

## 1. DEFINITIONS

In these conditions:-

- 11 The "Buyer" shall mean the corporate entity, firm or person seeking to purchase the Goods from the Company;
- 12 the "Company" shall mean Pre-Formed Components Limited (Company number 00716672);
- 13 the "Contract" shall mean any contract for Goods or Services made between the Company and the Buyer;
- 14 the "Goods" shall mean the products, articles or things to be sold by the Company;
- 15 an "Insolvency Event" shall mean:
  - 15.1 (where the Buyer is a company) the Buyer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal is made for a composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the Buyer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or a trustee, receiver, administrative receiver or a similar officer is appointed in respect of all or part of the business or assets of the Buyer or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Buyer or for the making of an administration order;
  - 15.2 (where the Buyer is an individual or partnership) the Buyer (or in the case of a partnership any of its partners) dies or is made bankrupt or is unable to pay his or her debts within the meaning of Section 123 of the Insolvency Act 1986 or a proposal is made for the composition scheme or an arrangement is made with (or an assignment for the benefit of) his or her creditors;
- 16 the "Services" shall mean any services provided by the Company to the Buyer (whether or not the Buyer shall purchase Goods);
- 17 the headings to these conditions shall not affect the construction of these conditions;
- 18 the use of the plural shall include the singular and the use of the singular shall include the plural; and
- 19 references to the masculine, feminine or neuter genders shall include each and every gender.

## 2. THE CONTRACT

- 2.1 These conditions shall:
  - 2.1.1 be incorporated into each and every Contract made between the Company and the Buyer;
  - 2.1.2 apply to the exclusion of any terms or conditions put forward by or on behalf of the Buyer; and
  - 2.1.3 not create any agency or partnership between the Company and the Buyer or any third party.
- 2.2 No variation or waiver of or addition to these conditions, whether written or oral, shall have effect unless and until authorised in writing by a manager of the Company.
- 2.3 Quotations and orders whether written or oral, submitted by the Company shall be deemed to be an invitation to treat and not an offer.
- 2.4 Any order given in respect of a quotation or estimate must state the date, the reference of that quotation or estimate and address for delivery.
- 2.5 Where Goods and Services are provided by the Company in circumstances which would give rise to a Contract under the meaning set out in Part 11 of the Housing Grants, Construction and Regeneration Act 1996 then in the event of a conflict of terms the provision of that Act and the regulations made thereunder shall prevail over the conditions set out herein to the extent necessary to give effect to that Act not further or otherwise.
- 2.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999, these conditions do not create any right or remedy enforceable by any person other than the Buyer and the Company. This clause does not affect any right or remedy of a third party that exists or is available apart from that Act.
- 2.7 Any Original Equipment Manufacturer (OEM) part numbers provided by the Company are given as a reference only, and no inference or implication beyond that of a useful reference tool should be taken nor is intended.

## 3. TIME LIMITS

Any time or date quoted by the Company for delivery or collection of all or any of the Goods or performance of any Services shall be an estimate and the Company shall not be liable for any failure to meet any such estimate nor for any loss, whether financial or otherwise resulting directly or indirectly therefrom. Time is not and shall not be of the essence in relation to this clause or the performance of the Company of its obligations under the Contract.

## 4. COLLECTION AND DELIVERY

- 4.1 The Buyer shall collect the Goods from the Company's premises. Where it is agreed that the Company shall procure delivery of the Goods, when ready, it shall do so at the risk and cost of the Buyer to such address in the United Kingdom as the Buyer may specify or, if no such address is specified to any address of the Buyer to which correspondence and/or Goods may previously have been sent under the Contract. The manner of delivery shall be such as the Company in its sole discretion shall deem appropriate. Non-signature of a delivery note by the Buyer shall not affect the incorporation of these conditions into the Contract.
- 4.2 If the Company or a third party on behalf of the Company is unable to effect delivery on arrival at the Buyer's premises for any reason whatsoever, an additional charge for any return or subsequent visit may be made.

## 5. LOSS OR DAMAGE IN TRANSIT

- 5.1 The Buyer is under a duty wherever possible to examine the Goods on delivery or on collection (as the case may be).
- 5.2 Where the Goods cannot be examined the carrier's note or such other note (as the case may be) shall be marked by the Buyer at the time of delivery "not examined".
- 5.3 The Company shall be under no liability whatsoever for any defects or shortages as aforesaid unless notified in writing of the details within seven days following dispatch.
- 5.4 In all cases where defects or shortages are complained of, the Company shall be under no liability to the Buyer in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company and the Buyer gives notice in writing before any use is made thereof or any alterations or modification is made thereto by the Buyer.
- 5.5 The Company shall make good any defects or shortages in accordance with the terms of these conditions but otherwise shall be under no liability whatsoever, whensoever or howsoever arising, whether by way of negligence or otherwise, for such defects or shortages (save for death or personal injury caused by the Company's negligence).

