

# YBS Terms and Conditions of Sale

## TERMS AND CONDITIONS OF SALE

### INTERPRETATION

In these conditions, unless the context requires otherwise:

"**Buyer**" means the company, firm, body or person purchasing the Goods.

"**Goods**" means the subject matter of the contract including but not limited to raw materials, finished or semi finished materials or articles.

"**Order**" means a purchase order in respect of the Goods or Services issued by the Buyer to the Supplier on the Buyer's official purchase order form, together with all documents referred to in it.

"**Services**" means services to be performed by the Supplier for the Buyer pursuant to the Order.

"**Supplier**" means Yorkshire Building Services (Whitwell) Ltd whose registered office is A Donnelly & Co, Daisy Walk Netherthorpe, Sheffield. And any subsidiary of the Supplier by which the Goods are sold.

#### 1. GENERAL

1.1 The Supplier's quotations are not binding on the Supplier and a contract (the "Contract") will only come into being upon acceptance by the Supplier of the Order and the following conditions shall be deemed to be incorporated in the Contract.

1.2 The Contract will be subject to these conditions. All terms and conditions appearing or referred to in the Order or otherwise stipulated by the Buyer shall have no effect. The Supplier must confirm any variation of the Contract in writing.

1.3 Where Goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.

1.4 Tenders submitted by the Supplier shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or the Supplier withdraws the tender.

1.5 These conditions apply to Services in the same way as they apply to Goods.

#### 2 PRICES

2.1 Where the Goods are sold by reference to Supplier's published price list, the price payable for the Goods shall be ruling price as published in the price list current at the date of dispatch of the Goods from the Supplier's works.

2.2 In other cases, the price stated in the Contract is based on the cost to the Supplier of raw materials, fuel and power, transport and labour and all other costs at the date of acceptance of the order or quotation (whichever is earlier). If at the date of dispatch the Goods from the Supplier's works, there has been any increase in all or any of such costs, the price payable for the Goods are subject to alterations without prior notice and orders will be invoiced at the price ruling at the date of dispatch of the Goods or date of invoice whichever is the later.

2.3 Where the price for the Goods are varied in accordance with clause 2.2, the price, as varied, shall be binding on both parties and shall not give either party any option of cancellation.

2.4 Prices are quoted exclusive of Value Added Tax, which will be charged at the rate ruling at the relevant tax point.

2.5 Minimum order value for carriage free delivery on our two/three day service will be £250, whilst under this amount the cost of two/three day service will be plus transport cost plus vat.

2.6 Quotations in currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.

#### 3. TERMS OF PAYMENT

Prices quoted are net and in sterling unless otherwise agreed. Subject to credit being approved, accounts are due for payment not later than the end of the month following the month of invoice; otherwise payment must be received by the Supplier before delivery. All payments shall be made without deduction or set - off. When deliveries are spread over a period, Each consignment will be invoiced as dispatched and each month's invoices will be treated as a separate account and be payable accordingly. Failure to pay any invoices in accordance with the foregoing terms or other terms specified in the Contract shall entitle the Supplier to suspend further deliveries and work both on the same order and any other order from the Buyer without prejudice to any other right the Supplier may have. The Supplier also reserves the right to charge interest on overdue accounts, such interest to be calculated on a day-to day basis on the amount outstanding at the rate of 3 per cent above the lending base rate for each day of the published base rate of H.S.B.C. Bank PLC. The Supplier Reserves the right, where genuine doubts arise as to a Buyer's financial position or in the case of failure to pay for any Goods or any delivery or instalment as aforesaid, to suspend delivery or performance of any order or any part of instalment without liability until payment or satisfactory security has been provided.

Where Goods are to be delivered outside the United Kingdom, payment must be made against delivery of the Goods or shipping documents, FOB UK port unless credit arrangements within the United Kingdom approved by the Supplier have been made.

