

## Terms and Conditions

### 1. DEFINITIONS

1.1 In these "Terms"

"We" and "Us" means "FGF Ltd Ltd" and "Us" shall be interpreted accordingly.

"You" means the person their employees or agents seeking to purchase Goods from Us and "Your" shall be interpreted accordingly.

"Goods" means the Goods and/or services to be supplied by Us.

"Company Signatory" means a Director or manager employed by Us.

"Terms" means these terms and any special terms agreed in writing between a Company Signatory and You.

"Consumer" means any natural person acting for purposes outside their trade, business or profession or as defined by the Unfair Contract Terms Act 1977.

### 2. THE CONTRACT

2.1 All orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Company Signatory. Any contrary or additional terms unless so agreed are excluded.

2.2 Quotations and tenders do not constitute offers and We may withdraw or amend them at any time before they are accepted which must be in writing.

2.3 We shall not be liable for any misrepresentation including any statement in any quotation or tender made by Us Our employees or agents to You as to the condition of the Goods their fitness for any purpose or as to specification, quantity or measurements unless the representation is made or confirmed in writing by a Company Signatory and/or is fraudulent.

2.4 Quotations and tenders have been prepared based upon information supplied by You and You are responsible for the accuracy and sufficiency of that information. You must check and confirm all measurements, sizes and quantities. We shall not be liable under Clause 2.4 or otherwise if material information is withheld concealed or misrepresented by You.

2.5 We may make changes to the specification of the Goods necessary to conform to any applicable statutory or EC requirements or where the Goods are supplied to Our specifications which do not materially affect their quality or performance.

2.6 Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation. Unused Goods will be accepted for return at Our discretion and on terms agreed with Us.

### 3. PRICE

3.1 The ex-works price exclusive of VAT of the Goods shall be as at the date of dispatch and We may alter prices quoted or stated to take account of any increase in costs sustained by Us after acceptance of Your order. A separate charge may be made for each delivery and for packing. Any discounts deductions or rebates agreed are only available if the price is paid by the due date.

3.2 Prices stated or quoted are applicable to the quantity, specification, delivery dates and information provided by You. If the order placed varies or delay is caused by Your instructions or lack of instructions We shall be entitled to adjust the price.

### 4. PAYMENT

4.1 If We have agreed in writing to give You credit, all accounts are due for payment without deduction or retention on the last day of the month following the month in which the Goods are delivered. Time for payment shall be of the essence.

4.2 Credit is granted and may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any order or contract if the arrangements for payment or Your credit rating is not satisfactory to Us.

4.3 You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason.

### 5. DELIVERY

5.1 Delivery shall occur when the Goods arrive at the delivery address or 2 working days after delivery or collection is offered to You.

5.2 If You fail to take or make arrangements to accept delivery or collect the Goods or we are unable to deliver because of inadequate access or instructions, delivery shall be deemed and We may do any one or more of the following (without prejudice to any other right or remedy We may have):-

- (a) make additional charges for failed delivery
- (b) store the Goods at Your risk and cost
- (c) invoice You for the Goods
- (d) suspend or terminate this contract without liability on Our part
- (e) recover from You all costs and losses incurred by Us

5.3 Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence.

5.4 Standard lead times vary according to product. Time estimates will be revised on receipt of Your order and times will not run until we are in receipt of all information required from You including Your written approvals as requested by Us.

5.5 We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by Us in delivery of the Goods or failure to deliver the Goods in a reasonable time where such delay or failure is beyond Our reasonable control.

5.6 We reserve the right to make delivery by installments and tender a separate invoice in respect of each installment. Any claim which You may have in respect of one installment shall not affect Your liability in respect of any other installment.

5.7 You will indemnify Us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to Our negligence.

5.8 The risk in the Goods shall pass to You on delivery as set out in Clauses 5.1 & 5.2 above even if We have agreed to install the Goods. It is Your responsibility to ensure that the Goods are kept safe on site before, during and after installation and are fully insured against fire theft damage and other normal insurance risks for their full replacement costs.

### 5A DATA PROTECTION

We may transfer information about you to our bankers/financiers for the purposes of providing services and for the following purposes:-

- Obtaining credit insurance
- Making credit reference agency searches
- Credit control
- Assessment and analysis (including credit scoring, market, product and statistical analysis)
- Securitisation
- Protecting our interests

We will provide you with details of our bankers/financiers and that of any credit reference agencies used on request.

### 6. INSPECTION

6.1 You shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.

6.2 Unless You advise Us by telephone immediately and written notice is received by Us within 5 working days of unloading of any claim for loss damage short delivery or failure to confirm to the contract apparent on inspection the Goods will be deemed to have been delivered in accordance with the delivery documents and You shall not be entitled and waive any right to reject the Goods.

