

# WALKERS OF STOKESLEY - CONDITIONS OF SALE

## 1. Definitions

In these conditions:-

- 1.1 "The Firm" means Walkers of Stokesley of Ellerbeck Court, Stokesley Industrial Park, Stokesley, TS9 5PT
- 1.2 "The Customer" means the Customer of the Firm
- 1.3 "The Contract" means any contract for sale of goods by the Firm to the Customer
- 1.4 "The Goods" means any goods which form the subject matter of the Contract, including parts, components or materials incorporated in them
- 1.5 "The Conditions" means the standard terms and conditions of sale and any other conditions referred to in the Firm's estimate, acknowledgement of order or any other documents specifically referred to in the Contract. If these additional terms conflict with the Conditions then the specifically agreed terms take precedence over the Conditions.

## 2. Quotations/Estimates

- 2.1 All quotations provided by the Firm are subject to acceptance within 28 days of the date of the quotation, irrespective of when the quotation is received by the Customer.
- 2.2 All quotations given by the Firm must be in writing and verbal commitments, offers etc. cannot be considered or constitute a quotation.
- 2.3 The Firm reserves the right to withdraw a quotation at any time before it has been accepted by the Customer.
- 2.4 No quotations supplied by the Firm constitute an offer capable of being accepted by a Customer to create a Contract.
- 2.5 The quotation can be varied by the Firm at any time up to it being accepted by the Customer but its acceptance does not create a Contract pursuant to condition 2.4, in any event any variation would constitute a new quotation.
- 2.6 An offer to supply provided by the Firm constitutes an offer and must be accepted by the Customer on the provided form and it is expressly stated that no acceptance in any other format or any counter offer submitted by the Customer including terms and conditions of business or otherwise would negate the Conditions and is incapable of being accepted by the Firm.

No Contract shall exist until:-

- a. The Firm issues a written acknowledgement of order
- b. The Firm has received the required deposit, or
- c. The Firm has satisfactory credit insurance for the customer
- d. Variations or amendments to the Contract or any terms thereof shall not be binding or valid unless agreed and confirmed by the Firm in writing save as being provided by the Conditions.
- e. All estimates/tenders are for supply only unless specifically noted otherwise
- f. No order that has been acknowledged in writing by the Firm may be cancelled by the Customer save with the express written agreement of the Firm and on terms that the Customer shall indemnify the Firm against all losses including but not limited to loss of profit, costs charges and expenses incurred by the Firm as a result of cancellation.
- g. All bespoke orders which constitute a Contract in accordance with these Conditions cannot be cancelled by the Customer and the Firm is under no obligation to try to resell any Goods in an effort to mitigate any loss in respect of bespoke or other orders.

## 3. Cancellation or suspension of supply

The Firm may suspend or cancel further supplies under this or any other Contract between the parties and charge the Customer for any losses incurred in any of the following circumstances:-

- 3.1 The Customer shall fail to make payment in full of any sum owing by the date due
- 3.2 The Customer enters into any voluntary arrangement with his creditors or becomes subject to any form of insolvency including having an administration order being made against it, having a Receiver appointed over its assets or an administrative Receiver is appointed over its assets goes into any form of liquidation or being an individual enters into bankruptcy.
- 3.3 The Customer ceases or threatens to cease to carry on business
- 3.4 Distress or other execution is levied over the goods or premises of the Customer including premises owned by the Customer or premises rented or otherwise occupied by the Customer
- 3.5 The Firm is entitled to act if it has reasonable belief, such to be determined on the basis of information held by the Firm whether it subsequently proves to be correct, that matters specified in b to d above may occur subject to the Firm being under an obligation to confirm the position to the Customer at the earliest opportunity in writing.
- 3.6 The value of goods ordered which remain undelivered and unpaid for exceeds the Customer's credit limit
- 3.7 If the Customer refuses to accept goods by the date specified or by any date for delivery advised in writing by the Firm within eight weeks of such notification being sent to the Customer or if no date is specified within a reasonable period of time the Firm may submit an invoice for those Goods and is under no obligation to continue work until the said invoice is paid and the Goods are accepted by the Customer. Should the Firm be put to cost in storing goods it may include a charge for storage to be calculated on the basis of a reasonable market rate or the actual costs to which the Firm are charged by any third party. Further the Firm, having served notice to accept delivery within a minimum of eight weeks as specified above may sell the Goods to any third party without the need to deduct such sale prices from the value of the Goods and other charges properly calculable in accordance with the Conditions. This sub-clause should be read in conjunction with the Sales Order Acknowledgement.