#### 4. RETENTION OF TITLE

4.1 Notwithstanding that risk in the Goods shall pass the Buyer in accordance with clause 7, title to the Goods (whether separate and identifiable or incorporated in or mixed with other Goods) shall remain with the Supplier until payment in full has been received by the Supplier:

4.1.1. for those Goods;

4.1.2. for any other Goods supplied by the Supplier;

4.1.3. of any other monies due from the Buyer to the Supplier on any account:

4.2 Until title to the Goods passes to the Buyer under clause 4.1, the Buyer shall:

4.2.1 keep the Goods separately and readily identifiable as the property of the Supplier

4.3 Any resale by the buyer of Goods in which property has not passed to the Buyer shall (as between the Supplier and the Buyer only) be made by the Buyer as agent for the Supplier.

4.4 Goods shall be deemed sold or used in the order delivered to the Buyer.

4.5 At any time before title to the Goods passes to the Buyer (whether or not any payment to the Supplier is then overdue or the Buyer is otherwise in breach of any obligation to the Supplier), the Supplier may (without prejudice to any other of its rights):

4.5.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorises;

4.5.2 require delivery up to it of all or any part of the Goods.

4.6 The Supplier may, at any time, appropriate sums received from the Buyer, as it thinks fit notwithstanding any purported appropriation by the Buyer.

4.7 Each clause of this clause 4 is separate, severable and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.

#### 5. WARRANTY; LIMIT OF RESPONSIBILITY

The Supplier warrant that it will at the Supplier's choice, either, repair, replace or refund the full purchase price of any Goods which are accepted by the Supplier as being defective or not in accordance with the Contract or any express description or representation given or made by or on behalf of the Supplier in respect of the Goods within a period of 3 months from despatch of such Goods from the Supplier's works ("warranty period") save that this warranty shall not apply where the defect or fault is attributable to defective materials supplied by third parties where the Buyer's only remedy will be against the third party. The Buyer's remedies' in respect of any claim under foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Goods or Services or any workmanship in relation to them (whether or not involving negligence on the part of the Supplier) shall, in all cases, be limited to repair, replacement, re-performance or refund of the purchase price as aforesaid and 'any condition or warranty implied by law shall cease to apply after the expiry of the Warranty period; and the Supplier shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment of any Order or any part of it shall not entitle the Buyer to cancel or refuse delivery of or payment for any other Order, delivery or instalment or any part of the same Order, delivery or instalment.

## **6. DELIVERY AND COMPLETION DATES :**

6.1 The dates of delivery of Goods are approximate only and unless otherwise expressly stated, time is not the essence for delivery or performance. The Supplier will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform.

6.2 No delay shall entitle the Buyer to reject any delivery or performance or any further instalment or part of the Order or any other Order from the Buyer or to repudiate the Contract or the Order.

6.3 Force Majeure - The Supplier shall not be liable to the Buyer in respect of any matter which results from any Act of God, war or extreme weather, strikes or any other event of any description which are beyond our control.

## **7. DAMAGE, SHORTAGE OR LOSS IN TRANSIT**

7.1 Unless the Contract otherwise stipulates, the risk in the Goods passes to the Buyer when the Goods are despatched from the Supplier's works and the Supplier accepts no responsibility for any damages or loss in transit. Claims for damage or loss in transit, must be advised in writing (otherwise than on the carriers Documents) within seven days after the receipt of invoice if the goods covered by the invoice have not been delivered, or within two days of delivery if damage, pilferage or shortage is revealed upon receipt of goods.

7.2 Where the Contract provides for delivery elsewhere than at the Supplier's works, risk will pass at the point in the Contract and the Supplier will entertain a claim by the Buyer in respect of loss or damage in transit only if the Buyer:

7.2.1 gives notice to the Supplier within two days of the delivery if damage, pilferage or shortage of the Goods is revealed upon receipt of Goods is revealed upon receipt of Goods.

