

TERMS & CONDITIONS OF SALE

1. INTRODUCTION & DEFINITIONS

1.1 These conditions shall apply to all sales, installations, servicing and repairs of goods and all services supplied or undertaken by Xact Building Profiles, hereinafter referred to as the "Seller", "we", or "us", or "our".

1.2 The "Buyer", "you" or "your" means any person, firm, company or corporation or organization who contracts with the Seller for the sale, purchase, hire, repair or refurbishment of goods or supply of services, or labour.

1.3 The word "site" means the building or part of a building including its external environs at which work is to be executed, services supplied, or to which goods are to be supplied under the Contract.

1.4 The word "contract" means the contract for the sale, purchase, hire, repair or refurbishment of goods or the supply of services or execution of works.

1.5 The words "services" and "work" are interchangeable and include, but are not limited to, the supply of services to property, buildings or goods and the supply of labour.

1.6 By accepting a quotation, or asking the Seller to do work or supply goods, the Buyer agrees that these conditions will apply and will prevail over all other conditions, including any conditions referred to in the Buyer's purchase order unless confirmed otherwise in writing a Partner of the Seller.

1.7 These conditions supersede any earlier conditions issued by the Seller and no alterations or additions to, or exclusion of any part, shall be applicable unless specifically agreed to in writing by the Seller.

2. PRICES & QUOTATIONS

2.1 All prices quoted exclude VAT and all applicable taxes and duties, which shall be added to the invoice at the rate prevailing at the tax point.

2.2 The price given in any price list, or written or verbal quotation by the Seller, is for goods ex-works, excluding delivery, offloading and assembly unless otherwise stated in writing.

2.3 Any quotation, detailed or budget, provided by the Seller will be based on the information available, or schedule or drawings provided by the Buyer. It is the duty of the Buyer to make known any special requirements.

2.4 Prices are based on agreed quantities and order size. Should the Buyer reduce the quantities or order size, the Seller reserves the right to charge at alternative rates appropriate to the amended order.

2.5 The Seller reserves the right to levy additional charges at the Seller's normal rates for any additional costs arising from variations to the order communicated to the Seller by the Buyer after quotation.

2.6 All prices are subject to variation without notice to cover any increase in costs incurred by the Seller including the costs of materials, carriage, labour, overheads, imposition of tax duty or other levy and any variation of exchange rates since the date of acceptance of order.

2.7 All goods quoted from stock are quoted subject to being unsold when the Buyer's order is accepted.

2.8 Unless the Sellers agree specifically otherwise in writing the quoted price does not include the amount of any government or local authority fees for consents, nor any provision for the cost of heating, lighting, power and water used on site, and the Buyer will reimburse the Seller for any expenditure reasonably incurred on such items and welfare facilities.

2.9 The Seller reserves the right to amend any quotation or invoice which contains an accidental typing, arithmetical or similar error or omission, at whatever stage it is discovered, and the Buyer agrees to pay the Seller the corrected amount.

2.10 If at the Buyer's request or approval, the Seller agrees to carry out work outside normal working hours, as defined in Clause 13.3 then the Buyer agrees to pay the additional cost of such overtime working.

2.11 If when the Seller has not anticipated any need for scaffolding or other access equipment (e.g. if the Seller has quoted from drawings) but in the event the Seller considers scaffolding necessary for safe working, then the cost of providing and erecting it will be extra.

2.12 If the Buyer is in breach of any obligations to the Seller under any contract with the Seller, then (without prejudice to any other remedy the Seller may have), the Buyer will pay the Seller at the Seller's normal rates for all time wasted as a result of the breach.

3. SPECIFICATION OF GOODS

3.1 The Buyer, whether acting directly for themselves or as an agent for another party, shall be responsible for the correct specification of goods including work to be carried out.

3.2 The Buyer shall be responsible for giving the Seller any necessary information or samples relating to the specification of the goods within a sufficient time to enable the Seller to perform the contract in accordance with these conditions or within any other agreed lead time.