6.3 Our liability for loss damage short delivery or failure of the Goods to conform to the contract which is apparent on inspection is limited to supplying the Goods as ordered or crediting part of the purchase price and We shall not be liable for any damages whatsoever. You remain liable to pay the full invoice price of Goods delivered in accordance with the contract. Any other claim for damages is subject to Clause 9.

## 7. TITLE

7.1 The title to the Goods shall remain with Us until You pay the price of the Goods and any other sums outstanding between You and Us whether in respect of this contract or otherwise.

7.2 Until title passes:-

7.2.1 You shall hold the Goods as Our fiduciary agent

7.2.2 The Goods shall be stored separately from any other goods and You shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods

7.2.3 We agree that You may use or agree to sell the Goods as principal and not as Our agents in the ordinary course of Your business subject to the following express conditions:-

\* that You notify Your customer that We remain the legal owner of the Goods until We receive payment in accordance with Clause 7.1 and We reserve the right to label the Goods accordingly

\* that You will at Our request and at Your expense assign to Us all rights You may have against Your Customer; and

\* that Your right to use or sell the Goods may be withdrawn by Us on notice at any time and will automatically cease in the event of Your becoming Insolvent.

7.2.4 If Goods are to become affixed to any land or building You must ensure that they are capable of removal without material injury to the land or building and You shall take all necessary steps to prevent title to the Goods from passing to the owner or landlord of such land or building.

7.3 We shall be entitled at any time to recover any or all of the Goods to which We have title and for that purpose We Our employees or agents may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

## 8. INSTALLATION

8.1 Where We have agreed to install the Goods, unless otherwise stated We assume the installation is to be carried out at ground floor level or adequate elevators, lifts or hoists are provided by You to move the Goods efficiently and safely to the place of installation and you must ensure that:

- (a) Adequate access of the relevant size for the Goods is provided
- (b) The site is ready at the agreed time for installation to commence
- (c) The programme of works allows for installation to be completed within normal working hours
- (d) Access to the site is available at the times necessary to complete installation
- (e) Our installation will not be delayed nor interrupted
- (f) Adequate lighting heating and power supplies are provided

8.2 If (in Our sole discretion) any of the above Conditions are not met We shall be entitled without prejudice to any other right or remedy We may have) to:

(a) Suspend Our obligation to install the Goods without liability on Our part and if the Conditions are not met within 5 working days cancel Our obligation to install and recover from You all losses damages costs and expenses incurred including any claims by any Third Party; and/or

(b) Charge You for additional costs incurred in completing the installation including but not limited to travel and overtime rates for labour.

## 9. LIABILITIES

9.1 In this Clause "the Defect" shall mean the condition and/or any attribute of the Goods and/or any condition or circumstance arising from Our installation of the Goods or any other service provided by Us and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.

9.2 Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or Our liability for fraudulent misrepresentation.

9.3 If You deal as a Consumer any provision of these Terms which is of no effect shall not apply. The statutory rights of a Consumer are not affected by these Terms.

9.4 Subject to Clauses 9.2 & 9.3 of these Terms We shall not be liable by reason of any misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 9.5 below.

9.5 Where but for the effect of Clause 9.4 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out in Clause 9.6 below shall at Our sole discretion either repair the Goods at Our own expense or supply replacement Goods or re-install the Goods free of charge or refund all (or where appropriate part) of the price paid.

9.6 We will not be liable under Clause 9.5:

- (a) If the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading unless You give Us written notice within 5 working days of the time of unloading.
- (b) Unless the Defect is discovered within 12 months from the date of delivery and we are given written notice of the Defect within 10 working days of it being discovered.
- (c) Unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. We acknowledge that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub clause shall not apply to any works affecting the Goods, which it may be reasonably necessary to carry out in the interest of safety and/or as emergency measures.
- (d) If the Defect arises from fair wear and tear
- (e) If the Defect arises from Your negligence misuse alteration or repair of the Goods storage of the Goods other than at room temperature or in any other unsuitable conditions or abnormal working conditions.

9.7 If the Goods or a component in the Goods ("the Component") are not manufactured by Us or have been processed by a third party whether at Our or Your request Our liability in respect of any defect in workmanship or materials of the Goods or the Component will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods or that Component.

