

In these Terms and Conditions 'The Company' means David Smith St Ives Limited, 'The Customer' means the person, firm or company purchasing the goods and/or accepting services from the Company under the Contract between the Company and the Customer; "Contract" means the contract made between the Company and the Customer and 'goods' means the goods or services the subject matter of the contract.

- 1. Acceptance of Order**
All orders are accepted by the Company solely on these Terms and Conditions, which override any Terms and Conditions stipulated, incorporated or referred to by the Customer whether in its order or any negotiations. No variation or addition to these Terms and Conditions shall be incorporated into the Contract unless such variations or additions and the Company's agreement thereto are both expressly agreed in writing.
- 2. Quotations**
 - a) Quotations are for the supply of goods on these Terms and Conditions only.
 - b) Any quotation given by the Company is not on offer and the Company reserves the right to withdraw or amend, any quotation at any time prior to the Company's acceptance of the Customer's order.
 - c) Where fine or specific tolerances are required in the goods supplied beyond those generally accepted in the building trade, no liability will attach to the Company unless such fine tolerances are notified in writing to the Company at the time of the order and the Company has acknowledged in writing that it is prepared to accept such fine tolerances.
 - d) The Company shall be entitled without notice to the Customer reasonably to alter any specification, description, design, drawing, illustration and/or other particulars relating to goods and to supply the goods as so altered in performance of the Contract and shall also be entitled to substitute similar goods of equivalent type and to supply such goods in performance of the Contract.
- 3. Cancellation/Returns**
 - a) The Company may in its sole discretion accept the cancellation of an order. In such circumstances the Customer will be responsible for all costs incurred by the Company subsequent to receiving the order or instruction to proceed such costs to include (without limitation) design costs, purchase of specialised products and abortive manufacturing and transport costs, plus reasonable profit margin. Payment will become due immediately on invoicing by the Company.
 - b) The Company may in its sole discretion accept or refuse the return of any goods which have been incorrectly ordered. In the event that the Company decides to accept the return of such goods acceptance shall be upon such terms as the Company may determine and in particular the Company reserves the rights to charge for the carriage and handling of such goods, being 25% of the invoiced value of the said goods.
- 4. Prices**
 - a) The price of the goods shall be the Company's quoted price which shall be binding upon the Company subject to conditions 4(b) and (c) provided that the Customer has accepted the Company's quotation within the specified time. For the avoidance of doubt where no price has been quoted (or a quoted price is no longer valid) the price of the goods shall be the price current at the time of delivery.
 - b) The Company may by giving notice to the Customer at any time up to 30 days before delivery increase the price of goods to reflect any increase in the cost to the Company which is due to factors occurring after the making of the Contract which are beyond the reasonable control of the Company (including without limitation foreign exchange fluctuations, taxes and duties and the cost of labour, materials and manufacturing costs).
 - c) All prices quoted are exclusive of Value Added Tax unless otherwise stated.
- 5. Accounts/Payments**
 - a) Credit accounts may be opened at the discretion of the Company subject to satisfactory credit references being obtained. Payment of goods supplied on credit accounts, unless otherwise stated in writing by the Company, shall become due and payable not later than 30 days after date of despatch unless otherwise stated.
 - b) For all other transactions, the Company shall be entitled to invoice the Customer for the price of the goods at the sooner of the acceptance of the order or delivery of the goods and the Customer shall pay the price of the goods at the time of the rendering of the Company's invoice, unless expressly agreed otherwise on the Company's order acknowledgment or acceptance of order.