3.3 The Seller reserves the right to make without notice any changes in the materials, specification or design of the goods which maybe required to conform with any safety or statutory requirements, or, having regard to all the circumstances, considers them reasonable or desirable. Such changes will not affect the validity of the contract.

3.4 The Buyer on ordering;

(a) Warrants and acknowledges that they have not relied on any representation made by the Seller or its employees or agents, or upon any descriptions and technical specifications, drawings, dimensions and weights, and waives any claim or breach of any such representation.

(b) Warrants to the Seller that they are satisfied that the goods are sufficient and suitable for the purpose or purposes intended.

(c) Covenants that the goods will (either by themselves or by any third party) be properly used or dealt with, and only in a manner fit for the purpose for which they are sufficient and suitable.

3.5 Although every effort will be made by the Seller to match colours and materials, the Seller cannot guarantee that a variation in such colours and materials will not occur.

3.6 It is the responsibility of the Buyer to examine the goods for defects in materials and/or workmanship or design which are likely to cause damage or injury.

4. THE BUYER'S RESPONSIBILITIES

4.1 Unless the Seller agrees otherwise in writing, the Buyer is responsible for obtaining any required consents for carrying out the contract, including planning permission, building control, listed building.

4.2 The Buyer must give the Seller unimpeded access to the site during normal working hours as defined in Clause 13.3 from Monday to Friday for carrying out the contract work and incidental matters.

4.3 Unless no-one other than the Seller's workmen can gain access to the site during the period of the contract work, the Buyer must make adequate secure on-site storage available for materials awaiting fixing and for plant, equipment and loose tools, or be liable for any loss or damage unless due to any act or default on the Seller's part.

5. ADVICE, INFORMATION & SAMPLES

5.1 Although every reasonable precaution will be taken to ensure accuracy of such information, all descriptive matter, colours, dimensions, weights, fire and acoustic performance and other documentation supplied by the Seller, and the descriptions and illustrations contained in the Seller's catalogues, price lists and other marketing material, are approximate only and are intended merely as a general description of the goods. They are not, unless specifically

expressed in the contract, deemed to form any part of the contract or conditions of sale and are not to be regarded as a warranty or representation.

5.2 Any estimates given in respect of quantities needed, or advice as to the suitability or fitness of any goods for any particular purpose given by the Seller or its employees or agents, is given in good faith but is without obligation or responsibility on the part of the Seller, and the Buyer is entirely responsible for ascertaining the quantities required and the suitability and fitness of the goods or services for the purpose intended.

5.3 Any samples or other items which the Buyer supplies or arranges to be supplied to the Seller, shall be delivered at the sole risk and expense of the Buyer and shall remain at the Buyer's risk and expense throughout the period of them, remaining at the Seller's address or other address that the Seller may specify.

5.4 Where samples are supplied, or are to be supplied by the Seller, no work will be undertaken by the Seller with regard to the bulk of the Buyer's order unless or until the Buyer has notified the Seller that the samples are in all respects satisfactory. The Seller may at its own discretion deem that the Buyer has so notified the Seller that the samples are in all respects satisfactory if there is no express written rejection of such samples within 7 working days of delivery to the Buyer.

6. ORDERING

6.1 The placing of an order by the Buyer, whether verbal or written, should be deemed to include acceptance by the Buyer of these conditions which will form the conditions of the contract and shall apply to the exclusion of any other terms or conditions put forward by or on behalf of the Buyer, unless such alterations or qualifications requested in writing by the Buyer are agreed in writing by the Seller.

6.2 Any typographical, clerical or other error or omission in any literature, quotations, price lists, acceptance of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

6.3 The Buyer acknowledges that before entering into the contract that the Buyer has expressly represented and warranted that the Buyer is not insolvent, has not committed an act of bankruptcy or been subject to any Act of Insolvency.