## 4. Performance and Delivery

- 4.1 Goods are delivered to the Customer when the Firm makes them available to the Customer when the Firm makes them available to the Customer or any agent of the Customer or any carrier who will always be considered the Customer's agent irrespective of other factors.
- 4.2 The Firm may at its discretion deliver the Goods by instalments in any sequence unless specifically agreed otherwise.
- 4.3 It is the responsibility of the Customer to ensure adequate labour is available in both terms of number and skill to unload delivered Goods, and that appropriate equipment and facilities are on hand, and to ensure adequate access for a standard 7.5 tonne vehicle or articulated lorry.
- 4.4 Unless specifically agreed otherwise any period or date of despatch is an estimate only and the Firm shall not be in breach of contract and liable for any losses occasioned for any delay save that if the failure to deliver continues for a period in excess of 90 days either party may serve notice terminating the contract. This will not negate the obligation the Customer has to pay for those sums due under the terms of the Contract. The Firm will not be responsible for any losses associated with any delay.
- 4.5 Risk in the Goods passes to the Customer when the Customer or its agents commences to take delivery of the Goods even if title to the Goods does not pass at the same moment.
- 4.6 The Firm is a supplier only and nothing is to be taken as a representation or otherwise that the Firm has provided advice, instructions, design skills etc upon which the Customer is entitled to place reliance. The Customer is recommended to obtain such advice from an appropriate professional.
- 4.7 The Goods supplied by the Firm to the Customer or its agents will be fit for the purpose or purposes for which Goods of this kind supplied are usually put. The Firm will not accept any liability for any problems which arise as a result of the Goods being used for a purpose for which Goods of this kind are commonly used.
- 4.8 All deposits paid are non refundable unless the Goods cannot be sourced by the Firm. If after payment of the deposit the Customer cancels or otherwise terminates the Contract, the Firm is entitled to retain the deposit, but if the Customer reorders from the Firm, then the Firm will endeavour to use all or a proportion of the deposit against the cost of the replacement Goods, such being at the absolute discretion of the firm.
- 4.9 The Firm accepts no liability for Goods bought by reference to a sample or by reference to a description as wood is a natural product which changes colour over time, and in other ways. The Firm will use its best endeavours to ensure that the wood is reasonably consistent in any batch.

## 5. Title

Even though risk in the Goods is passed in accordance with clause 4.5 above the Customer will not become the legal owner of the Goods until one of the following events occurs:-

- 5.1 The Firm is paid for ALL the Goods supplied and no other amounts are outstanding from the Customer to the Firm in respect of other Goods supplied by the Firm under this or any other Contract.
- 5.2 The Customer sells the Goods in accordance with this agreement in which case ownership of the Goods will pass to the Customer immediately before the Goods are delivered to the Customer.
- 5.3 Before title has passed to the Customer under the terms of this clause and without prejudice to any of its other rights the Firm will have the right to remove and sell the Goods or any of them and if given an express licence to enter upon the Customer's premises by its agents servants or in its own capacity for the purposes of recovering the Goods.
- 5.4 Should the Customer alter the Goods by incorporating them in any manufacturing process or altering them in any shape or form so they become a constituent element of a new item then the new item produced will become the property of the Firm and all clauses and conditions applied to the Goods will equally apply to the new Goods.
- 5.5 The Customer must insure the Goods from the moment risk passes in accordance with these Conditions and if any insurance claim is made the proceeds of such insurance claim must be immediately paid through to the Firm and until such payment is handed over the Customer holds such monies as trustees on behalf the Firm.

## 6. Price

- 6.1 The Firm shall have the right to adjust its prices for any increase at any time before the Goods have been delivered and such increased prices shall apply to any Goods contracted to be purchased by the Customer whether or not delivered unless 7 days from the date of such notice the Customer notifies the Firm in writing that such increased price is not acceptable and in which case the Contract in so far as it relates to such Goods and remains to be performed by the Firm shall be determined.
- 6.2 All invoices are payable as stated on the invoices at the Firm's premises and in no circumstances shall the Customer be entitled to make reduction or withhold payment for any reason at all and in particular the Customer is not entitled to exercise any right of set off for sums due or sums claimed to be due.

- 6.3 The method of payment should be as specified in the Contract and is deemed to be of the essence in the Contract. The Customer shall not be entitled to any discount offered otherwise in this Contract for any late payment and the Customer shall pay interest at the rate of 4% over the base rate from time to time quoted by Nat West Bank PLC and shall reimburse to the Firm all costs and expenses including legal costs reasonably incurred by the Firm in the collection of any overdue amount whether Court proceedings are taken or otherwise.

- 6.4 Unless special payment terms have been set up, payment is required in full prior to delivery of Goods. Depending on order value, this will be in full with order, or a 40% deposit with order and balance in one or two instalments prior to delivery.

## 7. Storage

The Customer shall store all goods supplied by the Firm in accordance with the British Standard Institute recommendations, unless otherwise stated and should the Customer fail to store Goods in such condition the Firm cannot and will not be liable for any sums or for any defects in the Goods which may be alleged by the Customer which may have been affected by inadequate storage.

