

# TERMS & CONDITIONS OF SALE

(These Terms & Conditions of Sale do not apply if you deal as a Consumer)

## GENERAL

- (a) In these conditions, “we” or “us” means Builder Depot Ltd. “You” means the person seeking to purchase goods from us, and “our” and “your” shall be construed accordingly. “Consumer” means any natural person acting for purposes outside their trade, business or profession.
- (b) These conditions apply to all sales of goods by us and shall prevail over any other terms or conditions contained or referred to in your order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless such other terms or conditions are specifically agreed in writing by one of our Directors. No variation or exclusion of these conditions shall be effective unless specifically agreed in writing in advance by one of our Directors.
- (c) A person who is not a party to a contract with us has no rights under the Contracts (Right of Third Parties) Act 1999 to enforce any term of the contract but this does not affect any right or remedy of a third party that exists or is available apart from that Act. You may not assign the contract or any part of it without our prior written consent.
- (d) No terms or conditions of any main building contract or sub-contract shall affect these conditions whether or not we have notice of them.
- (e) If any provision or part of a provision of the contract is found by any court, or other body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable or unenforceable it shall to the extent of such illegality, invalidity, voidness, voidability or unenforceability be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.
- (f) The headings appearing above each condition are included for reference purposes only and shall not affect or limit the interpretation and effect of these conditions.

## QUOTATIONS

- A quotation by us shall constitute an invitation to treat and not an offer. We may withdraw or amend any quotation at any time prior to our acceptance of your order. Acceptance of your order will occur when we issue a written acknowledgement or when we begin to process your order, whichever is the earlier.

## ESTIMATES OF QUANTITIES AND ADVICE AS TO FITNESS FOR PURPOSE

- You acknowledge that you do not rely on, and waive any claim for breach of, any representations made by our employees or agents. Any estimate of quantities needed or advice or recommendation as to the suitability or fitness of any goods for any particular purpose given by our employees or agents, is given without liability on our part. You will be entirely responsible for ascertaining the quantities required and the suitability and fitness of the goods for their purpose.

## PRICE

- (a) Subject to sub-clause 4(d), the price payable for the goods sold shall be that contained in our current price list at the time of despatch, notwithstanding that this may differ from the price stated in any quotation given by us, unless the price quoted was not a list price current at the time of the quotation.
- (b) Any typographical or clerical omission in any sales literature, quotation, price list, acceptance to offer, invoice or other document or information issued by us shall be subject to correction without liability on our part.
- (c) Subject to clause 4(d), if there is no list price for the goods sold, or if the price quoted was not a list price current at the time of quotation, then the price to be paid shall be the price specified in the quotation, provided that the order has been accepted by us within the period specified in the quotation.
- (d) We reserve the right to make such alterations to our price list as we think fit. In particular we may at any time and without notice to you revise the price payable for the goods sold to take account of increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rate since the date of preparation of the current price list or (in cases falling within clause 4(c)) acceptance of the order.
- (e) Unless we otherwise agree in writing all prices shall be deemed to be exclusive of Value Added Tax which shall be payable in addition by you at the rate prevailing at the tax point.
- (f) Unless we otherwise agree in writing we reserve the right to charge you the cost of transportation of the goods to the destination requested by you.

## TERMS OF PAYMENT

- (a) Credit accounts may be opened, subject to satisfactory credit references being obtained, in our sole discretion. Payment for goods supplied on a credit account shall be due and payable not later than the last day of the month following the month of delivery of the goods. If you default in making payment as aforesaid the entire balance of your account shall be payable forthwith and we shall be entitled to charge interest on the account, together with costs and expenses, in accordance with clause 5(d).
- (b) For all other transactions payment shall be in cash with the order. If cash is not paid with the order, we have the right to require cash on delivery.
- (c) You may not withhold or set off payment of any amount due to us whether in respect of any claim by you relating to goods supplied by us or for any other reason which is contested or for which we do not admit liability.
- (d) If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to:
  - Cancel the contract or suspend any further deliveries to you;
  - appropriate any payment made by you to such of the goods (or the goods supplied under any other contract between you and us) as we may think fit (notwithstanding any purported appropriation by you); and
  - charge interest to you at the rate of 8% above the base rate from time to time of Royal Bank of Scotland on the unpaid balance; this interest shall accrue on a day to day basis from the due date for payment until receipt by us of the full amount whether before or after any judgment; and
  - be indemnified by you against all costs and expenses (including legal costs and expenses on a full indemnity basis) incurred by us in recovering sums due or in exercising our rights pursuant to clause 5.
- (e) Interest costs and expenses shall be due and payable pursuant to the foregoing clauses notwithstanding the fact that a portion of the account is subject to any dispute or query.
- (f) If at any time you are an existing credit account customer and intend, being a company, to alter your constitution or, being a sole trader or partnership, to become incorporated or amalgamated with others, it shall be your duty to give prior written notice to us of the intended change if you wish to continue credit account facilities following the intended change. Continuance of trading with the amalgamated entity or commencement of trading with a new entity shall be in our sole discretion and only deemed undertaken by us if a written acknowledgement is issued by our Credit Controller or one of our Directors. You agree that we may obtain, retain, and provide to third parties, references as to your financial standing.