6.4 The Buyer may not cancel any order once accepted by the Seller without the written consent of the Seller, and the Buyer will in any event be liable to the Seller for a cancellation charge to cover all expenses or losses (including loss of profit) incurred by the Seller in relation to any such cancellation.

6.5 The Seller shall in no circumstances accept a cancellation of any order for goods which are to be specially made or obtained once such an order has been accepted by the Seller, nor will any allowance be made in respect of such goods where they are subsequently returned.

6.6 Goods are not sold on a sale or return basis. The Seller shall have the right to choose whether to accept or reject the return of any goods which have been over-ordered or ordered incorrectly.

6.7 In the event of the Seller accepting such goods for return, acceptance shall be upon terms such as the Seller may determine at the time and in particular, reserves the right to make a charge for the carriage and handling of the goods and for time spent on administration.

7. PAYMENT

7.1 If the Buyer does not have an account with the Seller, all goods are supplied on a pro-forma basis.

7.2 The Seller's prices are strictly net and no deduction may be made from the total on the invoice. Where the Buyer has an account, unless other terms have been agreed in writing in advance, the Buyer will pay 50% of the quoted price on placing of the order and the balance as follows: for goods, within 30 days of the date of delivery, for works or services, within 30 days of completion of work or services or invoice for stage payment for value of works done (whether completed or not) or materials delivered to site. Such a stage-payment invoice is to cover the value of materials delivered to the site plus the value of work done plus any disbursements incurred.

7.3 The Buyer shall not be entitled to withhold, or offset payment of any amount due to the Seller, in respect to any claims by the Buyer in respect of goods supplied by the Seller, or for any other reason which is contested or for which liability is not admitted by the Seller in writing.

7.4 Where part delivery or scheduled supply is required, interim payments shall be made by the Buyer, and if default is made in payment on the due date, the Seller shall have the right to suspend forthwith any further deliveries or works until payment is received.

7.5 Where the Buyer owes the Seller monies which have not been paid in accordance with clauses 8.1 and 8.2, the Seller may at its own discretion suspend deliveries of goods or execution of works or services without incurring any liability to the Buyer until has paid such monies to the Seller.

7.6 Where the Buyer requests delivery to be postponed and/or goods stored, full payment for completed work will become due for those goods held in store, and the storage costs will be added at the commercial rates in force at that time.

7.7 Without prejudice to the Seller's right to enforce payment, if the Buyer fails to make payment in accordance with these terms, the Seller is entitled to charge interest on any balance outstanding from the date the same became due, until payment is made, at the rate of 2 percent per month or part-month.

7.8 The Seller shall have the right to close the Buyer's account at any time at his discretion.

8. SUBCONTRACTING

8.1 The Seller may subcontract the whole or any part of parts of the performance of the contract.

8.2 The Buyer must obtain the Seller's consent before transferring or assigning benefit under this contract to any other person or firm.

9. THE BUYER'S MATERIALS

9.1 If the Seller agrees to carry out work on the Buyer's materials, the Seller's liability will be limited to the cost at which the Buyer purchased or manufactured them and the Seller will not be liable for any consequential loss, and carriage of the materials (where necessary) to and from the premises where work is to be done will be for the Buyer's account; and the Seller may exert a lien on the materials for outstanding amounts due and after 30 days' notice may sell the materials to recoup the outstanding amount and expenses of sale.

9.2 The Buyer warrants that the Buyer's goods conform to any relevant standards or government regulations.

10. COPYRIGHT

10.1 Any specification, drawing or other particulars submitted to the Buyer with a quotation remain the Seller's property and must be returned to the Seller on request. These are the Seller's copyright and must not be disclosed to any third party without the Seller's permission.

11. DELIVERY

11.1 DELIVERY DATES – TIME NOT OF THE ESSENCE

11.2 Delivery dates or dates for works or services to be carried out given by the Seller are intended as estimates only and time will not be of the essence.

