

1. **INTERPRETATION**

1.1 In these Conditions:

"Buyer"

means the person who, or firm which, accepts a quotation of the Seller for the sale of the Goods or whose order for the goods is accepted by the Seller;

"Goods"

means the goods and materials (including any instalment of the goods and materials or any parts for them) which the Seller is to supply in accordance with these Conditions;

"Seller"

means James Burrell Limited (registered in England under number 218384);

"General Conditions"

means the standard terms and conditions of sale set out in this document;

"Special Conditions"

means any special terms and conditions of sale as are agreed in Writing between the authorised representatives of the Buyer and the Seller;

"Contract"

means the contract for the purchase and sale of the Goods;

"Writing"

includes telex, facsimile transmission, email and comparable means of communication.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. **BASIS OF THE SALE**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Contract, subject to these Conditions, which supersede any other terms appearing in the Seller's catalogue or elsewhere, and which shall govern the Contract to the exclusion of any terms and conditions of the Buyer. All orders hereafter made by the Buyer shall be deemed to be made subject to the General Conditions.

2.2 No variations to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing, and the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed. These Conditions shall constitute the entire understanding between the parties for the sale of the Goods.

2.4 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. The Buyer must deal with the Goods in accordance with instructions given by the manufacturer of the Goods.

2.5 Any typographical, clerical or other error or omission in any document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 All descriptions and illustrations contained in the Seller's catalogues, price lists and advertisements or otherwise communicated to the Buyer are intended merely to present a general idea of the Goods described therein, and nothing contained in any of them shall form any part of the Contract.

2.7 While every effort will be made to supply Goods in accordance with the quality and colour of samples submitted or quoted for, this cannot be guaranteed and no condition or warranty to this effect shall be implied.

2.8 Where a third party signs any documentation, plans or drawings on behalf of the Buyer, the Buyer hereby confirms that such third party has authority to sign and the Seller can rely on such signature without making further enquiry.

2.9 The Buyer confirms that it is purchasing the Goods wholly or predominantly for the purpose of a business carried on by it or intended to be carried on by it and that it has sufficient expertise and understanding to make an informed decision as to the choice of Goods, the purposes for which such Goods can be used and their suitability for such purposes.

3. **ORDERS AND QUOTATIONS**

3.1 All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.2 The quantity and description of the Goods shall be as set out in the Seller's quotation.

3.3 All quotations of the Seller will be supplied in Writing, by telephone or in person to the Buyer.

3.4 An order shall be submitted by the Buyer either in Writing, by telephone or in person, whether or not pursuant to the Seller's quotation and shall be accepted by the verbal confirmation of the same by the Seller's authorised representative and such process shall form the Contract.

3.5 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.6 Quotations are subject to withdrawal or revision at any time before receipt of an unqualified order from the Buyer.

3.7 The Seller reserves the right to amend its price lists, quotations, invoices and credit notes to correct errors without any liability to the Seller.

3.8 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 on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, (including the cost of all labour), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. **PRICE OF THE GOODS**

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price current at the date of despatch of the Goods to the Buyer by the Seller or the collection of such Goods by the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase/decrease the price of the Goods to reflect any increase/decrease in cost to the Seller.

4.3 The price is exclusive of any applicable value added tax.

4.4 The cost of packaging containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided that they are returned undamaged to the Seller at the expense of the Buyer before the due payment date.

5. **TERMS OF PAYMENT**

5.1 Subject to any Special Conditions applied in any particular case, 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 The Buyer shall pay the price of the Goods within 30 days of the last day of the month in which the Seller issued an invoice to the Buyer for the price of the Goods, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Time of payment shall be of 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 whole price of all goods bought or agreed to be bought by the Buyer shall fall due and payable without demand, and 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);

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);

5.3.4 reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and treat such a failure as a repudiation of the whole Contract by the Buyer and to recover damages for such breach of contract;

5.4 The Seller reserves the right to claim any costs (including legal costs) associated with taking legal action in recovering any outstanding debt (with such debt not necessarily being exclusively related to insolvency of the Buyer) from the Buyer.

5.5 The Seller shall have right of set off.

6. **DELIVERY**

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods from the Seller's premises within 5 days of the Seller notifying the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. The Seller shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed.

6.2 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.

6.3 Delivery of the Goods by the Seller, or a third party on the Seller's behalf, shall be carried out only on roads or hardstanding which are suitable for that purpose in the opinion of the driver of the vehicle. If delivery is made by or on behalf of the Seller it shall be the responsibility of the Buyer to unload the Goods.