## 8. Claims

- 8.1 The Customer must notify the Firm in writing of any claim for short delivery within 7 days of the date of the delivery.
- 8.2 Any claim that the Goods have been damaged, or are not of the correct quality, or do not comply with descriptions, should be notified by the Customer to the Firm and must be made within 7 days of the date of delivery.
- 8.3 The Firm should be afforded all reasonable opportunities and facilities to inspect any claim and the Customer shall make any alleged defective/damaged Goods available for inspection immediately upon being requested to do so. Packing in which the Goods were delivered is to be included within the items to be produced to the Firm for examination.
- 8.4 The Customer acknowledges that it has not entered into any Contract with the Firm based upon any representations made by the Firm or any of its representatives or agents save for those specified in any quotation/estimate.
- 8.5 Without exception the Firm will have no liability of whatever kind for any defects resulting from wear or tear, accident or improper use by the Customer or as a result of use occasioned by the Customer in utilising the Goods save as in accordance with the instructions or advice of the Firm or manufacturer or of any Goods in accordance with British Standard Institute recommendations.
- 8.6 If the Customer establishes that any Goods are defective the Firm shall at its option replace with similar Goods or repair any defective Goods and allow the Customer credit for the invoice or value to the extent that the Goods are not of the Firm's manufacture assigned to the Customer any warranty provided by a manufacturer.
- 8.7 If it is discovered that the Firm is liable to the Customer in respect of some of its Goods this does not entitle the Customer to treat the Contract as a whole at an end and only then as damaged Goods can be the subject matter of a dispute. The Firm is entitled to replace or mend in accordance with clause 8.6 above.

## 9. General

- 9.1 This Contract is between the Firm and the Customer as principals and shall not be assignable by the Customer without the express written consent of the Firm.
- 9.2 The Firm shall have a lien on all the Customers property in the Firm's possession for all sums due at the time from the Customer and shall be entitled to sell, use or dispose of that property as agents for, and at the expense of, the Customer and shall be entitled to apply the proceeds in and towards payment of such sums having provided 28 days written notice to the Customer's registered office or principal place of trading.
- 9.3 The Firm may at its discretion suspend or terminate the supply of any goods if the Customer fails to make payment when due or defaults on any of its obligations under the Contract or other agreement with the Firm.

## 10. Force Majeure

If the performance of the Contract or any obligation under it is prevented, restricted, or intervened with, by reason of circumstances beyond the control of the party obliged to perform the obligations, the parties so affected upon giving prompt notice to the other parties should be excused from the performance to extent of the prevention, restriction, or interference, but the parties so affected shall use its best endeavours to avoid or remove such causes of non-performance and shall continue performance under Contract with the utmost despatch wherever such causes are removed or diminished.

## 11. Law and Jurisdiction

- 11.1 This Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English Courts in all matters regarding this Contract.
- 11.2 The headings of conditions are for convenience only and shall not affect their interpretation.

## 12. Special Conditions

These Conditions are standard conditions. The Firm has Special Conditions which are, unless specified otherwise, also incorporated under these Conditions.

## 13. Dispute Resolution

- 13.1 In the event of dispute between the parties to the Contract the following will apply:-
- 13.2 The Customer cannot withhold payment from the Firm whilst the dispute is being resolved, and
- 13.3 Either party to the Contract can serve notice of dispute, and
- 13.4 Unless the dispute is resolved within 7 days from submission of notice of dispute then the complaining party can serve notice of referral.
- 13.5 Upon receipt of notice of referral either party can apply to the President of the RIBA to appoint a mediator to act to resolve the dispute.
- 13.6 The mediator will give directions on how the matter is to be resolved.
- 13.7 The decision of the mediator on sums due to either party up to the maximum of the contract value shall be binding on the parties in the interim but either party can pursue the matter through the courts if required.
- 13.8 The Firm is entitled in full and final settlement to return any deposit paid if it transpires the Firm are unable to source a product due to be supplied under the terms of the Contract. The Firm will use its best endeavours to source the Goods to the best available standard within time constraints.

## 14. Material specification

- 14.1 All sizes quoted will be accurate plus or minus 2mm on thickness, plus or minus 5mm in width.
- 14.2 The Firm is entitled to supply an alternative to match as closely as possible to the original contracted product. The Firm must provide reasonable notice as soon as this becomes apparent and the Customer may exercise a right as in 4.4.
- 14.3 Flooring is typically supplied at 10% moisture content plus or minus 2%. However wood is a natural product and varies from specie to specie and batch to batch.
- 14.4 Flooring will be reasonably fit for purpose but responsibility for site conditions and compatibility lies with the Customer or the Customer and its installers but is not the responsibility of the Firm
- 14.5 Profiles of tongue and groove may vary between batches, and profiles are not guaranteed to match unless specifically requested and acknowledged at point of order.

## 15. Account information

- 15.1 All Customers must complete a credit application form before a Contract can be entered into and all purchase orders invoices etc, will incorporate the credit details.