

## GENERAL CONDITIONS OF BUSINESS

### 1. DEFINITIONS

In these Conditions of Business, unless the context otherwise requires the following definitions shall apply:

"The Seller" means Broadley Artstone Limited.

"The Buyer" means the party having the right to enforce the supply by the Seller of goods and/or services of any description under the terms of the contract.

"Contract" means an agreement under the terms of which the Seller is liable to supply goods and/or services of any description.

Words imparting one gender shall include the other and the singular shall include the plural.

### 2. CONTRACTS

- (1) Contracts are made and orders accepted only upon and subject to these Conditions of Business. All other conditions are hereby excluded unless expressly accepted in writing by the Seller.
- (2) All conditions, warranties, terms and obligations whether expressed or implied by statute, common law, custom or otherwise (including without prejudice to the generality of the foregoing exclusion any warranty or condition as to merchantable quality or fitness for any particular purpose) are hereby wholly excluded.
- (3) In entering into the contract the Buyer hereby acknowledges that he has not been induced to enter into the same by any representation made by the Seller its servants or agents or otherwise than in the Seller's written quotation or estimate or as may have been made in such other term of the contract as the Seller may have expressly stipulated or agreed in writing.
- (4) A binding contract for sale shall only be created upon the acceptance in writing by the Seller of the Buyer's order or other offer to purchase or upon delivery of the goods to the Buyer whichever shall occur the sooner. Where the goods or services are provided to the Buyer under a Credit Facility granted to the Buyer, the Seller may suspend its performance of the contract being subject to the conditions of clause 5 hereof.

### 3. PRICES, QUOTATIONS AND ESTIMATES

- (1) Only written quotations or estimates for the supply of goods and/or services shall be valid.
- (2) Prices quoted are those current at the date of quotation and shall be subject to variation without notice to allow for any increase in costs coming into effect between the date of the quotation, estimate or tender and the date of delivery or completion of the contract, unless specifically stated otherwise in the quotation.
- (3) Without prejudice to the foregoing, firm price quotations are valid for a period of one month only from the date of quotation (unless otherwise stated therein), thereafter the Sellers may at their absolute discretion accept or reject any order placed by the Buyer.
- (4) Estimates and quotations for work on site assume that the site will be available to the Seller on the due date and thereafter without interruption, or with only such interruptions be provided for in the contract, and the Seller reserves the right to render an additional account for costs incurred as a result of interruptions which are not the fault of the Seller and for which no provision has been made between the parties in the contract.
- (5) List prices are subject to alteration without notice.
- (6) Designs, drawings, illustrations and samples supplied to the Buyer remain the property of the Seller in which the Seller retains copyright and are to be returned to the Seller within a reasonable time or upon demand.
- (7) Where a contract requires the Seller to supply goods imported or to be imported into the United Kingdom and in the course of supplying them the cost to the Seller of so doing is increased by reason of variation in the rate of exchange for the pound sterling against foreign currency the Seller shall be entitled to vary the contract price so as to cover such additional cost.

### 4. TAX

Unless otherwise quoted or agreed, the Seller's prices do not include Value Added Tax, or any other tax, levy, duty or surcharge, whether before or after the making of the contract.

### 5. AGREEMENTS

- (1) Where the Seller has granted the Buyer a Credit Facility the price for the goods and/or services shall be paid by the Buyer on or before the last day of the month immediately following the month in which the goods are invoiced or, if the Seller shall so require, to be paid on demand without period of notice.
- (2) The Seller reserves the right to withdraw or vary credit facilities at any time without either giving any reason for so doing, or thereby incurring any liability to the Buyer.
- (3) If the Buyer takes goods from the Seller in excess of the Buyer's credit limit, the Seller may require payment on demand for such excess goods.
- (4) Invoices will be rendered at each month end for those goods manufactured notwithstanding that the goods may not have been delivered for whatever reason.
- (5) The Seller reserves the right to withhold manufacture and delivery of further goods if payments by the Buyer hereunder are overdue and the Seller shall not be liable for any consequent delays, disruption, loss, expense or damage incurred by the Buyer from whatever cause arising therefrom.

### 6. PAYMENT

- (1) Where it is a term of the contract that payment of any of the Seller's invoices is dependent upon the issue of the certificate of a third party, such as an architect or engineer, the invoice is due for payment not later than 7 days after the issue of the relevant certificate.
- (2) When payment of any of the Seller's invoices is overdue, the Seller may suspend its performance of the contract to which the invoice relates and/or of any other contract then subsisting between the Seller and the Buyer.
- (3) Except as the Seller's quotation/estimate may provide, no discounts are allowable, or may be taken against amounts invoiced by the Seller, nor shall the Buyer be entitled to any commission or rebate in respect thereof, and this notwithstanding any previous course of dealing between the Seller and the Buyer.
- (4) The Seller shall have a discretion to charge and recover interest from the Buyer on the price of goods supplied at the rate of 5% above Lloyds Bank Plc base rate per annum from the date upon which payment is due until the date that payment is received.
- (5) In the event of legal action being taken by the Seller against the Buyer, the Buyer shall be responsible for all costs and disbursements incurred by the Seller.

