |
| 8.5 | All payments payable to the Company under the Contract, shall become due immediately upon termination of this Contract despite any other provision. | | |
| 8.6 | The Customer shall make all payments due under the Contract without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise. | | |
| 8.7 | No act or omission of the Customer which prevents the Company from delivering the Goods or continuing to perform the Contract or to perform it according to any agreed time-scale shall prevent the Company from raising invoices in accordance with this clause 8. | | |
| 8.8 | If the Customer fails to make any payment within the time specified in this Contract, the Company may take any or all of the following steps:- | | |
| 8.8.1 | immediately invoice the balance of the Price in advance of the delivery of any further Goods; | | |
| 8.8.2 | refuse to deliver or install any balance of Goods or provide any warranty services, whether under this Contract or any other contract or otherwise, until payment is made in full; | | |
| 8.8.3 | charge the Customer interest (both before and after any judgement) on the amount unpaid at the compound rate of 8% per annum above the Official Dealing Rate of the Bank of England from time to time until payment in full is made, accruing on a | | |
| | | 9 | QUALITY AND WARRANTY |
| | | 9.1 | Subject to the terms of this Contract, the Company warrants to the Customer that for a period of 12 months from the date of delivery or collection ("the Warranty Period"), the Goods:- |
| | | 9.1.1 | will comply with the Specification; |
| | | 9.1.2 | are and will remain fit for their purpose, as identified in the Specification where applicable; |
| | | | in each case such that there will be no substantial failure in structural or functional performance during such period. |
| | | 9.2 | The warranty at clause 9.1 does not extend to Goods not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and is capable of being assigned to the Customer. |
| | | 9.3 | It shall be a condition of the warranty given by the Company at clause 9.1, and of any liability of the Company under this Contract, that the Goods:- |
| | | 9.3.1 | are used solely for any purpose identified in the Specification, or for the purpose for which they were designed, and where applicable, installed in the project for which they were supplied at the Site; |
| | | 9.3.2 | are installed in compliance with professionally prepared designs, plans or instructions of a competent designer, engineer or similar, taking account of adequate loading criteria and safety factors; |
| | | 9.3.3 | are installed and fixed using a reasonable level of care and skill, by suitably skilled and qualified installers, in accordance with any instructions which may be issued or published by the Company and, where applicable, by the suppliers of any associated fittings and materials, including inspecting during installation and rejecting any visually defective Goods at that time; |
| | | 9.3.4 | are maintained and used in accordance with any instructions issued by the Company, which may be updated periodically; |
| | | 9.3.5 | are not be installed in proximity to or exposed to chemically active materials. |
| | | 9.4 | The Customer warrants that it has not relied on any representations made by or on behalf of the Company or upon any descriptions, illustrations or specifications contained in any material produced by or on behalf of the Company save for the Specification. |
| | | 9.5 | During the Warranty Period, the Customer shall notify the Company in writing of discovery of any faults or alleged faults in the Goods, as soon as reasonably practicable and in any event within 14 days of the date on which such faults were discovered or (if earlier) ought reasonably to have been discovered. |
| | | 9.6 | On receipt of a claim under clause 9.5, the Company shall have a reasonable period to examine the Goods concerned to establish whether there is a valid warranty claim. The Customer will co-operate in all reasonable respects in this assessment, including the provision of samples of the defective Goods and return of such samples to the Company at the Customer's expense on request. |
| | | 9.7 | On acceptance by the Company of a valid warranty claim, (including notice having been served in accordance with clause 9.5) the Company shall, at its sole discretion, either:- |
| | | 9.7.1 | supply the Customer with repaired or replacement Goods, or suitable alternative products to the Goods, which satisfy the warranties at clause 9.1; or |
| | | 9.7.2 | if in the reasonable opinion of the Company it is wholly impractical to do so, refund such part of the Price as related to the Goods concerned. |
| | | | and such action shall be accepted by the Customer in full satisfaction of the Company's liability for the defect or fault concerned. |
| | | 9.8 | Replacement Goods shall be guaranteed for the remainder of the Warranty Period. |
| | | 9.9 | The Customer's obligations under this Contract shall also apply in relation to any replacement Goods. |
| | | 9.10 | The Company may refuse to provide any replacement Goods or any refund, or may alternatively invoice the Customer for the cost of any Goods supplied, brought about by the Customer's notification of any fault where such defect is not attributable to any act or omission of the Company or is attributable to or exacerbated by:- |
| | | 9.10.1 | fair wear and tear, wilful damage, negligence, abnormal working conditions or misuse; |
| | | 9.10.2 | continued use of the Goods after notice of the fault is given to the Company; |
| | | 9.10.3 | misuse of the Goods by the Customer or any other party; |
| | | 9.10.4 | change of use of the building or Site at which the Goods are installed; |
| | | 9.10.5 | breach of the Customer's obligations under the Contract; |
| | | 9.10.6 | modifications made to the Goods by the Customer or by third parties without the prior written consent of the Company; or |