11.3 Delivery is made by the Buyer collecting the goods from the Seller's premises after the Seller has notified the Buyer that the goods are ready for collection or by the Seller delivering the goods to another address by prior arrangement with the Buyer.

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11.4 Where the Buyer appoints an agent to accept delivery on the Buyer's behalf, it shall be deemed by the Seller that the Buyer invests the agent with full powers and right to authorize inspection and acceptance of delivery.

11.5 The Seller reserves the right to deliver in instalments. Where the goods are delivered in instalments (either by prior agreement with the Seller or pursuant to condition 12.4), 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 conditions, or any claim by the Buyer in respect of any one or more instalments, shall not entitle the Buyer to treat the contract as a whole as repudiated.

11.6 Where delivery is made by a carrier, it shall be under the usual terms and conditions of such a carrier.

11.7 Where delivery is made by the Seller's own transport, it shall be deemed to be "kerbside" delivery only. The Buyer shall be responsible for provision of the necessary personnel to assist the driver with offloading of the goods from the Seller's transport.

11.8 It is the responsibility of the Buyer to provide any equipment required for the offloading and distribution of the goods.

11.9 It is the Buyer's responsibility to notify the Seller of any vehicular or access restrictions or difficulties.

11.10 If the Buyer fails to take delivery of the goods, or fails to give adequate delivery instructions at the time notified by the Seller, then without prejudice to any other right or remedy available to the Seller, the Seller may;

(a) Return the goods to store (at its own or any third party's premises) and charge the Buyer for its reasonable costs including carriage, storage, insurance and VAT, and/or;

(b) Sell the goods at any time at the best price readily obtainable and charge the Buyer any shortfall below the price that would have been received under the contract.

11.11 The Buyer shall undertake to examine all goods on delivery.

11.12 Notification of short deliveries or damage in transit must be made to the Seller verbally within 24 hours of delivery and confirmed in writing within 7 days.

11.13 Notification of loss or non-delivery must be made in writing to the Seller within 30 days after the date of the Seller's invoice.

11.14 The Seller shall have the right of option to make good by reimbursement of the whole or part of the price, or by repair or replacement, any such non-delivery, short delivery, loss or damage notified in accordance with the conditions 11.10 and 11.11 above, and without affecting the validity of the contract.

11.15 If the Seller cannot deliver goods or commence work on an agreed date because the Buyer requests the Seller not to, or because the site is not ready, or because of any default on the Buyer's part, or if there is any interruption to the continuity of the work in a logical sequence, then the Buyer agrees to recompense the Seller as in Clause 11.15.

11.16 Compensation is to comprise: any direct costs, including abortive journeys, fitter's labour, waiting time, additional handling, storage and transport costs, etc. (provided that in the case of fitter's labour costs, no charge will be raised if 7 days' notice of the postponement is given); and if the delay (or total delay) exceeds 30 days, one percent of the contract price per calendar month or part thereof of the delay by way of liquidated damages to compensate the Seller for indirect costs resulting from the delay.

12. TIMING

12.1 The Seller will make best endeavours to comply with the Buyer's wishes regarding dates of starting and finishing work. However, any periods given in the Seller's quotation (e.g. for ordering goods or materials and / or for carrying out work) are estimates only and the Seller will not be liable in any way if these or subsequently agreed periods or dates are exceeded, for any reason outside the Seller's control. Time is not of the essence.

13. INSTALLATION

13.1 Where installation is to be undertaken by the Seller, it shall be the Buyer's responsibility to make sure that the Seller has unrestricted access to the installation area for free movement of personnel, goods and equipment between installation area and any vehicles or storage areas required for the duration on site, and to ensure that any such areas are ready in all respects for the installation on such date as may have been agreed between the parties.

