

TERMS AND CONDITIONS OF MASONRY SUPPORT SYSTEMS LIMITED

1. INTERPRETATION

In these terms the following words have the following meanings:

“Approved Designs” the Designs and any accompanying Documents (including without limitation final costings) as approved by the Buyer;

“Bricks” Bricks to be bonded onto Product and to be provided by the Buyer;

“Business Day” any day other than Saturday, Sunday, bank or public holiday when banks are open for business in the UK and Ireland;

“the Buyer” the person(s), firm or company with whom the Seller has agreed to provide Goods in accordance with these terms;

“the Seller” Masonry Support Systems Limited, a company incorporated in England and Wales (Company Number 08847189) whose registered office is situate at Cadley Hill Industrial Estate, Ryder Close, Swadlincote, Derbyshire, DE11 9EU;

“Contract” the contract between the Buyer and the Seller for the provision of Goods incorporating these terms, any quotation and the Approved Designs;

“Designs” means designs, drawings and/or calculations provided by the Seller and any accompanying Documents (including without limitation final costings);

“Goods” means any goods (including any instalment of the goods or any parts of or for them) (if any), the products of any services and any Documents, material or other information to be provided by the Seller to the Buyer pursuant to the Contract;

“Document” means anything in which information of any description is recorded and includes, inter alia, a document in writing, a map, plan, design, drawing, picture or other image, source code, transparencies, negatives, positives, prints, proofs, photographic, graphic design and illustration material or any record of any information in any form including electronic forms;

“Input Material” means any Documents or other materials including Bricks, disks, plates, negatives and positives, and any data or other information provided by the Buyer relating to the Goods ;

“Intellectual Property Rights” means any patent, copyright, registered or unregistered design right, database right, registered or unregistered trade mark, rights in relation to confidential information or any other intellectual property rights in any part of the world;

“the Price” The price for the provision of the Goods;

“writing” and any similar expression, includes facsimile transmission, email and comparable means of communication;

2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.2, the Contract will be on these terms and any conditions specified in any quotation, the Approved Designs, or other written communication from the Seller to the Buyer to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any request for Goods or other document). If there is any conflict between any of the provisions of any quotation, the Approved Designs and these terms and conditions the following order of precedence shall apply -(1) The Approved Designs; (2) Quotation; (3) these terms.

2.2 These terms apply to all the Seller's Contracts and any variation to these terms and any representations about the Goods shall have no effect unless expressly agreed in writing by the Seller and signed by a director of the Seller.

2.3 Each request for Goods by the Buyer or the Buyer's agent on the Buyer's behalf from the Seller shall be deemed to be an offer by the Buyer subject to these terms. Each request for Goods must be placed through

a builder's merchant approved by the Seller. A valid order number must be supplied by the builder's merchant before any approval process commences.

2.4 The Buyer must ensure that the terms of its request for Goods, any applicable specification, the Approved Designs and any quotation are complete and accurate, interpret the Buyer's requirements accurately and are suitable for the Buyer's intended purpose and site conditions and the Seller accepts no liability whatsoever arising therefrom. Subsequent amendments will incur additional costs and result in delay in delivery of Goods.

2.5 Any quotation is given on the basis that no Contract will come into existence until the Buyer's agent on the Buyer's behalf issues a written confirmation of the Buyer's request for Goods which is accepted in writing by the Seller

2.6 Any quotation is valid for a period of 30 days (or such other period specified by the Seller in writing on the quotation) only from its date, provided that the Seller has not previously withdrawn it. For the avoidance of doubt, and without prejudice to the foregoing provisions of this clause, prices and other terms quoted by the Seller are only valid if the Buyer requests all of the Goods which are the subject of the quotation and do not apply to part orders in respect of which the Seller expressly reserves the right to re-price or reject the request.

2.7 The Buyer warrants that it has the power and authority to enter into these

3. PROVISION OF MATERIALS

3.1 The Buyer shall at its own expense supply the Seller with all necessary Input Material (including without limitation Bricks in accordance with the delivery provisions in clause 6 below), within sufficient time to enable the Seller to supply the Goods in accordance with the Contract. The Buyer shall ensure the accuracy of all Input Material and shall insure against its accidental loss or damage. The Seller shall have no liability for any such loss or damage however caused.