6.4 Where the Goods are to be delivered in instalments:

6.4.1 each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated; and

6.4.2 a defect in one instalment will not allow the Buyer to reject all instalments.

6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's 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 to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including, without limitation, insurance) of storage; or

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.7 Should the Seller be prevented from delivering part of the Goods by reason of any cause beyond the Seller's reasonable control (including industrial action, and shortage of materials or labour) the Buyer shall take and pay for such part of the Goods as the Seller shall be able to deliver in accordance with the Contract.

7. **RISK AND PROPERTY**

7.1 The ownership of the Goods shall remain with the Seller until payment in full for the Goods has been received by the Seller in accordance with the terms of this Contract; or at the Seller's option until payment has been made of all other sums owing to the Seller by the Buyer at the date of this Contract on any account whatsoever and howsoever arising.

7.2 Risk in the Goods passes to the Buyer as soon as the Goods leave the Seller's premises.

7.3 The Buyer's right to possession of the Goods shall terminate immediately if:

7.3.1 the Buyer 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 and/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 Buyer or notice of intention to appoint an administrator is given by the Buyer or its Directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), or a resolution is passed or a petition presented to any Court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

7.3.2 the Buyer 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 or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceased to trade; or

7.3.3 the Buyer encumbers or in any way charges any of the Goods.

7.4 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.5 If any payments due hereunder are overdue in whole or in part the Seller may (without prejudice to its other rights) recover or resell the Goods or any part of them and may enter upon the Buyer's premises (or such other premises where the Goods are stored) by its servants or agents for that purpose.

7.6 Until ownership of the Goods has passed to the Buyer, the Buyer shall:  
7.6.1 hold the Goods on a fiduciary basis as the Seller's bailee;  
7.6.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;  
7.6.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and  
7.6.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

7.7 Without prejudice and subject to the rights of the Seller in law and equity, if any of the Goods shall be sold by the Buyer before payment for them has been made that part of the proceeds of sale which represents or is equivalent to the amount owed by the Buyer to the Seller shall be held by the Buyer upon trust for the Seller and shall be paid into a separate bank account designated for that purpose. The Seller shall be entitled to trace the proceeds of any such sale(s) into the said bank account (or wherever such proceeds may in fact be located) and the Buyer hereby authorises the Seller to make enquiries of its bankers (or otherwise appropriate) relating to such proceeds.

7.8 The Buyer shall ensure that the Goods are not incorporated in or mixed with or used as part of other goods ("New Goods") before payment for the Goods has been made to the Seller although if such incorporation or mixing shall take place the property in the Goods which remain identifiable and/or severable from such New Goods shall be and remain with the Seller until payment has been made of the New Goods have been sold as aforesaid and all the Seller's rights hereunder in the Goods shall extend to such part of the New Goods and to the proceeds of sale thereof, which shall be held by the Buyer in accordance with clause 7.7 above.

7.9 The Buyer or any Director(s) thereof shall not apply to the Court under section 9(1) of the Insolvency Act 1986 for the appointment of an administrator without giving 14 days' notice to the Seller. From the date of the said notice the Buyer shall not be entitled to remain in possession of any of the Seller's Goods and the Seller may recover or resell the Goods and enter upon the premises where the Goods are stored in accordance with clause 7.5 above. The appointment of an administrator without the aforesaid notice shall be deemed to be a fundamental breach of Contract.

7.10 The Buyer hereby assigns to the Seller all rights the Buyer has or may have against purchasers of the Goods from the Buyer.

7.11 Any failure by the Seller to require a separate account under clauses 7.7 and/or 7.8 above shall not constitute a waiver or variation of its rights under this clause.

7.12 Each of the foregoing clauses shall so far as the context thereof permits be read and construed independently of the other clauses so that if one or more should be held to be invalid for any reason whatsoever then the remaining clauses shall be valid to the extent that they are not held to be so invalid.

8. **WARRANTIES AND LIABILITY**

8.1 The Seller gives no warranty in relation to the Goods being free from defects in material and workmanship in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller. For details please refer to the manufacturer's guarantee provided with the Goods. The Seller does not give a warranty in respect of services supplied by any third party contractor.

8.2 Subject as expressly provided in these Conditions, and except 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 the statute or common law are excluded to the fullest extent permitted by law.

8.3 Where the Goods are sold to the Buyer as a consumer the legal rights of the Buyer are not affected by these Conditions.

8.4 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 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 a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.5 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 or profit or otherwise), costs, expense 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.

8.6 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 causes beyond the Seller's reasonable control:  
8.6.1 Act of God, explosion, flood, tempest, fire or accident;  
8.6.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;  
8.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;  
8.6.4 import or export regulations or embargoes;  
8.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);  
8.6.6 difficulties in obtaining labour, fuel, parts or machinery;  
8.6.7 power failure or breakdown in machinery.