13.2 Where any other trades or works such as for example, the addition, alteration or removal of electrical communication equipment and cabling and/or the emptying of storage units or moving of furniture or building works is required prior to installation by the Seller, it is the Buyer's responsibility to co-ordinate such works and to ensure it is completed in time in accordance with condition 13.1 above.

13.3 Unless specifically agreed otherwise in writing by the Seller, all installation costs are based on a working day of 8:00am to 5:00pm Monday – Friday (excluding Bank Holidays), including reasonable travelling time, and that work can proceed on a single phase basis of starting on site and continuing on consecutive days if needed until completion of the contract.

13.4 In the event that conditions 13.1, 13.2 and 13.3 above are not complied with by the Buyer, the Seller shall be entitled to make additional charges in respect of any costs and expenses incurred in consequence.

13.5 Where installation of the goods is not done by the Seller or its approved subcontractor, the Buyer undertakes that the goods will be installed, used, kept stored, maintained and serviced in strict compliance with any relevant instructions of the supplier and that the Buyer will notify any subsequent purchasers of such instructions. Failure to do so will invalidate the Seller's liability for damage caused to or by the goods. It is the Buyer's responsibility to ensure that these instructions have been obtained from the Seller.

13.6 Unless otherwise stated in our quotation the Seller will not have allowed for access equipment or scaffolding. In the event the Seller considers either of these are necessary for safe working, then the cost of providing and erecting will be extra.

14. RISK AND TITLE – RETENTION OF TITLE UNTIL PAYMENT IS MADE IN FULL

14.1 The risk in goods delivered shall pass to the Buyer as soon as they enter the building or site.

14.2 The risk in work done shall pass on completion of each separate section of the work.

14.3 Goods supplied and work done remain the Seller's property until paid for in full and until any other monies the Buyer owes the Seller have been paid for in full. The Seller may enter the site and detach (if necessary) and recover such goods and / or materials if payment is overdue, or if the Buyer has become insolvent, or if any act indicating insolvency has taken place.

14.4 Until the title in the goods has passed to the Buyer, the Buyer shall be in possession of the goods solely as fiduciary bailee for the Seller and shall mark the interest of the Seller on the goods. If the Buyer shall fail to mark the goods in compliance with this clause, the burden of proving that any equal or lesser quantity of goods of the same description as the goods supplied in the possession of the Buyer at any material time has been paid for in full, falls on the Buyer. If the Buyer resells goods or work which remains the Seller's property as in 14.3 the Buyer will hold the proceeds of sale in trust for the Seller to the extent of the Buyer's debt to the Seller and promptly pay these monies to the Seller.

14.5 The Buyer's Power of Sale shall automatically cease if a receiver is appointed over any of the assets or undertaking of the Buyer or a winding up order is made against the Buyer or

the Buyer goes into liquidation or calls a meeting, or asks any arrangement of composition with creditors or commits an Act of Insolvency.

14.6 Should the Buyer's Power of Sale cease as per the provision in condition 14.3 above, the Buyer shall place the goods at the disposal of the Seller, and the Seller and its employees or agents shall be irrevocably licensed, using only such force as is necessary, to enter upon any premises where the goods are held for the purpose of their removal.

14.7 The Seller may claim payment from the Buyer for goods or work whether or not the property in them has passed.

15. LIABILITY

15.1 The Seller shall not be liable for any damage or injury caused by its goods or workmanship beyond replacement or repair of the said goods or works on verification of the Buyer's complaint, except in respect of death or personal injury caused by the negligence of the company, its officers, employees or agents and any liability which cannot be excluded under Part 1 Consumer Protection Act 1987).

15.2 In case of defective goods or workmanship, or the failure of goods to correspond with the specifications agreed, such defects or failures must be notified to the Seller within 3 days of the installation of the goods. Liability shall be limited to the repair or replacement of the said goods or the offer of reimbursement of the whole, or part of, the cost of the goods involved, and shall exclude any other loss or consequential loss or expense howsoever arising.