3.2 The copyright and other Intellectual Property Rights in any Input Material shall belong to the Buyer but the Buyer hereby grants to the Seller a non exclusive licence to use the Input Material and any copyright or other Intellectual Property Rights in respect of same as the Seller may require for the purpose of supplying the Goods . The copyright and other Intellectual Property Rights in the Goods shall belong to the Seller.

3.4 Any samples provided remain the property of the Seller and the Buyer shall return same on demand. Should the Buyer fail to return such samples on demand the Buyer shall be liable for the cost of same.

3.5 The Buyer warrants that any Input Material and its use by the Seller for the purpose of supplying the Goods will not infringe the copyright or other rights of any third party, and the Buyer shall indemnify the Seller against any loss, damages, costs, expenses or other claims arising from any such infringement.

4. DESCRIPTION

4.1 The description of the Goods shall be as set out in the Seller's quotation as varied by the Approved Designs provided that:-

4.1.1 any dimensions given are approximate measures only and variations in size are possible;

4.1.2 any samples or description provided may not be identical to the Goods supplied.

4.2 Any drawings, photographs, illustrations, descriptive matter, specifications and advertising issued by the Seller and any description or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of these terms.

5. DESIGNS

5.1 Designs will be submitted to the Buyer for its approval, consideration and evaluation with an indicated return date; it is the Buyer's responsibility to ensure that the Designs are complete, accurate, suitable for its purposes and appropriate for site conditions (including without limitation in terms of dimensional accuracy, brick bond pattern and joint width and any negative

impact on any other building elements). The Seller shall not commence any other work until it receives written approval of the Designs from the Buyer or authorisation in accordance with clause 5.4 below. Failure to respond by the indicated return date may result in delay in delivery.

5.2 Upon the Seller's receipt of written comments from the Buyer in relation to the Designs the Seller shall amend the Designs and submit such amended Designs to the Buyer for approval. A maximum of 3 drawings will be produced, after this, where further drafts or work in preparing Approved Designs is required the Seller shall charge a reasonable fee for such work based on the time and work involved.

5.3 The Seller shall accept no liability for losses or delays incurred as a result of the implementation of this approval procedure or due to failure by the Buyer to respond by the indicated return date.

5.4 Where the Buyer's delivery requirements are such that manufacture of Goods must necessarily commence prior to the receipt by the Seller of approval of the Designs then such manufacture must be authorised in writing by the Buyer and the Buyer shall be responsible for any costs arising as a result of any further or subsequent alterations to the Designs.

5.5 Approval and/or comment in relation to the Designs by the Buyer's, its servants, agents or persons under its control architect or engineer for the project shall be deemed to constitute approval and/or comment of same by the Buyer.

5.6 Instructions to proceed with manufacture, notification of no comment, and requests for delivery shall be deemed to constitute approval of the Designs by the Buyer and approval of any part of the Designs shall be deemed approval of all of the Designs (including without limitation the accompanying Documentation and final costings).

6. DELIVERY

6.1 Subject to these terms and to payment in full of all sums outstanding from the Buyer or any group company, delivery of the Goods shall be made to the Buyer's address as notified in writing to the Seller in the Buyer's request for Goods or if some other place for delivery is agreed by the Seller in writing, by the Seller delivering or arranging for delivery of the Goods to that place. The Buyer is responsible for unloading the delivery vehicles. For the avoidance of doubt, all installation is the responsibility of the Buyer.

6.2 Delivery dates and times are approximate only and the Seller shall not be liable for any delay in delivery however caused and the Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract. Time for delivery by the Seller shall not be made of the essence by notice.

6.3 Delivery costs are not included in the quotation or in any final costings and will be payable as an additional cost by the Buyer.

6.4 Any delivery restrictions whether due to the nature or location of the site or the route to the site or otherwise must be notified to the Seller prior to delivery (including without limitation any requirement for additional deliveries, specialist vehicles or cranes, loading facilities, and subject to clause 6.1 above requests for specific dates/times for delivery); non compliance with this provision will result in additional costs for which the Buyer shall be liable and delay in delivery.

6.5 Standard lintels and Brick-slip feature products are manufactured in different production facilities and may arrive in separate deliveries.