| | | 9.10.7 | any deterioration of the associated materials including sheets, purlins, ferrules, roof-lights which may affect the mechanical performance or weather-tightness of the Goods. |
| | | 9.11 | Because of variations in atmospheric conditions, the Company shall not be liable to replace Goods solely due to changes to the colour of nylon-moulded heads, powder coated painted colour heads or plastic caps, or other colour changes. |
| | | 9.12 | For the avoidance of doubt the Customer shall not be entitled to any claim to set-off in respect of any repairs or alterations undertaken by the Customer without the prior written consent of the Company. |
| | | 9.13 | Where on receipt of any claim, the Company reasonably identifies that any prior works or rectification are required to the Site or to other associated fittings or materials, before replacement of the Goods, the Customer will promptly carry out such works at its own expense and the Company's obligations under this clause 9 shall be suspended accordingly. |
| | | 10 | LIMITATION OF LIABILITY |
| | | 10.1 | The following provisions set out the Company's entire liability to the Customer in respect of: |
| | | 10.1.1 | any breach of its contractual obligations arising under these Conditions; and |
| | | 10.1.2 | any representation statement or tortious act or omission including negligence arising under or in connection with the Contract. |
| | | | ("Events of Default") AND THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 10. |
| | | 10.2 | The terms of this Contract represent the whole agreement between the parties and all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of any Goods or services under or in connection with the Contract including (without limitation) as to the condition, quality, performance or fitness for purpose of any Goods or the standard of care used in the provision of services are hereby expressly excluded from the Contract save for the undertakings implied by the Sale of Goods Act 1979 Section 12 in respect of title to any goods. |
| | | 10.3 | Nothing in these Conditions excludes or limits the liability of the Company for: |

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| <p>10.3.1 death or injury resulting from its own or that of its employees, agents or sub-contractors negligence whilst acting in the course of their engagement under this Contract ;</p> <p>10.3.2 all damage suffered by the Customer as a result of the implied statutory undertakings as to title, quiet possession and freedom from encumbrances; fraudulent misrepresentation;</p> <p>10.3.3 such other claims which may not otherwise be excluded or limited by law.</p> <p>10.3.4 Subject to clause 10.3, the Company shall not be responsible for any Event of Default which is:-</p> <p>10.4.1 not notified in writing to it within the Warranty Period;</p> <p>10.4.2 not notified to the Company in accordance with clause 9.5; or</p> <p>10.4.3 the fault of the Customer or any third party.</p> <p>10.5 Subject to clause 10.3, the Company's entire liability in respect of any Event of Default (whether in contract, tort including negligence or otherwise) under or in connection with this Contract or based on any claim for indemnity or contribution shall be limited to damages of an amount equal to the Price of the affected Goods.</p> <p>10.6 Subject to clause 10.3, the Company shall not be liable to the Customer in respect of any Event of Default for any losses or damages which may be suffered by the Customer whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any of the following categories:</p> <p>10.6.1 special damage even though the Company was aware of the circumstances in which such special damage could arise:</p> <p>10.6.2 except as otherwise expressly provided in these conditions, costs including labour and materials incurred in:</p> <ul style="list-style-type: none"> • the repair, reconditioning, replacement, making good or removal of defective Goods; • the installation of repaired, reconditioned, replacement or made good Goods; any rectification work required in connection with such repair, reconditioning, replacement, making good, removal or installation; • making good, including scaffolding or other access facilities; • damage caused to, or replacements of, goods and materials other than the Goods, and including materials which may have been fastened by the Goods or allegedly damaged by reason of their failure; <p>10.6.3 wasted expenditure;</p> <p>10.6.4 cost of mitigation;</p> <p>10.6.5 loss of profits, anticipated savings, business opportunity or goodwill; or</p> <p>10.6.6 claims against the Customer by third parties under any liquidated damages clause, penalty clause or performance warranty.</p> <p>10.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.</p> <p>10.8 The Purchaser hereby agrees to afford the Company not less than 30 days in which to remedy any Event of Default hereunder.</p> <p>10.9 Nothing in this clause 10 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.</p> <p>10.10 All information and advice given by the Company to the Customer relating to the performance or use of the Goods or otherwise is based on the Company's experience, but the Company shall not be liable for any inaccuracies, save to the extent that such advice is incorporated into the Contract as an express term.</p> <p>10.11 The Customer agrees that except as expressly provided in this Contract, the Company will not be under any liability of any kind whatever and however caused, arising directly or indirectly in connection with this Contract.</p> <p>10.12 Any liability of the Company under the Contract shall be subject to and conditional upon the due performance by the Customer of all its obligations under this Contract.</p> <p>10.13 The Customer shall maintain such insurance protection as shall be reasonable and prudent, taking account of the nature of the Customer's business. The Company shall not be liable under this Contract for losses suffered by the Customer which are, or would have been, recoverable under such policy of insurance.