9.8 If the Goods are supplied manufactured or processed to the drawing design measurement or specification provided by You then:-

9.8.1 Subject to Clauses 9.2 & 9.3 of these Terms We shall not be under any liability for damages whatsoever or under Clause 9.5 of these Terms as the case may be except in the event of:

- (a) Fraudulent misrepresentation by Us
- (b) Misrepresentation where the representation was made or confirmed in writing by a Company Signatory
- (c) Non-compliance with such drawing design measurement or specification; or
- (d) Breach of a written warranty signed by a Company Signatory that the Goods are fit for that purpose

9.8.2 You will unconditionally fully and effectively indemnify Us against all losses damages costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim:-

- (a) For infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person; and/or
- (b) Arising from any such manufacturing or processing including but not limited to any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such losses damage costs and expenses are due to Our negligence.
- 9.9 Subject to Clauses 9.2 & 9.3 We shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof for:-
- (a) any loss of profit, business, contracts, revenues or anticipated savings; and/or
- (b) any special, indirect or consequential damage of any nature whatsoever.
- 9.10 Except where You deal as a Consumer You will unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence.
- 9.11 Without prejudice to any other provisions of these Terms in any event Our total liability for any one claim or for the total of all claims arising from any one act of default on Our part (whether arising from Our negligence or otherwise) shall not exceed (the purchase price of the Goods the subject matter of any claim) (or the limit of liability laid down by Our insurers in respect of such claim).

## 10. DEFAULT & TERMINATION

- 10.1 "Insolvent" means You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.
- 10.2 "Associated Company" means Your subsidiary or holding company as defined in Section 736 and Section 736A of the Companies Act 1985 or a subsidiary of such holding company, or any company over which Your directors or shareholders have control as defined in Section 840 of the Income and Corporation Taxes Act 1988.
- 10.3 If You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or You or Your Associated Company becomes Insolvent or there is a material change in Your or Your Associated Company's constitution or You commit a material breach of this contract and fail to remedy that breach after being requested to do so all sums outstanding between You and Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-
- (a) Require payment in cleared funds in advance of further deliveries of Goods.
- (b) Charge interest on the monies outstanding at the rate of 8 per cent above the Bank of England official dealing rate in force from time to time from the due date until date of payment after as well as before
- (c) Suspend or cancel any further deliveries of Goods to You under any contract without liability on Our part.
- (d) Suspend or cancel any obligation to install Goods whether under this or any other contract
- (e) Without prejudice to the generality of Clause 7 of these Terms exercise any of Our rights pursuant to that Clause; and/or
- (f) Terminate this or any other contract with You or any Associated Company without liability on Our part.
- 10.4 Except where You deal as a Consumer You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this contract including but not limited to recovery of any sums due.
- 10.5 In consideration of us supplying goods or services to a limited company the directors unconditionally guarantee, should the company be declared insolvent, any liabilities due to us.

## 11. EXPORT TERMS

- 11.1 Where the Goods are supplied for export from the United Kingdom the provisions of this Clause 11 shall apply notwithstanding any provision of these Terms.
- 11.2 In any case where Goods are sold CIF or FOB or on the basis of any other international trade term the meaning of such terms contained in Incoterms (1990) shall apply but if there is any conflict between the provisions of Incoterms and these Terms the latter shall prevail.
- 11.3 In the case of any sale of goods FOB We shall be under no obligation to give You notice specified in section 32(3) of the Sale of Goods Act 1979.
- 11.4 You shall be responsible for arranging for inspection of the Goods at Our premises before shipment. We shall have no liability for any claim in respect of any defect in the Goods which would have been apparent on inspection and which is made after shipment or in respect of any damage under transit.
- 11.5.1 Payment of all amounts due to Us shall be made by irrevocable letter of credit opened by You in favour of Us and confirmed by a United Kingdom clearing bank acceptable to Us or any other method of payment agreed by Us in writing by a Company Signatory.
- 11.5.2 Your order will not be accepted by Us until We have evidence of the letter of credit or bill of exchange as the case may be. All costs and charges incurred by us in negotiating and accepting payment methods shall be added to the price of the Goods.
- 11.5.3 This payment clause shall also apply if You are resident outside the United Kingdom.

## 12. GENERAL

- 12.1 This contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.
- 12.2 Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended extended or re-enacted.
- 12.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 12.4 We shall not be liable for any loss or damage arising as a direct or indirect result of Our delay or failure to perform Our obligations under this contract by reason of any force majeure circumstances which shall include but not be limited to industrial action, import or export regulations or embargoes, difficulties in obtaining materials, parts components labour or fuel, power failure or breakdown in machinery or vehicles or other circumstance outside Our control.
- 12.5 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 12.6 If any clause or sub-clause of the Terms is held by a competent authority to be invalid or unenforceable, the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 12.7 If the Housing Grants Construction & Regeneration Act 1996 Part II applies to this contract the Scheme under that Act shall apply and take precedence in the event of conflict between the Scheme and these Terms.
- 12.8 This contract is personal to You and it may not be assigned.
- 12.9 Termination of this contract shall not affect rights and obligations that have already accrued at the time of termination.