

TERMS AND CONDITIONS OF SALE GRAFTON MERCHANTING GB LIMITED - THESE TERMS & CONDITIONS  
RELATE TO TRADE SALES ONLY AND NOT CONSUMER SALES

In these Conditions "the Company" means Grafton Merchanting GB Limited (No.4725313) including its trading divisions; "these Conditions" means these terms and conditions; "the Customer" means the person, firm or company purchasing the Goods; "the Contract" means the contract for the sale of the Goods made between the Company and the Customer, "the Goods" means the goods, materials or services (including samples, where relevant) which are the subject of the Contract and a "Consumer" means a person who is buying the Goods other than in the course of a business. The statutory rights of a Customer who is a Consumer are not affected by these Conditions.

**1. The Contract/Order Acceptance**

- (a) These Conditions shall apply to the Contract and all orders placed and accepted by the Company to the exclusion of any other terms and conditions stipulated, incorporated or referred to by the Customer in any order, letter, form of contract or any other document or negotiations.
- (b) No variation to these Conditions shall be binding without the express written agreement of a director of the Company.
- (c) Even if the Company has given a quotation, no order placed by the Customer is binding on the Company until it has been accepted by the Company.
- (d) In placing an order with the Company the Customer and its representatives warrant and represent that each of them has the necessary authority to bind the Customer in contract. The Customer must ensure that the terms of its order and any applicable specification are complete and accurate given the Company shall be relying on that information.

**2. Estimates/Quotations**

- (a) The Customer is entirely responsible for ascertaining the quantities required notwithstanding that an estimate may have been given by the Company.
- (b) Quotations are for the supply of Goods on these Conditions only. Any quotation given by the Company is not an offer and the Company reserves the right to withdraw or amend any quotation at any time before the Company's acceptance of the Customer's order.
- (c) Where fine or specific tolerances are required in Goods beyond those generally accepted in the building trade no liability will attach to the Company unless the tolerances are notified in writing to the Company at the time of order and the Company has agreed in writing to supply Goods that meet those tolerances.
- (d) The Company may without notice to the Customer reasonably alter any specification, description, design, drawing, illustration and/or other particulars relating to the Goods and to supply the Goods as so altered in performance of the Contract and may also substitute and supply similar goods of equivalent type in the performance of the Contract.

**3. Returns/Cancellations**

- (a) If the Customer incorrectly orders any Goods the Company may, in its sole discretion, determine whether or not to accept their return. The acceptance by the Company of returned Goods shall be on such terms as it may determine and in particular the Company may charge for the carriage and handling of such Goods at the greater of 25% of their invoiced value or £5.
- (b) An order for Goods that are to be specially made or obtained ("Specials") may not be cancelled by the Customer once the order has been accepted by the Company nor will any allowance be made in respect of Specials if they are subsequently returned.

**4. Prices**

- (a) The price of the Goods ("the Price") shall be the price quoted by the Company to the Customer provided the Customer accepts the quotation within 30 days of its date. Where no price has been quoted (or a quoted price is no longer valid) the Price shall be the Company's trade price on the date the Goods are delivered.
- (b) The Company may by giving notice to the Customer at any time up to 7 days before delivery increase the Price to reflect any increase in the cost to the Company of procuring or supplying the Goods which is due to factors beyond its reasonable control (including without limitation foreign exchange fluctuations, taxes and duties and the cost of labour, materials and manufacturing costs) provided that in such circumstances the Customer may cancel the Contract up to 3 days before the due date for delivery.
- (c) All prices quoted are exclusive of Value Added Tax and delivery charges unless otherwise stated.
- (d) If the Company agrees to deliver Goods other than in accordance with Condition 6(a) (i) it may recharge the delivery costs to the Customer plus an administration fee.