7.2.2. Where the Goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

## **8. DELAYED ACCEPTANCE**

If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are ready for delivery, the Supplier may arrange storage of the Goods at the Buyer's risk and the Buyer shall be liable to the Supplier for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right, which the Supplier may have in respect of the Buyer's failure to take delivery of the Goods or pay for them in accordance with the Contract.

## **9. TERMINATION**

If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiver order is made against him or (being a company) it shall pass a resolution or the court shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets on undertaking of the Buyer or if the Buyer suffers the appointment of the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the court of a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding-up order or if the Buyer takes or suffers any similar action in consequence of debt or if the financial responsibility of the Buyer shall, in opinion of the Supplier, become impaired or if the Buyer shall commit any breach of any part of the Contract, the Supplier may, without prejudice to its right and remedies under these conditions, stop all Goods in transit and suspend further deliveries and by notice to the Buyer may terminate the Contract immediately.

## **10. PATENTS**

The Buyer shall indemnify the Supplier against all actions, costs (including the cost of defending any legal proceeding), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, design right, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Supplier with Buyer's instruction, whether express or implied.

## **11. INDEMNITY**

The Buyer agrees, upon demand, to indemnify the Supplier against all losses, damages, injury, costs and expenses of whatever nature suffered by the Supplier to the extent that the same are caused by or related to:

11.1 designs, drawings, or specifications given to the Supplier by the Buyer in respect of the Goods:

11.2 defective material or products supplied by the Buyer to the Supplier and incorporated by the Supplier in the Goods: or

11.3 the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer.

## **12. NON-STANDARD ORDERS**

Where the buyer orders goods which the supplier would class as a special because it is of a type, size or quality not normally supplied as a standard item. If the buyer requests stocks holding the supplier will stock agreed quantities subject to reappraisal after 6 months.

12.1 If the contract is terminated or the item in stock becomes obsolete according to the Buyer, all remaining stocks will be checked and invoiced to the Buyer and paid for in accordance to the Suppliers terms and conditions.

12.2 The supplier will use all the reasonable endeavours to execute the order, but if it proves impossible, impracticable uneconomical to carry out or complete the order. The supplier reserves the right to cancel the contract or the unbalance of it, in which event the Buyer will only be liable to pay for the part of it actually delivered or performed.

12.3 Clothing Alterations - If the Buyer requests clothing alterations, this will be at the Buyers cost and the supplier cannot accept liability on the suitability of the garment after the alteration.

## **13. CORPORATE IMAGE - LOGO**

Where the Buyer supplies patterns, drawings, artwork, with size and colour of their logo, the supplier shall be entitled to assume that the information given at the time of placing the order is a true likeness and is current and correct. No responsibility will be accepted by the Supplier for the accuracy or any change of logo not notified at the time of placing the order, if no Pantone references are given at the time placing the order the Supplier accepts no responsibility for any variation in colour on the corporate image logo. Accordingly the Buyer should check any details and information he wishes to rely on with the Supplier at the time of purchase.

## **14. PACKING**

Unless otherwise specified, packaging is included in the cost of the product.

14.1 The Supplier uses all reasonable endeavours to ensure, where necessary, suitability of packaging before despatch, but no claim will be accepted by the Supplier for breakage or damage in transit on the ground of alleged unsuitability for packing.

## **15. ASSIGNMENT AND SUBCONTRACTING**

15.1 None of the rights or obligations of the Buyer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Supplier.

15.2 The Supplier shall be entitled to subcontract any work relating to the contract without obtaining the consent of, or giving notice to, the Buyer.

## **16. HEALTH AND SAFETY**

The buyer agrees to pay due regard to any information or revised information when ever supplied by the Supplier.

## **17. NOTICES**

17.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by prepaid first class letter post or facsimile transmission.

17.2 Any notice or other communication or document shall be deemed served: if delivered, at the time of transmission.

## **18. INVALIDITY**

The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.

## **19. LAW AND JURISDICTION**

The Contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and both parties hereby submit to the exclusive jurisdiction of the English Courts.