## 6. CANCELLATION BY THE BUYER

- 6.1 No cancellation of the whole or any part or any order, whether it is an order by instalment or otherwise, by the Buyer is permitted except where agreed in writing in advance by a manager of the Company.
- 6.2 Goods, once delivered, may not be returned unless authorisation has been given as specified in clause 6.1 and provided that the following conditions are satisfied:
  - 6.2.1 Goods will only be accepted if they are in brand new and unused condition;
  - 6.2.2 packaged items will only be accepted if the package remains unbroken and in reasonable condition; and
  - 6.2.3 Goods will only be accepted if returned within three weeks of the date of collection or delivery;
- 6.3 Where Goods are returned by agreement:-
  - 6.3.1 in every case the invoice number and date together with reason for return must be stated.
  - 6.3.2 in every case the invoice number and date together with reason for return must be stated.

## 7. PRICE

- 7.1 Any price quoted by the Company is based upon current pricing as at the date appearing on the quotation, but the actual price to be charged to the Buyer under the Contract shall be based upon such ruling price (less any discount allowed by the Company) current as at the date of invoice and shall include the cost to the Company of any carriage, insurance and/or storage effected by it in connection with the Buyer's order. In accordance with the terms of this condition, the Company shall be entitled at any time up to the date of the invoice to vary the price quoted to the Buyer.
- 7.2 Unless otherwise expressly stated in writing, all prices are exclusive of, and therefore subject to the addition of VAT.

## 8. DATE FOR PAYMENT

- 8.1 The Company may invoice the Buyer on or at any time after completion of performance of the Services or delivery of the Goods. The Buyer shall make payment in full within thirty days from the end of the month in which the invoice is dated. Any sums not paid by the Buyer by the due date shall, notwithstanding and without prejudice to any other remedies of the Company, bear interest at the rate as specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.2 Any delay or default by the Buyer in making payment in accordance with clause 8.1 shall render all sums owing to the Company on any account whatsoever including the costs of recovery of such sums, due and payable forthwith without requirement for any notice to be given to the Buyer, and interest will be charged in accordance with clause 8.1 with immediate effect until the date of actual payment.
- 8.3 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim by the Buyer (whether or not the Goods or Services are to be provided by instalments and in such case each instalment is deemed to constitute a separate and distinct Contract). In the case of any short delivery or delivery of damaged Goods to the Buyer, the Buyer shall remain liable to pay the full invoice price of all other Goods delivered.
- 8.4 Any Buyer wishing to pay their account by credit card should note that credit card payments are subject to a 2% invoice surcharge.

## 9. DISPUTES AND SET OFF

- 9.1 Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Buyer of all its obligations under these conditions, and subject to these conditions, the Buyer shall not be entitled to withhold or delay payment or exercise any right of set off whatsoever and howsoever arising or arisen which might otherwise be available to it.

## 10. RISK

Risk in the Goods shall pass to the Buyer when the Goods are dispatched by the Company to or collected by the Buyer or its agent.

## 11. TITLE

- 11.1 Notwithstanding the passing of risk under condition 10, unless and until payment shall have been made to the Company of all sums due to it under the Contract and/or under any other Contract between the Buyer and the Company on any account whatsoever:
  - 11.1.1 the property in the Goods shall remain in the Company; and
  - 11.1.2 the Buyer shall store the Goods separately from all other goods and products and in such a way that they can be readily identified as being this property of the Company; and
- 11.2 Subject to conditions 11.3 and 11.4 the Buyer shall be free to sell the Goods in the ordinary course of its business on the basis that the proceeds of sale shall be transferable to the Company and pending such transfer shall be held in trust for the Company, and the Buyer shall account therefore to the Company on demand for all sums outstanding under clauses 8 and 8.2; and
- 11.3 The Company may at any time revoke the Buyer's power of sale referred to in clause 11.2 by written notice to the Buyer if the Buyer shall for seven days or more be in default in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other Goods supplied by the Company or Services rendered, whether or not under the Contract by the Company or for any other reason whatsoever), or immediately if any cheque or other negotiable instrument drawn or accepted by the Buyer in favour of the Company shall on presentation for payment be dishonoured