15.3 The Seller shall not be liable for any defect developing under fair wear and tear, wilful damage, negligence, lack of proper maintenance or servicing, abnormal working conditions, failure to follow

the Seller's instructions (whether verbal or written), misuse or alteration or repair of the goods without the Seller's express approval.

15.4 The Seller shall not be liable for any defect in its goods arising from any drawings, designs, specifications, or parts supplied by the Buyer.

15.5 The Seller shall not be liable for any defects in parts not manufactured by the Seller in respect of which, the Buyer shall only be entitled to the benefit of any such warranty as it is given by the manufacturer to the Seller.

15.6 The Seller shall not be liable for any loss of profits, or any other incidental or consequential loss or expense caused by either its failure or delay in supplying, repairing or installing goods, or through any other negligence of its employees or agents.

15.7 The Seller shall be under no liability for any loss, consequential loss, damage or delay, or expense of any kind whatsoever caused wholly or in part, by Act of God, outbreak of war, civil commotion, Governmental policies or restrictions or control, including restrictions of export or import or other licenses, trade or industrial disputes of whatever nature, whether or not such dispute involves the Seller, its servants or agents, or by any other contingency whatsoever which is beyond the control of the Seller.

15.8 The limitations of liability in clauses 15.1 - 15.7 shall not apply where and to the extent that a prohibition against exclusion or restriction of obligations applies in law.

16. GUARANTEES

16.1 The Seller will give the Buyer the benefit of any manufacturer's warranty in respect of goods and materials, but give no warranty ourselves in respect of goods and materials except as specified in our literature or quotations. Such guarantees are valid for the period stated provided that

(a) Where the goods have been installed by the Buyer or the Buyer's agents, they have been assembled correctly in accordance with the Seller's instructions; and

(b) The goods are used for their correct and agreed purpose.

(c) Fair wear and tear is excluded from this guarantee.

16.2 Any faults parts, or work, or complete goods may be repaired or replaced.

16.3 Any defective goods requiring replacement or repair shall be made available for collection by the Seller from a point within the mainland of Great Britain.

16.4 Any guarantee given by the Seller is invalidated if the goods are subject to misuse or accident after the Buyer has taken delivery.

16.5 The Buyer must notify the Seller within 3 months (the time limit is essential) of any defects in goods of our manufacture or in our workmanship, and provide satisfactory proof of the defect, and the Buyer must also give the Seller access at all reasonable times to carry out inspection and remedial work, or the Seller will not be liable.

16.6 The Buyer agrees that the breach of any warranty gives the Buyer no right to cancel the contract.

16.7 The Seller gives no guarantee as to the fitness of any goods or works for the Buyer's purposes.

16.8 The Seller reserve the right to make reasonable amendments to descriptions or specifications of materials or goods (e.g. as given in the manufacturer's sales literature) and the Buyer will accept any such amendment.

17. APPLICABLE LAW AND JURISDICTION

17.1 The contract shall in all respects be governed by and construed in accordance with English law.

17.2 It is irrevocably agreed for the exclusive benefit of the Seller that the Courts of England are to have jurisdiction to settle any dispute which may arise out of, or in connection with, the contract. Nothing in this clause shall limit the right of the Seller to take proceedings against any other party in any other Court of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

18. GENERAL

18.1 NON WAIVER OF RIGHTS

The failure of either party to the contract to exercise or enforce any rights conferred by the contract, or any particular clause of the contract, shall not be deemed to be a waiver of any such right, nor operate so as to bar the exercise or enforcement of the contract or any particular clause of the contract at any time in the future.

18.2 The headings appearing above each condition or clause are for reference purposes only and shall not affect or limit the interpretation and effect of these conditions as a whole.

18.3 In the event of the invalidity of any of these conditions of any paragraph, sub-paragraph or part thereof, the same should be severed and shall not affect the validity or enforceability of the remaining provisions