### 7. DELIVERY

- (1) Where the goods are offered for delivery to site, the Seller's obligation is to deliver as near to the site as safe hard road permits. If, in any particular case, the Seller should agree to relax condition, the relaxation shall be deemed to have been given in consideration of an indemnity from the Buyer against all losses, costs and expenses which the Seller may incur or pay as a result of such relaxation.
- (2) The Seller shall have the sole discretion as to the mode of transport to be adopted.
- (3) Delivery of goods by the Seller does not necessarily imply the provision of labour and equipment by them for unloading and stacking, which it shall be the responsibility of the Buyer to provide at his own cost.
- (4) Goods held by the Seller pending delivery instructions may be subject to a storage charge.
- (5) Any contract or part thereof for which the Buyer has not given to the Seller clear and unambiguous instructions for delivery within a period of six months after acceptance of the order shall (at the option of the Seller) be invoiced and the amount become payable by the Buyer forthwith or cancelled. Unless such order shall be invoiced within seven months from acceptance of the order it shall be deemed to be cancelled.
- (6) The Seller reserves the right to deliver goods by instalments.

### 8. NON-DELIVERY AND DAMAGE IN TRANSIT

- (1) Time shall not be of the essence of this contract insofar as it concerns the delivery of the goods or the performance by the Seller of its obligations under the contract. The Seller shall not be liable for any loss or damage howsoever arising from the failure to deliver goods or perform its obligations by any date specified either by the contract or by any collateral agreement, representation or arrangement made by the Seller or its servants or agents, whether oral or in writing.
- (2) No claim for damage in transit, for shortage in delivery or for loss of goods will be entertained unless (a) in case of damage, a separate notice in writing is given to the carriers and to the Sellers within three days of receipt of the goods, followed within fourteen days of advice of dispatch by a complete claim in writing to both the Seller and the Carrier or (b) in case of loss of goods, a separate notice in writing and claim is given to the Sellers and Carriers within fourteen days of the Seller's advice of dispatch to the Buyer. In all cases a signature "unexamined" shall be deemed to be an unconditional acceptance of the goods.
- (3) The Sellers shall not be liable in the event of non-fulfilment of a contract owing to circumstances outside the Seller's control which shall be deemed to include, but shall not be limited to fire, Act of God, war, strike, lock-outs, accident, shortages of material or power and failure on the part of the Seller's suppliers.

### 9. VARIATION AND CANCELLATION

- (1) The terms of the contract may not be varied, nor may the contract be suspended or cancelled without prior consent of the Seller in writing, which may be given on terms.
- (2) If the Seller's performance of a contract is interrupted or hindered for any reason other than the default of the Seller, the Buyer shall be liable to pay the Seller a proper price for any additional work or attendance thereby required.

### 10. RETURNS

Subject to the Seller's absolute discretion only new and unused goods may be accepted for credit less the amount of the Seller's handling and re-stocking charges. Proof of purchase will be required to be produced on any application for return and credit.

### 11. WARRANTY

- (1) Goods – During a period of six calendar months from the date of delivery of the goods to the Seller, will at its option, repair, or replace at the point of sale, goods which are shown to be defective by reason of faulty workmanship and/or materials, provided that the defect has been notified to the Seller within a period of 30 days after it has become apparent. Services – Defects in the contract works which appear within a period of six calendar months after the date the works have been handed over to the Buyer and which are shown to be due to materials and/or workmanship not in accordance with the contract, will be made good at the Seller's expense, provided that each defect has been notified to the Seller within 30 days of its having become apparent.
- (2) Goods replaced under the terms of the Seller's warranty shall thereby and thereupon become the property of the Seller, and shall be held by the Buyer to the order of the Seller.
- (3) The Seller's express warranty set out above is given in lieu of and excludes all other warranties, guarantees and assurances, whether express or implied, statutory or otherwise.

### 12. CONSEQUENTIAL LOSS

Except where negligence on the part of the Seller is shown to have resulted in the death of, or bodily injury to, any person, the Seller shall not be liable for consequential loss suffered by the Buyer as a result of the Buyer having entered into a contract and the Seller's price levels are set accordingly.

### 13. DESCRIPTIVE MATTER

- (1) Descriptive matter contained in catalogues, brochures and any other publication or display is believed correct and up-to-date, but is not warranted so, unless specifically confirmed in writing by the Seller.
- (2) Colour indications, whether given by means of the provision of samples or derived from colour charts or descriptions, are necessarily approximate by reason of inevitable variations in the process of manufacture and reproduction.

