

WILLIS WESTCOTT LIMITED

TERMS AND CONDITIONS

1. **Parties**

In these Conditions:-

 - 1.1 "the Seller" means Willis Westcott Limited
 - 1.2 "the Buyer" means the person, firm or Company by whom or on whose behalf the order is made
 - 1.3 "the goods" means the articles or things or any of them described in the Order
 - 1.4 "the Order" means the Order placed by the Buyer
 - 1.5 "Delivery" shall be deemed to have taken place once the buyer has commenced the operation of unloading the Goods pursuant to Condition 7.5
2. **Basis of the sale**
 - 2.1 The Seller shall sell and the Buyer shall purchase the Goods subject to these Conditions, which Conditions shall govern the contract to the exclusion of any other terms and conditions.
 - 2.2 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing
 - 2.3 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.
3. **Orders**
 - 3.1 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and upon payment of all losses (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation.
4. **Price of the Goods**
 - 4.1 The Seller reserved 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 cost 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.
5. **Terms of payment**
 - 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after Delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take Delivery of the Goods, in which event 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.
 - 5.2 If the Buyer holds an account with the Seller the Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, but in all other cases upon receipt of the Seller's invoice and in both cases notwithstanding that Delivery may not have taken place and the property in the Goods has not passed to the Buyer. Time for payment of the price shall be the essence of the Contract. Receipts for payment will be issued only upon request.
 - 5.3 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:
 - 5.3.1 cancel the Contract or suspend any further Deliveries to the Buyer,
 - 5.3.2 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
 - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above Bank of Scotland base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
6. **Property and Risk**
 - 6.1 Notwithstanding that property in the Goods shall not pass to the Buyer as provided below, the Goods shall be at the risk of the Buyer from the time of collection by or Delivery to him of the Goods or after the expiration of the rent free period referred to below, whichever is earlier save where it is agreed that the seller will deliver the Goods to the Buyer. Goods will be stored rent free for 14 days from the date of this Contract or the date of collection (if any is agreed upon) or the date when the Goods are available for collection which ever is the later, after which time the Buyer shall pay rent at the rate of £20 per ton (or part thereof) per week under cover and £10 per ton (or part thereof) per week in the open. Any delay caused by the unreasonable act or default of either party to rail or road transport or craft furnished by other to be for the account of the party causing the delay.
 - 6.2 Notwithstanding Delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
 - 6.3 Until such time as the property 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 separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to re-sell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the event of tangible proceeds, property stored, protected and insured.
 - 6.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
 - 6.5 The Buyer shall not be entitled to pledge or in any way charge by the 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 of remedy of the Seller) forthwith become due and payable.
7. **Delivery**
 - 7.1 Any dates quoted for Delivery of the Goods are approximate only and the Seller shall not be liable for any delay in Delivery of the Goods howsoever caused. Time for Delivery shall not be of the essence unless previously agreed by the Seller in writing. The goods may be delivered by the Seller in advance of the quoted Delivery date upon giving reasonable notice to the Buyer.
 - 7.2 Where the Goods are to be delivered in instalments, each Delivered 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.
 - 7.3 If the Seller fails to Deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyers fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost of the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the goods.
 - 7.4 If the Buyer fails to take Delivery of the Goods or fails to give the Seller adequate Delivery instructions at the time stated for Delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 7.4.1 store the Goods until actual Delivery and charge the Buyer rent at the rates set out in clause 6.1 and for insurance thereof
 - 7.4.2 sell the Goods at the best price ready obtained and charge the Buyer for any shortfall below the price under the Contract.
 - 7.4.3 Charge the Buyer for the cost of the attempted delivery
 - 7.5 Where the Seller agrees to deliver the goods to site this shall be to the nearest point on a public road suitable, in the option of the driver, for the vehicle used. The Seller is under no obligation to deliver the goods elsewhere, but should it do so at the request of the Buyer the Seller will not be liable for any damage or loss whatsoever resulting therefrom which shall be the sole responsibility of the Buyer. The Buyer shall provide the necessary labour and equipment to unload the vehicle without undue delay.
8. **Warranties and liability**
 - 8.1 Subject as expertly provided in these Conditions, and expect where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
 - 8.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions.