6.6 If the Buyer for any reason fails to take delivery of the Goods then, without limiting any other right or remedy available to the Seller:-

6.6.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence);

6.6.2 the Goods will be deemed to have been delivered; and

6.6.3 the Seller may (a) store the Goods or have them stored by a third party until actual delivery and charge the Buyer for all related costs and expenses (including without limitation storage, handling, additional transportation and insurance, costs for redelivery and aborted

delivery costs); or (b) sell the Goods at the best price readily obtainable and (after deducting all storage, insurance, transportation, delivery and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price

6.7 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.

6.8 The Buyer shall deliver the Bricks free of charge to the Seller's address as notified in writing to the Buyer unless otherwise agreed by the Seller in writing. For the avoidance of doubt, the Buyer shall be responsible for the cost of the Bricks. The Buyer is responsible for loading and unloading the Bricks. The Buyer is responsible for ensuring the Bricks are secured on a pallet; loose Bricks will not be accepted. Non-compliance with this provision will result in the Seller rejecting delivery of the Bricks and delay in delivery of the Goods. The Buyer is responsible for all costs of such delivery. The Seller accepts no liability arising from the Buyer's failure to deliver the Bricks (in whole or in part), delay in delivering the Bricks (in whole or in part), delivery of incorrect quantity or poor quality Bricks, or in appropriate or unacceptable delivery, or in each case any losses arising as a result or same.

6.9 It is the responsibility of the Buyer to ensure the integrity of the structure where the Goods are supported.

6.10 The quantity of Bricks required is calculated by the Seller with an appropriate wastage assessed against the Brick type. Although every effort is made to calculate the maximum number of Bricks required for the job, if it becomes necessary for additional Bricks to be supplied the Buyer shall be responsible for the costs of such Bricks, the costs of delivering same to the Seller and for arranging such delivery. Any delay in providing same may result in delay in delivering the Goods. The Seller accepts no liability arising due to extra Bricks being required (including without limitation for costs, losses or delays arising as a result of same).

6.11 Bricks provided by the Buyer to the Seller must be clearly marked by the Buyer with Buyer's name, project, site name, brick type, contact name and phone number. The Seller assumes no liability where the Buyer does not comply with this requirement including without limitation in respect of costs, losses or delays resulting therefrom or of subsequent bonding to incorrect units and the Buyer shall be responsible for and shall indemnify the Seller against any costs or losses suffered by the Seller as a result of same.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of Goods shall pass to the Buyer at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has tendered delivery of same; if Goods are to be collected by the Buyer risk shall pass to the Buyer at the time when the Seller notifies the Buyer that the Goods are available for collection. Risk of damage to or loss of the Bricks shall remain with the Buyer at all times.

7.2 Notwithstanding delivery and passing of risk in Goods, or any other provision of these terms the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price and payment in full for all other goods and/or services agreed to be provided by the Seller to the Buyer or any group company in accordance with the current Contract or any other Contract or account with the Buyer or any group company for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer and without prejudice to all or any of the Seller's other rights against the Buyer whether under these terms or otherwise:

7.3.1 the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep them separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property with all identifying marks intact and legible but the Buyer may resell or use the Goods in the ordinary course of its business at full market value; 7.3.2 The Buyer shall maintain the Goods in satisfactory condition at the Buyer's risk insured on the Seller's behalf for their full replacement value against all usual risks to the reasonable

satisfaction of the Seller and on request shall produce the policy of insurance to the Seller;

7.3.3 the Seller may at any time require the Buyer to deliver up the Goods (provided the Goods are still in existence and have not been resold), to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored to inspect and/or repossess same.

7.3.4 hold the proceeds of the insurance referred to in clause

7.3.2 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

7.5 Until such time as the property in the Goods passes to the Buyer, and without prejudice to all or any of the Seller's other rights against the Buyer whether under these terms or otherwise, the Buyer's right to possession of the Goods shall terminate immediately if:

7.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or in each case any analogous event occurs in any jurisdiction; or

7.5.2 the Buyer suffers or allows any execution, whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of the Insolvency (Northern Ireland) Order 1989 (as amended) or the Buyer ceases to trade, or in each case any analogous event occurs in any jurisdiction; or

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

7.6 The Seller shall be entitled to recover payment (including VAT) for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Buyer's right to possession has terminated to recover them.