 - c) Without prejudice to the Company's rights to enforce payment, if the Customer fails to make payment as herein provide for in Conditions 5(a) and 5(b) the Company shall be entitled to charge interest on any balance outstanding from the date the same become due for payment at the annual rate of 5% above the base lending rate from time to time of Natwest Bank PLC until payment is made, whether before or after any judgment.
 - d) Interest shall become due and payable pursuant to Condition 5(c) notwithstanding the fact that a portion of the account or invoice is the subject of any dispute or query.
 - e) If at any time the Customer being a credit account customer alters its constitution (being a company) or (being a sole trader or partnership) become incorporated or amalgamated with others, the Customer shall give prior written notice to the Company of the intended change should the Customer wish to continue credit account facilities following the intended change. The Company may commence trading with the changed entity at its sole discretion and will not be deemed to do so until a written acknowledgement and acceptance is issued by the Company's Credit Controller, a Director or the Company Secretary.
 - f) If the Customer shall pay any account or any part thereof by cheque and should such a cheque be subsequently dishonoured the Company reserves the right to debit the Customer's account with any charge levied by the Company's bankers relating to the handling of such dishonoured cheque and the charge shall be immediately due and payable.
 - g) If in the case of any sale involving more than one delivery the Company becomes entitled to determine the Contract under Condition 12(a) the Company may, without prejudice to its other rights, forthwith suspend any further deliveries.
 - h) If the Company becomes entitled to determine the Contract under Condition 12(a) the Company may demand immediate payment of all sums then payable including such sums not yet due.
 - i) The Company will accept payment by credit card.
- 6. Delivery/Despatch**
 - a) Delivery of goods shall be made by the Company or its agents delivering the goods to the appointed site or by the Customer collecting the goods at the Company's premises at any time after the Company has notified the Customer that the goods are ready for collection.
 - b) Risk of damage to or loss to the goods shall pass to the Customer;
 - i) In the case of goods to be collected from the Company's premises, at the time when the Company notified the Customer that the goods are available for collection; or
 - ii) In the case of goods to be delivered, on delivery or if the Customer wrongfully fails to take delivery of the goods, at the time when the Company has tendered delivery of the goods.
 - c) Where the goods are delivered by or on behalf of the Company otherwise than at the Company's premises, the Company accepts no liability whatsoever for loss of or damage to goods in transit unless notified in writing of the details within seven days following despatch.
 - d) The Customer will give to the Company, its servants and workmen, unrestricted access to any relevant working area at all reasonable times and shall provide the necessary labour and equipment so that the Company may complete the delivery in accordance with the Contract. Return visits as a result of the Customer's failure to take delivery of the goods for whatever reason will be on a chargeable basis.
 - e) Any stated time or date for delivery is an estimate only and the Company does not bind itself to make delivery at such time or date. Accordingly the Company shall not be liable for failure to deliver by such time or date, nor for any loss or damage arising directly or indirectly from such failure; nor shall the Customer be entitled to refuse to accept the goods because of late delivery; nor where goods are to be delivered in instalments, shall the Company's failure to deliver any instalments by any time or date entitle the Customer to treat the contract as a whole as repudiated.
 - f) If the Customer fails to take delivery of the goods or fails to give the Company adequate instruction for delivery, without prejudice to any other right or remedy available to the Company, the Company may:
 - i) Store the goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - ii) Sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price stated in the Contract or charge the Customer for any shortfall below the price stated in the Contract.

