

R E Buildings Limited

Terms and Conditions

(1) Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.2.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 17.8.

Contract: the contract between the Supplier and the Customer for the supply of Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the Goods, as set out in the Customer's written acceptance of the Supplier's.

Supplier: R E Buildings Limited (registered in England and Wales with company number 02797885).

Supplier Materials: has the meaning given in clause 7.1.2.

1.2 Interpretation:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 a reference to **writing** or **written** includes faxes and emails.

(2) Basis of Contract

2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted the Customer confirms their acceptance in writing to these Conditions at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods contained in the Supplier'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 or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

(3) Goods

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier accepts no liability for any specifications produced by the Customer or an third party.

3.4 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.5 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Supplier as a result of cancellation.

(4) Delivery of Goods

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the order number and the type and quantity of the Goods.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 The unloading of the Goods is the responsibility of the Customer and the Customer shall provide adequate unloading facilities. Delivery is as far as hard roads permit at the absolute discretion of the Supplier's delivery driver.

4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.7 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

(5) Quality of Goods

5.1 The Supplier warrants that on delivery the Goods shall:

5.1.1 conform in all material respects with the Goods Specification;

5.1.2 be free from material defects in design, material and workmanship; and

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

5.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.3.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

(6) Title and Risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery. As such, the Customer shall be responsible for insuring the Goods.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; and

6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Until title to the Goods passes to the Customer then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:

6.4.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

(7) Customer's Obligations

7.1 The Customer shall:

7.1.1 comply with all applicable laws, including health and safety laws;

7.1.2 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

7.1.3 comply with any additional obligations as set out in the Goods Specification;

7.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

7.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

7.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and

7.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

(8) Charges and Payment

8.1 The price for Goods:

8.1.1 shall be the price set out in the Order; and

8.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

8.2 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

8.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- 8.2.2 any need for foundations to be amended and/or in the event that difficult ground conditions are encountered;
- 8.2.3 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 8.2.4 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 8.3 The Supplier shall invoice the Customer on or at any time after confirmation of the Order.
- 8.4 A non-refundable deposit of 10% of the price of the Goods shall be payable on confirmation of the Order.
- 8.5 The Customer shall pay each invoice submitted by the Supplier:
- 8.5.1 on or before delivery of the Goods; and
- 8.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 8.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 8.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time.
- 8.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.9 The Customer shall indemnify the Supplier against all actions, costs, claims, demands, loss, damages or expenses (including any legal and other reasonable professional costs and expenses) or other matters arising out of or in connection with any default in payment of the Customer.
- (9) Intellectual Property Rights**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods Specification (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 9.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Goods to the Customer.
- (10) Confidentiality**
- 10.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- 10.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- (11) Limitation of Liability**
- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 11.1.2 fraud or fraudulent misrepresentation;
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 11.1.5 defective products under the Consumer Protection Act 1987.
- 11.2 Subject to clause 11.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 11.2.1 loss of profits;
- 11.2.2 loss of sales or business;
- 11.2.3 loss of agreements or contracts;
- 11.2.4 loss of anticipated savings;
- 11.2.5 loss of use or corruption of software, data or information;
- 11.2.6 loss of or damage to goodwill; or
- 11.2.7 any indirect or consequential loss.
- 11.3 Subject to clause 11.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract.
- 11.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 This clause 12 shall survive termination of the Contract.
- (12) Termination**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing to do so;
- 12.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 12.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 12.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- 12.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 12.2.2 there is a change of control of the Customer.
- 12.3 Without affecting any other right or remedy available to it, the Supplier may suspend all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- (13) Consequences of Termination**
- 13.1 On termination of the Contract:
- 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.1.2 the Customer shall return all of the Supplier Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 13.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- (14) Force Majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- (15) General**
- 15.1 **Assignment and other dealings**
- 15.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 15.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 15.2 **Notices.**
- 15.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order.
- 15.2.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- 15.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 15.6 **Entire agreement.**
- 15.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 15.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 15.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 15.11 **Data Protection.** RE Buildings understand the requirements of the General Data Protection Regulations and as such manage the data we hold responsibly. To make sure you get the best service from us we need to store some of your basic information. You can be sure we do not use any of our client's data for marketing purposes. We will Delete your personal data from our systems if we have not had any meaningful contact with you (or, where appropriate, the company you are working for or with) for two years (or for such longer period as we believe in good faith that the law or relevant regulators require us to preserve your data).