## DELIVERY

- (a) Delivery will occur when the goods are ready for unloading at the delivery address, or when you take possession of the goods at our premises whichever is the earlier. Delivery dates or times mentioned in any quotation or acknowledgement of order or elsewhere are approximate and not of contractual effect and we shall not be liable to you for any failure to deliver on any particular date or dates, or at any particular time, nor shall time be of the essence of any contract.
- (b) Where we deliver to site it is on the understanding that there is a suitable road to the point on the site where delivery is requested. If no such road exists delivery will be made to the nearest point to which, in the opinion of the driver, the vehicle can safely proceed and unload.
- (c) Except for use of a vehicle mounted crane, you will provide all necessary labour and equipment required to unload materials promptly and will indemnify us against any cost, claim, loss or damage arising from unloading.
- (d) If you refuse or fail to take delivery of goods tendered in accordance with the contract we shall be entitled to immediate payment in full for the goods so tendered. We shall be entitled to store at your risk any goods of which you refuse or fail to take delivery and you shall in addition to the purchase price pay all costs of such storage and any additional costs or carriage incurred as a result of your refusal or failure.
- (e) On your request, we will within 3 months of delivery, provide evidence of delivery of goods ordered, such as a copy of a delivery note. If you do not raise any query about delivery within such period, the goods shall be deemed to have been delivered in accordance with your order.

## RISK

- The risk in the goods shall pass to you upon delivery.

## TITLE TO GOODS

- (a) Until we have been paid in full the price of the goods and all other goods agreed to be sold by us to you for which payment is then due together (where applicable) with the costs of packaging and delivery plus any interest and charges thereon:-
  - We shall retain ownership of the goods.
  - You may sell and deliver the goods to third parties in the ordinary course of your business, acting towards such third parties as a principal and not as your agent, but you shall hold all proceeds of sale on trust for us in a separate bank account, you hereby assigning to us all rights and claims which you may have against your customers arising from such sales until full payment is made as aforesaid.
  - You shall if required by us store the goods in such a way as clearly to show our ownership of them.
  - You shall notify us immediately upon our demand of the place or places where the goods are situated.
  - You shall afford to us access to the goods during all normal business hours whether they are upon land occupied by you or your customers and you shall deliver the goods up to us at our request and allow us to remove the same. For this purpose you hereby grant an irrevocable right and licence to our employees or agents to enter upon the said land with or without vehicles during normal business hours.
- (b) The authority given to you pursuant to clause 8(a) (ii) will continue until otherwise notified to you by us or until the happening of any of the following events (whichever is earlier):-

- any notice to you that an administrative receiver or other receiver or manager is to be or has been appointed in respect of your undertaking or a material part thereof or other property or assets;
  - any notice to you that a petition to wind you up is to be or has been presented to you under Section 124 of the Insolvency Act 1986 or otherwise or any notice to you of a proposal to pass a resolution to wind you up (including any proposal by you so to do);
  - a decision by you to make a voluntary arrangement or composition with your creditors or any notice to you and/or any of your creditors that a proposal for the same is to be or has been made;
  - you becoming unable to pay your debts as such expression is defined by the Insolvency Act 1986; or
  - any notice to you that you are to be the subject of a petition for an administration order or the making of any administration order in respect of you;
- and you shall immediately notify us in writing upon the happening of any such event.
- On receipt of written notice from us or on the happening of any of the events set out in clause 8(b), your authority to sell our goods shall immediately be withdrawn and all such goods and products made therefrom shall immediately be delivered to us at your cost and risk.

## LIABILITY

- (a) You shall inspect the goods upon delivery. We will make good at our option by repair or replacement any defects in the goods due solely to defective workmanship or materials which are notified in writing to us and, in the case of any defect discoverable upon reasonable examination, such notification must be made within 2 working days from the date of delivery and, in the case of any defect not discoverable upon reasonable examination, such notification must be made within 2 working days of the date such defect is actually discovered provided that:
  - our above obligations shall not extend to defects caused by wilful damage, negligence (other than by our employees or agents), fair wear and tear, alteration or repair of the goods without our prior written approval, or incorrect storage, application, movement or installation;
  - we shall not be responsible either for the cost of removing any defective goods from any place where they are installed or affixed (or making good the place after removal) or for the cost of installing or affixing in such place any repaired or replacement goods unless the same shall have been previously agreed in writing by one of our Directors; and
  - our above obligations shall in any event only apply for a period of six months from the date of delivery.
- (b) We will not accept liability for shortages in quantities delivered unless you notify us of any claim for short delivery of the goods within 2 working days of delivery. In such circumstances our liability shall be limited to making good the shortage.
- (c) Save as set out in these conditions and save for liability for death or personal injury resulting from our negligence and save for breach of our undertakings as to title implied by statute, all express or implied conditions, representations or warranties as to description, quality or fitness of the goods or otherwise are expressly excluded. We shall not be liable for any consequential, indirect or economic loss or for any loss or depletion of profits, business, revenue, goodwill or anticipated savings, (whether arising from breach of contract, tort (including breach of statutory duty and negligence), misrepresentation or otherwise).
- (d) Where fine or special tolerances are required in the goods supplied beyond those generally accepted in the building trade, no liability shall attach to us unless such fine tolerances are notified in writing to us at the time of order and we have acknowledged in writing that we are prepared to accept such order.
- (e) On request, we will provide information about any guarantee offered by a manufacturer and available to you in respect of the goods.