- 7. Performance**
- a) It shall be the responsibility of the Customer to ensure that the goods are sufficiently suitable and fit for the purpose or purposes intended, and that its premises are safe and suitable for the delivery, installation, use and operation of the goods and comply both before and after such delivery, installation and during such operation with all relevant legislation (including without limitation safety legislation).
 - b) Where the Customer provides any item of equipment which relates to the installation and / or operation of the goods or which is ancillary to and /or for use in connection with the goods, it shall be the Customer's responsibility to ensure that the use of any such item does not adversely affect the suitability or fitness for purpose of the goods.
 - c) It shall be the responsibility of the Customer to ensure that all requirements applicable to the goods, whether statutory, regulatory, municipal and /or otherwise howsoever are duly complied with.
- 8. Liability and Risk**
- a) Nothing in these terms shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from its negligence or for fraudulent misrepresentation.
 - b) The Company accepts liability for any breach on its part of any undertaking as to title implied by Section 12 of the Sale of Goods Act 1979 (as amended) or by Section 8 of the Supply of Goods (Implied Terms) Act 1973 (as amended).
 - c) The Company does not accept liability for shortages in quantities delivered unless the Customer notifies the Company of any claim for short delivery of the goods within two days of the delivery to the Customers. In such circumstances the Company's liability shall be restricted to making good the shortage. Any delivery book or note marked "NOT EXAMINED" will not prevent the operation of these clauses nor constitute express or implied notice in writing of any potential or actual shortage.
 - d) Subject to Conditions 8(a) and (b) the Company agrees to repair or replace free of charge any goods which in the reasonable opinion of the Company are defective due to manufacturing fault, but only if such default is reported to the Company in writing within seven days of delivery and the Company will not be responsible either for the cost of removing or the cost of re-installing any repaired or replacement goods, unless the same have been previously agreed in writing with a director of the Company. The Company will not accept responsibility for the cost of removing or cost of re-installing any repaired or replaced goods, if either such defects should have been revealed prior to using or fixed by examination by the Customer or his agents, or such caused by improper storage, use or handling by the Customer or his agents or any person or persons for whom the Customer or his agents may be responsible.
 - e) Subject to Conditions 8(a) and (b);
 - i) The company's total aggregate liability under or in connection with the Contract (howsoever such liability arises) shall be limited to the value of the goods supplied under the Contract; and
 - ii) The Company shall not be liable for any indirect or consequential loss or damage or for loss of profit or business or depletion of goodwill which arises out of or in connection with the Contract.
 - f) These Terms and Conditions set out the Company's entire liability in respect of the goods and rights granted under them are in lieu and to the exclusion of all other warranties, conditions and other terms express or implied by statute or common law except for any which cannot legally be excluded.
- 9. Misrepresentation**
- The Company shall not be liable in respect of any misrepresentation made by the Company its servants or agents to the Customer its servants or agents as to the condition of the goods their fitness for any purpose or as to quantity or measurements unless the representation is made or confirmed in writing by the Company and / or is fraudulent.
- 10. Ownership**
- a) Notwithstanding that risk in the goods may have passed in accordance with the Contract, ownership of the goods shall not pass to the Customer until the earliest of the following events occurs;
 - i) The Company receives payment for all amounts payable to it under the Contract.
 - ii) The Customer sells the goods in the ordinary course of business in which case ownership of the goods will pass to the Customer immediately before title in the goods is needed to pass to the Customer's buyer.
 - iii) The Company transfers ownership in respect of specified goods by separate written agreement with the Customer.
 - b) Before ownership has passed the Customer holds the goods as mere bailee and the Company reserves the right to repossess any of the goods in respect of which payment is outstanding and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in Condition 12 or otherwise and is without prejudice to any accrued rights to of the Company thereunder.
 - c) The Customer's licence to sell in Condition 10(ii) is immediately revoked where the Customer becomes insolvent (as defined in Condition 12).
- 11. Force Majeure**
- The Company shall be under no liability for any loss (including consequential loss or loss of profit) damage or delay or expenses of any kind whatsoever caused wholly or in part by Act of God, outbreak of war, civil commotion, government policies or restrictions or control including restrictions on export or import or other licences, trade or industrial disputes of whatever nature, whether or not such dispute involves the Company, its servants or agents, or by any other contingency whatsoever which is beyond the control of the Company.
- 12. Default**
- a) If the Customer becomes insolvent or commits any breach of the contract the Company may stop any goods in transit and / or suspend further deliveries and by notice in writing to the Customer may forthwith determine the Contract without prejudice to the provisions of Condition 10(b) and to any existing claim.
 - b) For the purposes of Condition 12 (a) "insolvent" shall mean the Customer becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, the levying of the threat of execution or distress on any property of the Customer, the appointment of a receiver or administrative receiver over all or any part of the Customer's property, a proposal for a voluntary arrangement or compromise between the Customer and its creditors whether pursuant to the Insolvency Act 1986 or otherwise, the passing of a resolution of voluntary winding-up or summoning a meeting to pass such a resolution other than for the purposes of a bona fide amalgamation or reconstruction, the presentation of a petition for the winding-up of the Customer or an administration order in relation to the Customer, the Customer ceasing or threatening to cease to carry on its business.
- 13. Notices**
- Any notice under or in connection with the Contract shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address and sent by first class pre-paid post. Such notice shall be deemed to be delivered 48 hours after posting. Delivery by fax or email will not be accepted.
- 14. Disputes and Set-Off**
- Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Customer of all its obligations under these Conditions and the Customer shall not be entitled to withhold or delay payment or exercise any rights of set-off whatsoever and howsoever arising which might otherwise be available to it.
- 15. Waiver**
- No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Customer of any of its obligations under this Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.
- 16. Health & Safety**
- Certain products supplied by the Company could, if incorrectly used, give rise to risks to health and safety. Information in respect of such products is available from the Company. The Customer undertakes that it shall ensure compliance so far as is reasonably practicable by its employees, agents, licensees and customers with any instructions given by the Company for the purpose of ensuring that the goods will be safe and without risk to health when properly used and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of persons handling, using or disposing of them.