</p> <p>10.14 The Company is a limited company. This Contract and the commitments of the Company under it, are provided solely on behalf of the Company. No personal liability, whether in contract, tort or otherwise, is accepted by any individual who may provide services or advice to the Customer or otherwise, whether as a shareholder, director, employee, consultant, freelancer or supervisor.</p> <p>10.15 The Company shall not be liable for any change to the Specification of the Goods if the variation does not materially affect the characteristics of the Goods, and the substituted materials (if any) are of comparable quality to the originals.</p> <p>11 ASSIGNMENT AND SUB-CONTRACTING</p> <p>11.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.</p> <p>11.2 The Company may assign the Contract or any part of it to any person, firm or company.</p> <p>11.3 The Company may engage sub-contractors to carry out any part of its obligations under the Contract at its sole discretion.</p> <p>12 FORCE MAJEURE</p> <p>12.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the amount of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business or from performing the Contract due to circumstances beyond the reasonable control of the Company, including, without limitation, acts of God, governmental actions, war or national emergency, 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</p> | <p>adequate or suitable materials provided that if the event in question continues for a continuous period in excess of 180 days the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.</p> <p>13 TERMINATION</p> <p>13.1 The Company may terminate this Contract or suspend its performance with immediate effect on written notice if:-</p> <p>13.1.1 the Customer ceases or threatens to cease to carry on its business or becomes insolvent;</p> <p>13.1.2 a Receiver, Administrator or similar Officer is appointed over all or any part of the assets or undertaking of the Customer;</p> <p>13.1.3 the Customer makes any arrangement for the benefit of its creditors;</p> <p>13.1.4 the Customer goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;</p> <p>13.1.5 there is a material change of control of the Customer, within the meaning of s.416 Income and Corporation Taxes Act 1988;</p> <p>13.1.6 the Customer commits a material breach of this Contract and (in the case of a breach capable of remedy) fails to remedy it within 14 days of receipt of written notice from the Company specifying the breach and containing a warning of an intention to terminate if the breach is not remedied;</p> <p>13.1.7 the Customer refuses to take delivery of the Goods or any part of them or collect them on such date as they are ready for delivery;</p> <p>13.1.8 the Customer defaults in paying the Price or any part of it.</p> <p>13.2 In the event of a suspension, the Company shall be entitled to demand pre-payment of any part of the Price not yet due for payment as a condition of re-commencing its performance.</p> <p>13.3 The Company may terminate this Contract at its discretion at any time by giving 14 days notice in writing to the Customer.</p> <p>13.4 Upon termination of this Contract for whatever cause, the Customer shall pay to the Company all monies due to the Company at that date after taking into account amounts previously paid including:-</p> <p>13.4.1 the total value of Goods delivered up to the date of termination, the Price for which shall then become payable immediately notwithstanding any prior contrary arrangement;</p> <p>13.4.2 any cancellation charges payable to the Company's contractors;</p> <p>13.4.3 the cost of the Goods ordered for the purposes of the Contract for which the Company has paid or is legally bound to pay. The Company may at its discretion retain or take back part or all of the Goods in lieu of the payment attributable to such material;</p> <p>13.4.4 the cost of removal from the Site of any property of the Company;</p> <p>13.4.5 any other costs incurred by the Company in connection with the Contract or its termination including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used.</p> <p>13.5 Termination of this Contract shall not affect any rights of the parties accrued to them up to the date of termination.</p> <p>14 GENERAL</p> <p>14.1 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 otherwise.</p> <p>14.2 All notices to be given under this Contract shall be in writing and shall be sent to the normal business address of the party concerned by first class post or by hand.</p> <p>14.3 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.</p> <p>14.4 The Company shall be entitled to set-off against any monies payable to it by the Customer under this Contract, any monies which may be payable by it to the Customer, whether under this Contract or otherwise. The Customer shall not be entitled to any right of set-off.</p> <p>14.5 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.</p> <p>14.6 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.</p> <p>14.7 Both parties undertake not at any time to disclose any confidential information, documents or other material supplied or made known to it during the existence of this Contract by the other, to any third party, save as permitted by this Contract and save for any information in the public domain, and to use its best endeavours to prevent unauthorised publication or disclosure of the same.</p> <p>14.8 This Contract is the complete and exclusive statement of the Contract between the parties relating to the subject matter of the Contract and supersedes all previous communications, representations and other arrangements, written or oral, save as stated to the contrary herein.</p> <p>14.9 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.</p> <p>14.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.</p> |
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