### 14. PASSING OF PROPERTY AND RISK

- (1) The risk in goods supplied by the Seller shall pass to the Buyer on delivery of the goods to or to the order of the Buyer in accordance with the terms of the contract.
- (2) The property in goods supplied by the Seller shall pass to the Buyer upon payment in full being made for the goods. Until the price for the goods has been paid in full the relationship between the Seller and the Buyer in respect of the goods shall be that of bailor and bailee and should the Buyer sell the goods before paying the Seller for them, he shall do so as agent for the Seller.
- (3) The Seller's goods held by the Buyer as bailee shall be insured by the Buyer against fire and all other normal hazards in a sum not less than the price owed to the Seller by the Buyer for them and the Buyer shall cause the interest of the Seller therein to be noted upon the policy of insurance.
- (4) When the price for goods supplied by the Seller remains unpaid after the date when it should have been paid, the Seller shall have the right to enter upon any premises where the goods may be found for the purpose of recovering possession of the goods and the cost to the Seller of so recovering the goods shall be payable by the Buyer to the Seller on demand.
- (5) Without prejudice to the foregoing all goods delivered by the Seller remain the Seller's property until all debts owed to the Seller from the Buyer including any balances existing at relevant times due to the Seller on any legal grounds are settled.

### 15. FITNESS FOR PURPOSE

Except where the goods are supplied on the express advice of the Seller, giving in writing that they are suitable for any particular purpose, it shall not be a term of a contract that goods are sold as fit for any particular purpose, and this notwithstanding that the Seller may have, or be deemed to have, knowledge of the purpose for which the goods are required. It should be noted that Artstone Products (Dry-pack) are not manufactured to conform to BS1217. Cast Stone Products (Wetcast) do conform to BS1217.

### 16. MEASUREMENT AND QUANTITIES

- (1) Measurements, dimensions, quantities and quality are expressed, in relation to goods the subject of a contract, in accordance with the usage of the relevant trade.
- (2) Where the Seller supplies goods and/or services to measurements and/or drawings provided by the Buyer and which the Seller has not verified, the Seller shall have no liability if and to the extent that such measurements or quantities prove to be incorrect.
- (3) All goods are supplied subject to dimensional tolerances as stated in BS1217. That is, up to and including 2 metres in length – nil oversize up to 5mm undersize. Goods over 2 metres in length – nil oversize up to 10mm undersize.

### 17. SITE FACILITIES AND APPROVALS

- (1) The Buyer shall, without cost to the Seller provide:
  - (a) Sufficient access to the site of the works the subject of the contract.
  - (b) Such unloading, haulage and craneage facilities on site as the Seller may reasonably need.
  - (c) Adequate dry, secure storage facilities for the Seller's materials and plant.
  - (d) Such supplies of water and electricity as the Seller may reasonably need.
- (2) The Buyer shall ensure that his authorised servant or agent is attendant upon site to receive delivery of all goods and to sign for goods off-loaded by the Seller.
- (3) The Buyer shall, without cost to the Seller, protect the Seller's work-in-progress from injury by inclement weather or other hazard.
- (4) The Buyer shall be liable for the safe custody of the Seller's equipment and unfixed materials on site.
- (5) The Seller contracts on the basis that all consents, permission and approvals necessary to enable the Seller to perform the contract have been or will be obtained by others, and that the Seller shall have no responsibility whatsoever to obtain the same.
- (6) Without prejudice to the generality of sub-paragraphs 17(1), 17(2), 17(3) and 17(4), the Seller shall reserve the right at their absolute discretion to refuse to deliver or off-load goods where the said site facilities and approvals are not made available and to render an account for all expenses incurred by them for aborted deliveries.

### 18. THIRD PARTY RIGHTS

- (1) The Seller does not warrant, nor shall it be an implied term of a contract, that goods and designs sold or employed by the Seller do not infringe the rights of any third party.
- (2) Where information, instruction or guidance received from the Buyer is the direct or indirect cause of any assertion by, or on behalf of a third party that the Seller is in breach of any right of that party, the Buyer shall be deemed to have agreed to indemnify the Seller against all costs incurred by the Seller as a result of such assertion.

### 19. BUYER'S INSOLVENCY

Except where payment for goods to be supplied has been made or secured in advance of their delivery to or to the order of the Buyer, the Seller shall be entitled to withdraw from a contract if and when the Buyer suffers distress or execution to be levied against his or its goods or effects, makes an arrangement or composition with creditors, enters into liquidation (otherwise than for the purpose of amalgamation or reconstruction), has a receiver appointed for the whole or any part of its undertaking, or if a receiving order in bankruptcy is made against it. When the Seller elects to withdraw from a contract in any such circumstances, the Seller shall thereupon cease to have any liability to the Buyer thereunder but shall remain entitled to claim from the Buyer a due proportion of the contract price in respect of such part of the contract as the Seller shall have performed.

### 20. MISCELLANEOUS

- (1) The Buyer may not assign its rights or liabilities under a contract without the prior consent in writing of the Seller.
- (2) Failure by the Seller to enforce a term of a contract shall not prevent the subsequent enforcement of that or any other term of the contract.
- (3) The construction, validity and performance of a contract shall be governed by the laws of England.
- (4) The English Courts shall have exclusive jurisdiction in any dispute or difference arising between the Seller and the Buyer in relation to a contract.
- (5) The titles to the several clauses of these conditions are inserted for convenience only and shall not be deemed to form part of them.