17. Severability

Each and every obligation contained in these Terms and Conditions shall be treated as a separate obligation and if any provision of these Terms and Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining Terms and Conditions and the remainder of such provision shall continue in full force and effect.

18. Headings

The clause heading in these Terms and Conditions are for convenience only and shall not in any way affect the interpretation of the Contract.

19. Governing Law

- a) Subject to Clause 19 (b) the Contract shall be governed by and construed in accordance with English law and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the English Courts.
- b) If the Customer is domiciled in Scotland (according to the Civil Jurisdiction and Judgements Act 1982) or goods are delivered to the Customer in Scotland, the Company may elect that the Contract shall be governed by and construed in accordance with Scottish Law and/or all disputes arising in connection with the contract shall be submitted to the jurisdiction of the Scottish Courts.

20. Credit Search

The Company may make a search with a Credit Reference Agency, which will keep a record of that search and may share that information with other businesses. In some instance the Company may also make a search on the personal credit file of principal directors partners or proprietor of the Customer. The Customer acknowledges that the Company may monitor and record information relating to the trade performance of the Customer and such records will be available to Credit Reference Agencies who will share that information with other businesses when assessing applications for credit and fraud prevention.

21. Assignment/Sub Contract

- a) The Customer shall not be entitled to assign the Contract without the prior written consent of the Company.
- b) The Company may assign the Contract or any part of it to any person, firm or company. The Company also reserves the right to sub-contract any order or part of any order.

22. No Rights to Third Parties

The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

23. Guarantee of Credit Account

- a) The unconditional and irrevocable guarantee for payment of all the financial obligations of the Customer to the Company granted by the director(s) partners or proprietor of the Customer in consideration of the Company opening and making available to the Customer a credit account ("the Guarantee") shall be a continuing security and shall not be discharged by any intermediate settlement of the credit account.
- b) The Guarantee shall ensure for the benefit of the Company, its successors an assigns and can be assigned in whole or in part by the Company without notice to the Customer to its parent company, its ultimate parent company and any subsidiary of such ultimate parent company of the Company.
- c) Where two or more directors or partners of the Customer have granted the Guarantee the obligations shall take effect as joint and several obligations and the Guarantee shall not be revoked or impaired as to any of the guarantors by the death, incapacity or insolvency of the other.
- d) The Company may at its sole discretion release or discharge any of the guarantors from their obligations under the Guarantee or accept any composition from or make any other arrangements with any of the guarantors without releasing or discharging the other(s) or without prejudicing or affecting the Company's rights and remedies against the other.



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