- 11.4 or in seven days if the Company in good faith shall have doubts as to the solvency of the Buyer.
  - 11.5 The Buyer's power of sale referred to in clause 11.2 shall automatically cease if an Insolvency Event occurs.
  - 11.6 Upon determination of the Buyer's power of sale under conditions 11.3 or 11.4, the Buyer shall place the Goods at the disposal of the Company and the Company shall be entitled to enter upon any premises of the Buyer for the purpose of removing the Goods from the premises (including severance from realty where necessary).
  - 11.7 The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.
- ## 12. TERMINATION AND SUSPENSION
- 12.1 Without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, the Company shall be entitled in its absolute discretion and upon giving to the Buyer written notice of its intention to do so, either to terminate wholly or in part the Contract and/or any other contract with the Buyer or to withhold, vary or suspend performance of all or any of its obligations under the Contract or any other Contract in any one or more of the following events:
    - 12.1.1 if any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the due date for payment;
    - 12.1.2 if the Buyer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the Contract;
    - 12.1.3 if an Insolvency Event occurs in respect of the Buyer;
    - 12.1.4 if the Buyer shall commit any breach of any Contract with the Company;
    - 12.1.5 if the Company in good faith shall have doubts as to the solvency of the Buyer;
    - 12.1.6 where it is necessary to make alternative arrangements to deal with supply shortages. In such circumstances the Buyer's obligation to purchase Goods hereunder shall remain binding to the extent that the Company meets the Buyers order;
    - 12.1.7 if the Buyer shall exceed the credit limit agreed between it and the Company from time to time on any account. The Company shall be entitled to require as a condition of resuming performance under the Contract in such circumstances, the payment of such proportion of the sums or sum outstanding on any such account by the Buyer as such further sums as the Company sees fit in its absolute discretion to bring the Buyer back within its agreed credit limit;
    - 12.1.8 if the Buyer refuses to permit or hinders performance of Services. The Company shall be entitled to exercise its rights of termination or suspension hereunder at any time during which the event given rise thereto shall not have ceased or been remedied, and in the circumstances of any such suspension, the Company shall be entitled to require as a condition of resuming performance under the Contract, pre-payment of or such security as it may stipulate for the payment of any sum or sums due under the Contract. Upon any such event happening the Company shall also have a general lien over all monies and property of the Buyer in its possession for any sums due to the Company.
  - 12.2 **WARRANTY AND LIABILITY**  
The liability of the Company is subject to compliance by the Buyer with all the terms contained in this clause 13.
  - 12.3 The Company shall at its option replace any defect that has developed under normal use in the Goods and solely due to faulty design (except where the design is supplied by or on behalf of the Buyer), faulty materials or faulty workmanship provided that:
    - 12.3.1 the Buyer shall be responsible for ensuring that Goods are fit for the purpose for which it wishes to use them and the Company gives no warranty (and none shall be implied) in respect of the Goods or its liability for any particular purpose, apart from those listed in the Company's technical data sheet;
    - 12.3.2 the defect in question shall have appeared within 1 month (or such longer time period (if any) as may be provided for in any guarantee given by or on behalf of the manufacturer of the Goods) after the Buyer shall have taken possession of the Goods or performance of Services has been completed and shall have been thereupon promptly notified in writing to the Company;
    - 12.3.3 any Goods alleged to be defective shall be stored in a safe place by the Buyer until such time as the Company authorises their disposal in writing;
    - 12.3.4 any Goods alleged to be defective shall if so required by the Company, be promptly returned at the Buyer's risk and expense to the Company's works for inspection, and the Company shall, in its reasonable opinion consider them to be defective solely by reason of faulty design, materials or workmanship;
    - 12.3.5 no attempt shall have been made by the Buyer or by any third party to remedy and defect before, if so required by the Company, the Goods in question shall have been returned to the Company for inspection; and
    - 12.3.6 the Goods in question shall have been serviced and maintained properly and in accordance with the Company's recommendations and shall not have been fitted with any parts, components or accessories other than those manufactured or recommended by the Company.
  - 12.4 Apart from such replacement, the Company, its employees and agents shall be under no liability to the Buyer or to any third party for any injury, loss or damage of any kind whatsoever, howsoever and wheresoever arising or arisen, and whether direct or indirect, including without limitation any injury, loss or damage arising out of or incidental to:
    - 12.4.1 any negligence of the Company or of any of its employees or agents (except insofar as such negligence may result in death or personal injury); or
