

FRAMECLAD LIMITED - TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:-

“Buyer”	Means The Purchaser
“Contract”	means the contract for the purchase and sale of the Goods and Services subject to these Conditions;
“Conditions”	means the terms and conditions set out below;
“Goods”	means the goods (including any instalments or parts) which the Seller is to supply;
“Seller”	means Frameclad Limited and
“Services”	the services (including any repair work or instalments) which the Seller is to perform.

1.2 In these Conditions:-

- 1.2.1 any gender includes any other gender;
- 1.2.2 any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force;
- 1.2.3 references to “the Goods”, “the Contract”, “the Services” or any payment includes any part of any of them.

2. BASIS OF THE SALE

- 2.1 The Seller shall sell and the Buyer shall buy the Goods and the Services subject to these Conditions, which supersede any other terms and which govern the Contract to the exclusion of any terms and conditions which the Buyer purports to apply or which are implied by trade, custom or course of dealing.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s order or other document will form part of the Contract simply as a result of such document being delivered to the Seller or referred to in the Contract.
- 2.3 Any variation to these Conditions is of no effect unless agreed in writing by an authorised representative of the Seller.
- 2.4 These Conditions constitute the entire agreement between Buyer and Seller for the supply of the Goods and the Services.
- 2.5 The Seller’s employees or agents are not authorised to make any representation concerning the Goods or Services 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 unconfirmed representation (unless such representation is made fraudulently).
- 2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer 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.
- 2.7 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.

3. **QUOTATIONS, ORDERS AND SPECIFICATIONS**

- 3.1 Quotations are subject to withdrawal or revision once the fixed price period has elapsed.
- 3.2 Each order for Goods and/or Services by the Buyer is an offer by the Buyer to purchase the Goods and/or Services subject to these Conditions.
- 3.3 The Buyer must ensure that the terms of any order (including any specification) are complete and accurate and that it gives to the Seller any necessary information relating to the Goods and Services within a sufficient time to enable the Seller duly to perform the Contract.
- 3.4 Where the Goods are manufactured or where standard goods of the Seller are altered in either case in accordance with information, drawings or instructions supplied by the Buyer:-
- 3.4.1 no guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods; unless authorised by the seller prior to delivery.
- 3.4.2 the Buyer shall indemnify the Seller against all liability incurred by the Seller as a result of:-
- (a) the Goods infringing any intellectual property right or any statutory provision; unless authorised by the seller prior to delivery.
- (b) any impracticability, inefficiency, lack of safety or defect in the Goods where any of these is due wholly or partly to faults or omissions in any such information, drawings or instructions;
- 3.4.3 all work (including design drawings) and any idea, invention or improvement made by or on behalf of the Seller pursuant to the Buyer's commission and all intellectual property rights therein (including any design right in a design created by the Seller) belong to the Seller; and
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods or Services which are required for the Goods or Services to conform with any applicable safety or other statutory or EU requirements or which do not materially affect their quality or performance.

4. **DESCRIPTION**

All descriptions, samples and illustrations issued by the Seller are intended merely to present a general idea of the Goods and Services described and do not form part of the Contract.

5. **CANCELLATION AND DELAY**

- 5.1 No order may be cancelled by the Buyer except with the Seller's written agreement and on terms that the Buyer shall indemnify the Seller against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 5.2 If the Buyer extends or delays the Contract or fails to take delivery of any Goods at the agreed time or (if no time is agreed) within a reasonable time then the Buyer shall indemnify the Seller against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges or expense incurred by the Seller as a result of such extension, delay or failure.
- 5.3 The Seller reserves the right to defer the date of delivery or performance, to cancel the Contract or reduce the volume of Goods ordered without liability to the Buyer if it is prevented from or delayed in carrying on its business by any cause beyond the Seller's reasonable control (which includes Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw

materials, labour, fuel, parts or machinery, power failure or breakdown in machinery). In such circumstances, the Buyer may also give written notice to cancel the Contract if the cause in question continues for a continuous period in excess of 180 days but in any event shall remain liable to pay for Goods or Services delivered or supplied prior to such cancellation by the Seller or the Buyer.