 - 8.3 The goods are not tested or sold as fit for any particular purpose and any term warranty or condition express implied or statutory to the contrary is excluded. In no circumstances whatsoever shall the Sellers liability (in contract, tort or otherwise) to the Buyer arising under out of or in connection with this contract or the goods applied hereunder exceed the Invoice price of the particular pieces concerned, and the Seller shall be under no liability for loss or damage or delay how so ever arising caused by circumstances outside his control. In the case of a sale by sample the Seller does not undertake that the bulk shall correspond with the sample in colour, exact dimensions or quality. This provision shall not apply to consumer transactions to the extent to which it would, by virtue of the Unfair Contract Terms Act 1977, be void.
 - 8.4 If and to the extent that any person by whom the Seller has been supplied with the goods supplied hereunder (hereafter referred to as "the Supplier") validly excludes restricts or limits his liability to the Seller in respect of the said goods or of any loss or damage arising in connection therewith the liability of the Seller to the Buyer in respect of the said goods or of any loss or damage arising in connection therewith shall be correspondingly excluded restricted or limited. If the Supplier validly excludes restricts or limits his liability to the Seller in respect of any liability of the Seller to the Buyer in connection with the said goods, then the liability of the Seller to the Buyer in respect of the said goods shall be excluded restricted or limited to the extent to which the Supplier is liability to the Seller in respect of the Seller's liability to the Buyer and no further. Any term, warranty or condition express or implied or statutory to the contrary is excluded. The Seller will, upon request, supply the Buyer with details of any such exclusion restriction or limitation.
 - 8.5 Notice of any claim arising out of or in connection with this contract must be given in writing to the seller within 48 hours from the date when the goods are collected or delivered, failing which all claims (other than claims arising out of or in connection with defects not discoverable upon reasonable examination of the goods) shall be deemed to be waived and absolutely barred. In any event, the Seller shall be under no liability for shortage or damage in transit or for deviation, is-delivery, delay or detention unless the Seller and the Carrier are advised thereof in writing otherwise than upon a consignment note or delivery document within 48 hours and a claim is made on the Seller and the Carrier in writing within 7 days after the termination of transit as defined under the current conditions of carriage of the Road Haulage Association (in the computation of time for this purpose the following days shall not be included in England and Wales Sunday, Good Friday, Christmas Day or Bank Holiday, Scotland Sunday 1st and 2nd January, Spring Holiday or Autumn Holiday). The Seller shall be under no liability whatsoever if bulk is broken pending settlement of any claim, or, where the goods collected or delivered include plywood or particleboard or the marked battens on the packages (if any) are not produced with the goods for inspection by the Seller. This provision shall not apply to consumer transactions to the extent, to which it would, by virtue of the Unfair Contract terms Act 1977, be void.
 - 8.6 If it is agreed that the goods be processed the Seller may arrange for such processing to be performed by a third party and in such case the operation shall be carried out on the Standard Terms and Conditions of the third party.
 - 8.7 Any variation in the cost to the Seller of carriage and/or effecting delivery of the goods to the Buyer or in charges directly or indirectly affecting the goods which occurs after the date of the contract and prior to delivery of the goods to the Buyer shall be for the Buyer's account.
 - 8.8 All terms, express or implied, relating to the quality of goods are warranties only the breach of which gives no right to reject the goods or terminate the contract in any circumstances whatever. This provision shall not apply to consumer transactions to the extent to which it would, by virtue of the Unfair Contract Terms Act 1977, be void.
 - 8.9 All sales "to arrive" shall be subject to shipment and safe arrival. Any variation in the total of the war risk insurance rate or of any charge, tax, levy duty or impost on the goods shall be for the Buyer's account. Instructions for delivery to be given in time to enable them to be carried out upon arrival. In the absence of such instructions or if ordered by the Buyer to rail or road retransport or to craft and the Buyer fails to provide same when goods are available the Seller may take such steps as he may in his absolute discretion consider to be necessary to clear the goods and may recover from the Buyer all expenses thereby incurred.
 - 8.10 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet the manufacturer's specification is notified to the Seller in accordance with these Conditions, 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 Proportionate part of the price), but the Seller shall have no further liability to the Buyer including any liability for the cost of replacement materials, labour or scaffolding.
 - 8.11 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.
 - 8.12 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 any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as caused beyond the Seller's reasonable control:
 - 8.12.1 Act of God, explosion, flood, tempest, fire or accident;
 - 8.12.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.12.3 acts, restrictions, regulations, buy-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.12.4 import or export regulations or embargoes;
 - 8.12.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 8.12.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.12.7 power failure or breakdown in machinery.
9. **Legal Construction**
 - 9.1 This Contract shall in all respects be construed and operate as an English Contract and in conformity with English Law.
 - 9.2 If any legislation is compulsorily applicable to the Contract these Conditions shall be read and subject to such legislation. If any part or parts of these conditions be repugnant to or inconsistent with such legislation to any extent such part or parts shall be overridden to that extent and no further.