8. PRICE

8.1 Subject always to clause 8.4 below, the Price will be the Seller's quoted price provided that the Buyer makes a request for Goods in accordance with the quotation and the request is accepted by the Seller in accordance with clause 2.5, or where different such price as is set out in the Approved Designs, in each case plus delivery costs and any additional costs (including without limitation costs in respect of site visits in accordance with clause 8.6 below).

8.2 The Seller may at any time increase the Price to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the Contract which are beyond the reasonable control of the Seller (including without limitation exchange fluctuations, taxes and duties and the cost of labour materials and other manufacturing costs) provided that the Buyer may cancel this contract within 7 days of any such notice from the Seller.

8.3 The Price shall be exclusive of any value added tax for which the Client shall be additionally liable at the applicable rate on the date of the invoice.

8.4 Any alterations, additions, or revisions to the Contract (including without limitation, any alterations or additions to the Approved Designs, the quotation, specification or meter girth), and provision of any samples, increase in the volume of Goods, change in the scope of work or times and dates for delivery/provision of Goods or other delivery arrangements, the addition of new Goods or Services not included in the quotation or Approved Designs must be agreed in writing by the Seller and shall be subject to additional costs or charges. PROVIDED ALWAYS that the Seller may at any time without notifying the Buyer make any changes to the Goods and alterations, additions or revisions to the Contract which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Goods. Without prejudice to the remainder of this clause and clause 6.1 above, the Buyer acknowledges that where the Seller agrees to a later delivery date an additional storage and handling fee will be payable by the Buyer.

8.5 On notification of requested amendments to the Contract (including without limitation the quotation or the Approved Designs) by the Buyer, the Seller will stop work. The Seller shall not be liable for any resulting delays.

8.6 Site visits will be carried out by the Seller only on the reasonable request of the Buyer and an additional costs based on the time and work involved shall be payable in respect of each such visit.

8.7 All invoice/financial queries must be made within 5 Business Days of the date of the invoice under query. The Seller will not be liable for any claims after this period and will not grant deferment of payments.

8.8 The Buyer shall be responsible for obtaining any necessary import licences or other requisite documentation associated with import or export of the Goods (as applicable) and paying all associated expenses, duties and taxes.

8.9 All companies in the Buyer's group who have accepted these terms shall be jointly and severally liable for amounts owing by any member of the group. In addition, if during the course of any matter a Buyer involves a subsidiary or a separate legal entity the Buyer remains responsible for the relevant amount.

9. PAYMENT

9.1 Payment of the Price (including VAT) is due within 30 days of the date of the Seller's invoice unless otherwise specified in writing by the Seller in the quotation or on the confirmation of order. Payments must be made in the currency of the issued invoices unless otherwise agreed in writing by the Seller.

9.2 Time for payment shall be of the essence. No payment shall be deemed to have been received until the Seller has received cleared funds.

9.3 All payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.

9.4 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

9.5 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgement. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9.6 The Seller may exercise a lien over any Input Materials, Bricks or Documents in its possession until the Price plus VAT together with any interest outlays and expenses for the provision of all Goods under the current Contract or any other contracts with the Buyer or any group company are fully paid.

9.7 The Seller may at any time at its absolute discretion, appropriate any payment made by the Buyer in respect of the Goods to such outstanding debt of the Buyer or any group company as the Seller thinks fit notwithstanding any purported appropriation to the contrary by the Buyer.

9.8 If the Seller has to refer unpaid invoices to its legal representatives as well as recovering the invoiced amount and interest it will seek to recover any legal fees incurred.

10. EXCLUSIONS

10.1 The Seller shall have no liability to the Buyer for any loss, damage, costs, expenses, delays (or losses arising due to such delays) or other claims for compensation arising as a result of any Bricks or any Input Material or instructions supplied by the Buyer being of poor quality, missing, damaged, irregular, not complying with the Contract, incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival (including without limitation inappropriate or unacceptable deliveries of Bricks by the Buyer), or any other fault of the Buyer. It is the Buyer's responsibility to ensure the Bricks are of satisfactory quality and fit for purpose, the Seller shall have no responsibility to inspect the Bricks and will only incorporate the Bricks as provided by the Buyer.