8.7 Any information, recommendation or technical advice given by the Seller to the Buyer is for guidance and is given in good faith but without warranty. The Buyer is solely responsible for checking its validity and to test the Goods as to their suitability for the intended processes and uses.

9. **CLAIMS**

9.1 If the Seller, or a third party on behalf of the Seller, has delivered the Goods then the Buyer:  
9.1.1 shall inspect the Goods immediately on receipt thereof; and  
9.1.2 any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond to the specification must (whether or not delivery is refused by the Buyer) be notified to the Seller (and the Seller's carriers, if relevant) within five days from the date of delivery, or where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure.

9.2 If the Buyer, or a third party on behalf of the Buyer, has collected the Goods then the Buyer:  
9.2.1 shall inspect the Goods immediately on receipt thereof; and  
9.2.2 any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond to the specification must be notified to the Seller immediately on receipt, or where the defect or failure was not apparent on reasonable inspection, within five days from the date of receipt.

9.3 If the Goods are to be delivered "direct to site" to a third party contractor then it remains the Buyer's responsibility to inspect the Goods as soon as they are delivered to the third party contractor and any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond to the specification must (whether or not delivery is refused by the third party contractor or the Buyer) be notified to the Seller (and the Seller's carriers, if relevant) within seven days of delivery or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure.

9.4 A claim for non-delivery will not be considered unless the Seller is given written notice within seven days of the date when the Goods would in the ordinary course of events have been received. Any claim for non-delivery must also be notified to the carrier by the Buyer in the manner and within the appropriate time limits prescribed by the carrier's terms and conditions.

9.5 In the event of any failure by the Buyer to give the notices as specified by clauses 9.1 and 9.4 the Goods shall be conclusively presumed to be in all respects in accordance with the Contract and the Buyer shall be deemed to have accepted the Goods accordingly and all and any such claims are deemed to have been waived and the Buyer shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract. In the event that the Buyer notifies the Seller of a claim in accordance with clauses 9.1 to 9.4 and establishes to the Seller's reasonable satisfaction that the Goods are not in accordance with the Contract, the Buyer's sole remedy in respect of such non-accordance shall be limited as the Seller may elect to the return of the Goods.

9.6 If the parties dispute whether there is a defect in the quality or condition of the Goods, or the Goods' failure to correspond to the specification, either party shall be entitled to refer the matter to an independent expert for determination in accordance with clause 10.

9.7 The Seller shall not be liable for defective Goods in any of the following events:  
9.7.1 the Buyer makes any further use of such Goods after giving notice in accordance with clauses 9.1 and 9.2;  
9.7.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;  
9.7.3 the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer or the Buyer's nominated representative;  
9.7.4 the Buyer alters or repairs such Goods without the written consent of the Seller; or  
9.7.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

10. **EXPERT**

10.1 In the event of a dispute arising under clause 9.6, the parties shall agree upon the appointment of an independent expert and shall agree with the expert the terms of its appointment.

10.2 In the event that the parties fail to agree on the appointment of an expert, or the terms of its appointment, within seven days of either party serving details of a suggested expert on the other, either party shall be entitled to request the Builders Merchants Federation to appoint an expert of sufficient repute with experience in the matter disputed and for the Builders Merchants Federation to agree with the expert the terms of its appointment.

10.3 The parties are entitled to make submissions to the expert and will provide (or procure that others provide) the expert with all such assistance and documentation as the expert may reasonably require for the purpose of reaching a decision. Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.

10.4 The parties agree that the expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.

10.5 The expert shall act as an expert and not as an arbitrator. The expert's decision shall be final and binding on the parties in the absence of fraud or manifest error.

10.6 Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs it properly incurs in arriving at its determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties in equal shares or in such proportions as the expert shall direct.

11. **INSOLVENCY OF THE BUYER**

11.1 In the event that:  
11.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or  
11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or  
11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or  
11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly;  
then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. **GENERAL**

12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

12.4 The Contract shall be governed by the Laws of England, and the parties submit to the exclusive jurisdiction of the High Court in England.

13. **BRIBERY ACT COMPLIANCE**

13.1 The Buyer shall ensure that in any dealing with the Seller, neither the Buyer nor its employees or agents, shall commit any offence under the Bribery Act 2010 ("the Act") including not engaging in any activity, practice or conduct which would constitute an offence under sections 1,2 or 6 of the Act. The Buyer shall inform the Seller immediately it becomes aware of any actions between the parties that could constitute an offence under the Act.