6. **PRICE**

- 6.1 The price of the Goods and Services is the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of quotation
- 6.2 Any price quoted by the Seller for the Goods is exclusive of the cost of delivery to the Buyer (including transport, packaging, insurance and any taxes, duties or surcharges).
- 6.3 The price is exclusive of any applicable VAT.

7. **PAYMENT**

- 7.1 Payment of the price for the Goods and Services is due 30 days end of the month following invoice date.
- 7.2 Time of payment is of the essence.
- 7.3 For the purposes of these Conditions, payment is received when the Seller receives it in cleared funds.
- 7.4 Payment by the Buyer shall be made without any deduction or set off unless otherwise agreed.
- 7.5 The Seller reserves the right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.
- 7.6 Despite any provision allowing credit, payment is due and payable to the Seller within the invoice period upon cancellation or termination of the Contract.

8. **DELIVERY**

- 8.1 Delivery of the Goods shall be within the time agreed and if no time is agreed, within a reasonable time by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified 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 at the Buyer's cost. The Seller may make delivery by instalments as agreed with the buyer. Any deviation from the agreed delivery schedule must be notified by the seller to the buyer.
- 8.2 No claim for damage or shortages will be considered unless the Seller is given written notice within 14 days after delivery. If no such notice is received by the Seller, the Buyer is deemed to have accepted the Goods.
- 8.3 No claim for non-delivery will be considered unless the Seller is given written notice within 14 days of the date when the Goods would in the ordinary course of events have been received.
- 8.4 Any claim for damage, shortages or non-delivery must also be notified to the Seller by the Buyer in the manner and within the appropriate time limits prescribed by the seller's terms and conditions.
- 8.5 Where the Goods are to be delivered or Services are to be performed in instalments, each delivery or performance shall be a separate contract and failure by the Seller to deliver or perform 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.

- 8.6 If the Buyer fails to take delivery of the Goods or the Seller is unable to deliver the Goods on time because the Buyer has not provided adequate instructions, documents, licences or authorisations, then the Goods are deemed delivered and the Seller may:-
- 8.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 8.6.2 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.

9. RISK AND PROPERTY

- 9.1 The Goods remain the property of the Seller until their full price has been received by the Seller in cash or cleared funds.
- 9.2 In addition, the Goods remain the property of the Seller until all other sums which are or which become due from the Buyer on any account with the Seller have been received by the Seller in cash or cleared funds.
- 9.3 Irrespective of whether payments received from the Buyer are stated to refer to a particular invoice, the Seller may appropriate such payments to any outstanding invoice.
- 9.4 The Goods are at the risk of the Buyer from the time of delivery.
- 9.5 During the period following delivery of the Goods and prior to ownership having passed to the Buyer, the Buyer may use or sell the Goods to a bona fide purchaser in the ordinary course of the Buyer's business, subject always to compliance with condition **Error! Reference source not found.** whilst the Goods remain under the control of the Buyer.

10. RESALE OF GOODS

- 10.1 It is the responsibility of the Buyer to ensure that no marking or label affixed to the Goods referring the user to the Seller's instructions and/or recommendations for use and packaging is removed, tampered with or disfigured in any way.
- 10.2 If any item comprised in the Goods is resold by the Buyer, the Buyer shall:-
 - 10.2.1 bring to the purchaser's attention all the Seller's instructions and/or recommendations for use which are packed with or appearing on the Goods or which the Seller has notified to the Buyer; and
 - 10.2.2 be responsible for providing full and accurate translations in all relevant languages where the Goods go overseas.

11. DEFECTS

- 11.1 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with specification must (whether or not delivery is refused by the Buyer) be notified to the Seller within 14 days from the date of delivery or performance or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure.
- 11.2 In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.
- 11.3 If the Buyer does not notify claims in accordance with condition 11.1 then:-
 - 11.3.1 the Buyer shall not be entitled to reject the Goods and/or Services; and
 - 11.3.2 the Seller shall have no liability for such defect or failure; and

11.3.3 the Buyer shall be bound to pay the full price for the Goods and/or Services

11.3.4 unless failure is a latent defect or a material failure.