10.2 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any act of omission of the Buyer, its servants, agents or persons under its control or any other cause beyond the Seller's reasonable control.

10.3 The Seller shall be under no liability in respect of parts, materials or equipment not manufactured by the Seller (including without limitation the Bricks) and gives no warranty, guarantee or other term as to their quality, fitness for purpose, or otherwise, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller (if any). The Seller accepts no responsibility for the performance of the Bricks including without limitation their performance once submerged in water, subject to freeze-thaw conditions or adverse weather conditions.

10.4 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these terms shall not entitle the Buyer to treat the Contract as a whole as repudiated.

11. LIMITATION OF LIABILITY

11.1 The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

11.1.1 any breach of these terms; and
11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these terms excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or affects the Buyer's statutory rights as a consumer (if the Buyer is contracting as a consumer).

11.4 the Buyer shall inspect the Goods on receipt and shall within 5 Business Days of receipt of same notify the Seller in writing of any alleged defect, shortage in quantity or damage. The Buyer shall at the Seller's request and at the Seller's sole option, afford the Seller an opportunity to inspect the Goods within a reasonable time following discovery of the shortage, defect or damage and before any further use is made of them, make the Goods

accessible for repair according to instructions given by the Seller, make the Goods accessible for collection by the Seller according to instructions given by the Seller and co-operate with the Seller in connection with such collection.

11.5 Where any goods or surplus goods are received by the Buyer in error the Buyer shall advise the Seller immediately and store same safely until collection by the Seller otherwise the Buyer shall be liable for damages or shortages.

11.6 If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Contract and free from any shortage, defect or damage and accordingly the Buyer shall be deemed to have accepted the Goods, the Seller shall have no liability for such shortage defect or failure and the Buyer shall be bound to pay the Price as if the same had been delivered in accordance with the Contract.

11.7 The Seller shall not be liable for any defect shortage in quantity or damage:-

11.7.1 where the Buyer, its servants, agents or persons under its control makes any further use of such Goods after giving such notice; or

11.7.2 where the defect arises directly or indirectly due to wilful damage negligence or misuse by the Buyer, its servants, agents or persons under its control or because the Buyer, its servants, agents or persons under its control failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use, cleaning, handling, processing, or maintenance of the Goods, the manufacturer's instructions and good trade practice; or

11.7.3 Where the defect arises directly or indirectly as a result of fair wear and tear, normal deterioration, or improper or faulty installation, storage handling or processing of the Goods by the Buyer, its servants, agents or persons under its control or abnormal working conditions of the Buyer.

11.7.4 Where the Buyer, its servants, agents or persons under its control alters or repairs such Goods without the prior written consent of the Seller.

11.7.5 where the defect arises directly or indirectly due to discoloration or any other cosmetic conditions, or other conditions which do not materially affect the operation or functionality of the Goods.

11.8 Where the Seller at its sole discretion considers that a valid claim in respect of any of the Goods has been notified to it in accordance with these terms, the Seller may at its sole discretion repair or replace the same (or the part of same in question) or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) by crediting the Buyer's account with the Seller in which case the Seller shall have no further liability to the Buyer. Where the Seller at its sole discretion considers that a valid claim in respect of the Goods has not been made the Buyer shall be responsible for all costs incurred by the Seller in connection with same, including without limitation the costs of collection and transporting the Goods to the Seller, redelivery to the Buyer, and costs in respect of any site visit by the Seller.

11.9 Where the Seller elects to replace the Goods (or the part of same in question) it may do so with a similar product and for the avoidance of doubt this may not be the same version, model, form or colour.