## MEASURES

- We may supply all or any of the goods in either metric or Imperial sizes in the nearest equivalent measure and goods may be charged in metric measure allowing for conversion.

## PACKAGING AND WASTE

- (a) A charge may be made by us for any special packaging to cover the cost of labour and materials.
- (b) Pallets, crates and cases will be charged for but charges will be credited in full if items are returned to us carriage paid and in good condition, within 7 days of delivery.
- (c) You will be solely responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licences relating to such waste. You will indemnify us against all costs, claims, liabilities and expenses incurred by us arising from or in connection with any breach by you of this clause 11(c).

## CANCELLATIONS OF ORDERS

- We may in our sole discretion accept or reject the cancellation of any order after we have accepted such order. We will not accept the cancellation of an order for goods which are to be specially made or obtained or which are liable to deteriorate or expire rapidly after we have accepted such an order nor will any allowance be made in respect of such goods where they are subsequently returned.

## RETURN OF GOODS

- We may in our sole discretion accept or reject the return of any goods which have been incorrectly ordered. If we decide to accept the return of such goods, such acceptance shall be upon such terms as we may determine and in particular we reserve the right to charge for the carriage and handling of such goods. We will not accept the return of goods which are liable to deteriorate or expire rapidly.

## FORCE MAJEURE CLAUSE

- Shall be under no liability for any loss, damage, delay or expenses caused wholly or in part by Act of God, out break of war, civil commotion, governmental policies or restrictions or control, including restrictions of export or import or other licences, trade or industrial disputes of whatever nature, whether or not such dispute involves us, our employees or agents, or by any other event whatsoever which is beyond our control, and in any such circumstance, we may omit goods from, or cancel, your order, or postpone delivery of the goods ordered.

## BANKRUPTCY OR INSOLVENCY

- If,
  - you make a proposal for or enter into a scheme of arrangement or a composition with your creditors or fail to comply with a statutory demand for the repayment of a debt within the time therein allowed; or become apparently insolvent, or
  - (where you are an individual or, where you are a partnership, in the case of any individual partner) an application is made to the court under Part VIII of the Insolvency Act 1986 for an interim order for the purpose of a voluntary arrangement or an order is made for the administration of your estate pursuant to Part VI of the County Courts Act 1984 or a bankruptcy petition relating to you is presented to the court or you are adjudged bankrupt, or
  - (where you are a company) a petition for an administration order is presented to the court pursuant to Part II of the Insolvency Act 1986 or you pass a resolution or the court makes an order that you shall be wound up (otherwise than for the purpose of amalgamation or reconstruction) or a receiver or administrative receiver is appointed of any of your assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or administrative receiver or
  - (where you are either a company or a partnership) circumstances arise which entitle the court to make a winding-up order or
  - (whether you are a company, a partnership or an individual) you take or suffer any similar action in consequence of debt, we may stop any goods in transit and suspend further deliveries and may forthwith terminate the contract without prejudice to the continuation of all our rights hereunder and to any existing claims. Where goods have been delivered but not paid for, the price shall become immediately due and payable.

## NON-WAIVER OF RIGHTS

- The failure by either you or us to exercise or enforce any rights conferred by 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 such right at any time thereafter.

## HEALTH & SAFETY

- Certain products supplied by us could if incorrectly used, give rise to risks to health and safety. Information in respect of such products is available from us. You undertake to us that you will ensure compliance so far as is reasonably practicable by your employees, agents, licensees and customers with any instructions given by us or the manufacturer for the purpose of ensuring that the goods will be safe and without risk to health when properly used and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of person handling, using or disposing of them.

## NOTICES

- Any notices hereunder shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address. Any notice hereunder shall be deemed to have been delivered, if sent by post, 2 days after posting, and if sent by fax, on the next working day after transmission.

## APPLICABLE LAW

- (a) Subject to clause 19(b) the contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under the contract.
- If,
  - you are domiciled in Scotland within the meaning of the Civil Jurisdiction and Judgements Act 1982, or
  - the goods are delivered to your place of business or at your direction in Scotland, then the contract shall be governed by and construed in accordance with Scottish law and shall be subject to the exclusive jurisdiction of the Scottish Courts as regards any claim or matter arising under the contract.