11.4 In the event the Buyer has a valid claim which has been notified to the Seller pursuant to condition 11.1, the Seller shall be entitled to repair or replace the Goods or carry out the Services again (or the part or element in question) free of charge or, at the Seller's option, refund to the Buyer the price of the Goods or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

11.5 If the Buyer is entitled to reject the Goods because all or part of the Goods are defective, the Buyer must reject all of the Goods and cannot keep some of the Goods and reject the remainder.

12. **LIMITATION OF LIABILITY**

THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

12.1 The following sets out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Buyer in respect of any breach of these Conditions, any representation or statement made or act or omission relating to or done in connection with the Contract and in respect of any contemplated performance or lack of performance including negligence and other tortious liability.

12.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to any implied condition that the Seller has or will have the right to sell the Goods when the property is to pass.

12.3 Nothing in these Conditions excludes or limits the Seller's liability for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation or excludes or limits any other liability to the extent such liability may not be excluded or limited as a matter of law.

12.4 Subject to conditions 12.2 and 12.3:-

12.4.1 the Seller shall not be liable to the Buyer for:-

(a) any loss of profit, loss of production, depletion of goodwill; and

(b) any indirect loss, damage, costs or expenses whatsoever

in each case which arise out of or in connection with the Contract or its contemplated performance or lack of performance; and

12.4.2 subject to condition 12.4.1, the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of the Contract shall be limited to the contract price.

13. **TERMINATION**

13.1 The Contract shall terminate immediately upon the happening of any one or more of the following in any jurisdiction:-

13.1.1 the Buyer is dissolved;

13.1.2 the Buyer makes an arrangement or composition with his creditors;

13.1.3 the Buyer convenes a meeting of creditors or enters into liquidation (voluntary or compulsory);

13.1.4 the Buyer has a receiver, manager or administrative receiver appointed of the whole or any part of its undertaking, property or assets;

- 13.1.5 a resolution is passed or a petition presented to any court for the winding-up of the Buyer or any person takes any step to appoint an administrator of the Buyer;
 - 13.1.6 the Buyer has a bankruptcy order made against him; or
 - 13.1.7 any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer in any jurisdiction to which the Buyer or any of its assets is subject.
- 13.2 The Contract shall terminate immediately upon service of written notice of termination by the Seller on the Buyer on the happening of any one or more of the following:-
- 13.2.1 the Buyer has, suffers or allows any execution to be levied on its assets or obtained against it; or
 - 13.2.2 the Buyer commits a material breach of any of its obligations under the Contract or under any other contract with the Seller; or
 - 13.2.3 the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 13.2.4 the Buyer ceases or threatens to cease to trade.
- 13.3 Termination of the Contract shall not affect rights and duties accrued before termination and in particular shall not affect the Seller's rights contained in condition 9. However, the Buyer's rights contained in that condition shall immediately terminate.

14. **HEALTH AND SAFETY**

The Buyer agrees to:-

- 14.1 comply with the General Product Safety Regulations 2005 if and to the extent that they are applicable to the Goods;
- 14.2 indemnify the Seller in respect of any and all claims arising from the Goods being unsafe as a result of the Buyer's activities;
- 14.3 monitor the safety of the Goods, to pass on to the Seller information as to the risks of the Goods and to co-operate in any action the Seller decides to take to avoid those risks; and
- 14.4 to keep records of the customers to whom the Goods are sold and to provide the Seller with copies of them as and when requested.

15. **GENERAL**

- 15.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller, whether or not under the Contract.
- 15.2 If any provision of the Contract (including any provision of condition 9) is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall continue in full force and effect.
- 15.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 15.4 Any waiver by the Seller of any breach by the Buyer is not a waiver of any subsequent breach.
- 15.5 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.

15.7 Notices shall be delivered personally, electronically or sent by first class post or sent by facsimile transmission.

15.8 A notice is deemed to have been received:-

15.8.1 if delivered personally, at the time of delivery;

15.8.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);

15.8.3 if sent by facsimile transmission, on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.

15.8.4 If issued by email and delivery receipt and or read receipt is received.

15.9 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

16. **ASSIGNMENT**

16.1 The Seller may assign or subcontract the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.

16.2 The Buyer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

17. **ENGLISH LAW**

The Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.