11.10 Where the Seller elects to repair the Goods (or the part of same in question) it may provide a replacement (whether on a temporary or permanent basis) being a similar product and for the avoidance of doubt this may not be the same version, model, form or colour.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 11.11. Subject to conditions 11.2 and 11.3:
11.11.1 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 of this Contract shall be limited to the amount from time to time payable by the Buyer under the

Contract and subject to that overall limit to the part of any loss suffered which is proportionate to our responsibility; and

11.11.2 the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12. INDEMNITY

The Buyer shall indemnify and keep indemnified the Seller against all actions, claims, costs, damages, demands and expenses or other loss arising out of defects in the Goods to the extent occasioned or contributed to by any act or omission of the Buyer, its servants, agents or persons under its control;

13. WARRANTY

13.1 The Seller hereby warrants that on delivery and for a period of 10 years from the date of delivery the Seller shall provide the Buyer with a warranty on the following terms:-

13.1.1 The warranty covers only defects in the Goods arising from faulty materials employed or workmanship carried out by the Seller (other than defects arising from compliance with specific instructions, drawings, specifications issued by the Buyer including without limitation the Approved Designs) existing but not reasonably discoverable upon inspection at the time of receipt.

13.1.2 any claim must be notified to the Seller within 5 days from when the Buyer discovered or ought to have discovered the defect. If the Buyer does not notify the Seller accordingly, the claim shall not be valid and the Seller shall have no liability for such defect.

13.1.3 The Buyer shall at the Seller's request and at the Seller's sole option, afford the Seller an opportunity to inspect the Goods within a reasonable time following discovery of the defect and before any further use is made of them, make the Goods accessible for repair according to instructions given by the Seller, make the Goods accessible for collection by the Seller according to instructions given by the Seller and co-operate with the Seller in connection with such collection.

13.1.4 if any Goods are repaired or replaced under this warranty, then the repaired or replaced Goods will continue to be covered under the warranty for the original warranty period. No new warranty will apply to the repaired or replaced Goods or any parts/materials used in any repair.

13.1.5 the Buyer shall be responsible for documenting the date and time of delivery and that the warranty period has not expired, this warranty shall not apply where such information provided by the Buyer is false, incomplete, or illegible.

13.1.6 The Seller shall not be liable for any defect or damage:-

(a) where the Buyer, its servants, agents or persons under its control makes any further use of such Goods after giving such notice; or

(b) where the defect arises directly or indirectly due to wilful damage negligence or misuse by the Buyer, its servants, agents or persons under its control or because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use, handling, processing or maintenance, cleaning or maintenance of the Goods, the manufacturer's instructions and good trade practice; or

(c) Where the defect arises directly or indirectly as a result of any Bricks or any Input Material or instructions supplied by the Buyer being of poor quality, missing, damaged, irregular, not complying with the Contract, incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Buyer. It is the Buyer's responsibility to ensure the Bricks are of satisfactory quality and fit for purpose, the Seller shall have no responsibility to inspect the Bricks and will only incorporate the Bricks as provided by the Buyer; or
(d) Where the defect arises directly or

indirectly as a result of parts, materials or equipment not manufactured by the Seller (including without limitation the Bricks); or

(e) Where the defect arises directly or indirectly as a result of fair wear and tear, normal deterioration, or improper or faulty installation, storage handling or processing of the Goods by the Buyer, its servants, agents or persons under its control or abnormal working conditions of the Buyer; or
(f) Where the Buyer, its servants, agents or persons under its control alters or repairs such Goods without the written consent of the Seller; or

(g) where the defect arises directly or indirectly due to discoloration or any other cosmetic conditions, or other conditions which do not materially affect the operation or functionality of the Goods; or

(h) where the loss or damage incurred by the Buyer arises directly or indirectly from incidents beyond the Seller's reasonable control, including but not limited to acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood or other weather event, epidemic, disease, infestation, restrictions on transport or movement, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability to obtain supplies of adequate or suitable goods, terrorism, import restrictions, political unrest, unusual natural occurrences, vandalism or other force majeure.

13.2 Where the Seller at its sole discretion considers that a valid claim in respect of any of the Goods has been notified to it in accordance with this provision the Seller may at its sole discretion repair or replace the same (or the part of same in question) or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) by crediting the Buyer's account with the Seller, in which case the Seller shall have no further liability to the Buyer, provided that in each case if the Seller so requests the Buyer shall prior to such repair, replacement or refund, at the Buyer's expense and risk return the Goods or the part of the Goods which is defective to the Seller. Where the Seller at its sole discretion considers that a valid claim in respect of the Goods has not been made the Buyer shall be responsible for all costs incurred by the Seller in connection with same, including without limitation the costs of collection and transporting the Goods to the Seller, redelivery to the Buyer, and costs in respect of any site visit by the Seller.