    - 12.4.2 the Company's performance of or failure to perform or breach of any of its obligations, whether express or implied under the Contract or otherwise; or
    - 12.4.3 the supply, installation, repair or maintenance of any of the Goods; or
    - 12.4.4 any defect in any of the Goods; or
    - 12.4.5 any advice given or representation made by the Company or on its behalf; or
    - 12.4.6 any performance of any Services;
  - 12.5 In the event of any claim against the Company in respect of any matter whatsoever, the liability (if any) of the Company shall be limited to replacement of the Goods sold by the Company in respect of which the liability arises.
  - 12.6 The Company shall not be liable for any claim relating to any breach of warranty, express or implied, under the Contract, the period of which shall be limited to the period for which the Contract was made (or in the case of Goods, after the expiry of such longer period (if any) as may be provided for by or on behalf of the manufacturer of those Goods.)
  - 12.7 The Company shall in no circumstances be liable for the Buyer for any economic loss, loss of profit, loss of business or like loss (in each case whether direct or indirect).  
The terms of this clause shall replace all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute or otherwise all of which shall accordingly be excluded to the extent allowed by law, and the Company shall in relation to the Goods and Services have no obligation to the Buyer, either arising by statute, in tort or in Contract and whether arising out of any negligence of the Company or any of its employees or agents (and whether under the Contract or under any other Contract), other than the express obligations contained in these conditions or in any other document expressly incorporated in writing into the Contract. As a result, it shall be for the Buyer to insure against any liability arising from the performance of the Services and from its use of the Goods.
  - 12.8 The Company shall use its reasonable endeavours to transfer to the Buyer the benefit of any guarantee in respect of the Goods available from the manufacturer provided that the Company may in its discretion, elect to do so only at the cost of the Buyer.  
Notwithstanding anything to the contrary herein contained the Company's liability to the Buyer shall be:
    - 12.8.1 death or personal injury resulting from the negligence of the Company, its employees or agents;
    - 12.8.2 damage suffered by the Buyer as a result of a breach by the Company as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1992; and
    - 12.8.3 any claim for which the Company is liable to the Buyer under Part 1 of the Consumer Protection Act 1987, shall not be limited save that nothing in this clause 13 shall confer a right or remedy upon the Buyer to which the Buyer would not otherwise be entitled.
  - 12.9 The provisions of this clause 13 shall survive any termination of the Contract.
  - 12.10 The exclusions from and limitations of liability set out in this clause 13 shall be considered severable. The validity or unenforceability of any one clause, sub clause, paragraph or sub-paragraph of this clause 13 shall not affect the validity or unenforceability of any other part of this clause 13.
- ## 14. INDEMNITY
- 14.1 If any process is to be applied to the Goods or the Services by the Company in accordance with a specification or direction (as the case may be) submitted by the Buyer, the Buyer shall indemnify and hold harmless the Company from and against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement or alleged infringement of any intellectual property rights of any other person which results from the Company's use of the Buyer's specification or from the Company complying with the Buyer's direction as the case may be.
  - 14.2 Where the Buyer uses the Goods or the Services:
    - 14.2.1 the manufacturer, supplier or distributor of any other goods;
    - 14.2.2 in the provision of a service, then the Buyer shall indemnify and hold harmless the Company from and against all loss, damages, costs and expenses awarded against or incurred by the Company in respect of such use by the Buyer arising out of the manufacture, supply or distribution of those other goods or the provision of that service.
  - 14.3 The Buyer shall indemnify and hold harmless the Company from and against all loss, damages, costs and expenses awarded against or incurred by the Company in respect of:
    - 14.3.1 any liability which the Company may incur as a result of a claim against the Company by a third party under Part 1 of the Consumer Protection Act, 1987;
    - 14.3.2 any warranty howsoever given by the Buyer to a third party; and
    - 14.3.3 any loss caused by the Goods during transit.
- ## 15. FORCE MAJEURE
- 15.1 The Company shall have no liability whatsoever for any failure to perform, or for any delay in the performance of any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its direct control.
- ## 16. NOTICES
- 16.1 Any notice required to be given in writing under the Contract shall be given either by telex or facsimile transmission or by email or by first class post addressed to the registered office of the party furnished with it is intended.
- ## 17. GOVERNING LAW
- 17.1 This Contract shall be governed by the law of England and subject to the exclusive jurisdiction of the English Courts.