13.3 Where the Seller elects to replace the Goods (or the part of same in question) it may do so with a similar product and for the avoidance of doubt this may not be the same version, model, form or colour.

13.4 Where the Seller elects to repair the Goods (or the part of same in question) it may provide a replacement (whether on a temporary or permanent basis) being a similar product and for the avoidance of doubt this may not be the same version, model, form or colour.

13.5 This warranty may be invoked only on condition that the Goods have been paid for in accordance with the payment terms agreed.

13.6 this warranty does not cover (and accordingly he Seller shall not be liable to the Buyer for) any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused).

14. ASSIGNMENT

14.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

14.2 The Seller may assign or subcontract the Contract or any part of it to any person, firm or company.

15. FORCE MAJEURE

The Seller reserves the right to defer the date of delivery of the Goods or to reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer), or to cancel the Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business or performance of the Contract due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood or other weather event, epidemic, disease, infestation, restrictions on transport or movement, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable goods. Provided that, if the event in question continues for a continuous period in excess of 90 days, either party shall be entitled to give notice in writing to the other to terminate the Contract.

16. CANCELLATION & TERMINATION

16.1 If for any reason a matter does not proceed to completion the Seller will charge the Buyer for work done and expenses incurred unless otherwise agreed.

16.2 If, for whatever reason, the Seller is unable to fulfil a request for Goods or any part thereof it shall notify the Buyer as soon as practicable and the Buyer's sole remedy shall be the reimbursement of any payment already made in respect of the Goods which the Seller is unable to supply.

16.3 The Seller may cancel the contract at any time before delivery by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.4 If the Buyer fails to make payment for the Goods in accordance with the Contract or commits any other breach of the Contract or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately (whether or not then due or payable) and the Seller may in its absolute discretion and without prejudice to any other rights which it may have:-

16.4.1 suspend all subsequent/planned and/or all future provision of Goods to the Buyer or any group company; and/or

16.4.2 terminate the Contract without liability upon its part; and/or

16.4.3 appropriate any payment made by the Buyer or any group company to such of the Goods (or the goods or services supplied under any other contract between the Buyer or any group company and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); And the Seller shall not be liable for any costs, losses or delays arising as a result.

16.5 The termination of the Contract shall not affect:-

16.5.1 any payment which is owing by either party to the other; 16.5. any other accrued rights of either party; or

16.5.3 any terms which are expressed to come into force or continue in force on or after termination.

17. GENERAL

17.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

17.2 If any provision of the Contract 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 provisions of the Contract and the remainder of such provision shall continue in full force and effect.

17.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

17.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract. Any waiver must be in writing signed by a Director of the Seller.

17.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts and these terms shall be governed by and interpreted and construed in accordance with the laws of Northern Ireland.

17.6 No person other than a party to the Contract may enforce it by virtue of the Contracts (rights of third parties) Act 1999.

17.7 The Buyer acknowledges that in entering into the Contract it does not rely on any representation or other term or any understanding except as expressly agreed in writing but nothing in these terms affects the liability of either party for fraudulent misrepresentation.

18. COMMUNICATIONS

18.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile or e-mail transmission:

18.1.1 (in case of communications to the Seller) to its registered office or published e-mail address, or such changed address as shall be notified to the Buyer by the Seller; or

18.1.2 (in the case of the communications to the Buyer) to its registered office (if it is a company) or its e-mail address or to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Seller by the Buyer.

18.2 Communications shall be deemed to have been received:

18.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

18.2.2 if delivered by hand, on the day of delivery;

18.2.3 if sent by facsimile transmission or e-mail on a working day prior to 4.00 pm, at the time of transmission or sending and otherwise on the next working day.

19. USE OF PERSONAL INFORMATION

The Seller, its group companies and their respective successors may use the Buyer's personal information to contact the Buyer (by email, telephone or post) and/or to provide information about itself and its services, clients, developments and issues in which the Buyer may be interested. If the Buyer does not wish to receive such communications it should opt out by providing written notification to the Seller.