**5. Accounts/Payments**

- (a) Credit accounts may be opened at the discretion of the Company, subject to satisfactory credit references being obtained. Unless otherwise agreed in writing, payment for Goods supplied on credit accounts shall become due and payable no later than the last day of the month following the month of delivery. However if the Goods concerned are Specials the Company may instead apply the payment terms in Condition 5(b).
- (b) For cash Customers, that is, Customers who do not have a credit account with the Company or whose credit account is cancelled or suspended under Condition 5(g) and in respect the supply of Specials to credit account Customers and other non-standard transactions (as determined by the Company), the Customer shall pay the price for the Goods on or before delivery, (where applicable) upon receipt of the Company's invoice.
- (c) No payment shall be deemed to have been received until the Company has received cash or cleared funds. Time for payment shall be of the essence. Notwithstanding any other provision, all payments payable to the Company under any Contract shall become due immediately if the Company becomes entitled to terminate the Contract under Condition 15(a) or the Contract otherwise terminates.
- (d) Any queries on an invoice must be raised in writing by the Customer within 21 days of the invoice date, otherwise the invoiced amount shall be deemed to be accepted by the Customer.
- (e) Without prejudice to the Company's rights to enforce payment, if the Customer fails to make payment in accordance with these Conditions the Company may (at the Company's absolute discretion) charge interest on any balance outstanding (notwithstanding that a portion of the account or invoice is the subject of any dispute or query) from the due date for payment until payment is made, whether before or after any judgment either: (i) at the annual rate of 5% above the base lending rate from time to time of Lloyds TSB Bank plc; or (ii) at the rate and on the basis permitted under the Late Payment of Commercial Debts (Interest) Act 1998.
- (f) The Customer shall indemnify the Company, against all costs (including legal costs) and expenses incurred by the Company in recovering amounts due from the Customer, or exercising its rights under this Condition 5, including any administration fee incurred if the Company refers a late/non payment dispute to its lawyers or collection agents.
- (g) The Company may cancel or suspend the Customer's credit account by notice in writing at any time should it decide, for whatever reason, that it requires further security from the Customer, other than that already provided (if any). If the Company exercises such rights it may continue trading with the Customer in accordance with Condition 5(b). The Company may reinstate the credit account once the additional security required has been provided by the Customer and any other conditions have been met. The Customer agrees to use its best endeavours to ensure that any additional security required by the Company (including but not limited to a third party guarantee) is provided.
- (h) The Company may at any time, at its sole discretion and without reference to the Customer or any guarantor: (i) increase (without limit) or decrease any credit limit applied to the Customer; and (ii) supply Goods in excess of the credit limit. The Company may take action to collect all monies owing in full whether or not the sums due exceed the prevailing credit limit. Where more than one invoice is outstanding the Company may choose against which invoice(s) to apply any payment from the Customer even if the Customer has allocated the payment to a specific invoice.
- (i) The Customer shall give the Company prior written notice of any change in its constitution or ownership or, in the case of a sole trader or partnership, if it wishes to incorporate or merge with others. The Company may then decide whether to exercise its rights in Condition 5(g) to continue trading with the Customer, whether a new credit application is required and whether to continue with any credit arrangements granted to the Customer and shall not be obliged to continue with either unless a written confirmation and acceptance is issued by an authorised member of the Company's credit management team, a Company director or the Company Secretary.
- (j) If a cheque used by the Customer to pay an account is dishonoured the Company may debit the Customer's account with any charge or cost incurred by the Company as a consequence. If the Company accepts payment by credit card it may levy a surcharge at its standard rates in force at the time of payment.
- (k) On termination of the Contract, howsoever caused, the Company's rights contained in this Condition 5 shall remain in effect.

**6. Delivery/Despatch**

- (a) Delivery of the Goods shall be made: (i) by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection; or (ii) if some other place for delivery is agreed by the Company, by it delivering the Goods to that place.
- (b) Risk of damage to or loss of the Goods shall pass to the Customer: (i) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; (ii) in the case of Goods to be delivered other than at the Company's premises, on delivery to the agreed destination; and (iii) if the Customer fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.
- (c) If Goods are delivered by or on behalf of the Company other than at the Company's premises: (i) the Company accepts no liability whatsoever for any loss of or damage to the Goods whilst in transit unless it is notified in writing with the details of the damage within 7 days of despatch; (ii) the Customer shall give the Company such access to its premises as the Company requires in order to deliver the Goods and shall provide the labour and equipment required to complete the delivery; and (iv) the Company may charge the Customer for any return visits made as a result of the Customer's failure to take delivery of the Goods.

(d) Any stated time or date for delivery is an estimate only and is not binding on the Company. The Company shall not be liable for any failure to deliver by such time or date, nor for any loss or damage arising directly or indirectly from such failure. The Customer may not refuse to accept Goods because of late delivery; nor, where Goods are to be delivered in instalments, shall the Company's failure to deliver any instalments by any time or date entitle the Customer to treat the Contract as a whole as repudiated.

(e) If the Customer fails to take delivery of Goods or to give the Company adequate instruction for delivery then, without prejudice to its other rights, the Company may: (i) store the Goods until actual delivery and charge the Customer for the costs (including insurance) of storage; or (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for any excess over the Price or charge the Customer for any shortfall against the Price.

(f) Where delivery is to be made by instalments, each instalment shall be deemed to be a separate and distinct contract and no default by the Company in respect of any one or more instalment shall entitle the Customer to reject or withhold payment in respect of any other instalment.

(g) The Company shall provide evidence (such as a delivery note) of the delivery of Goods supplied in response to a request from the Customer provided it is received within 3 months of the delivery date. If the Customer does not raise any query about delivery within such period, the Goods concerned shall be deemed to have been delivered in accordance with the Contract.

(h) The Company does not accept liability for shortages in quantities delivered unless the Customer notifies the Company of any claim for short delivery of the Goods within 2 days of the delivery to the Customer. In such circumstances the Company's liability shall be restricted to making good the shortage. Any delivery book or note marked "NOT EXAMINED" will not prevent the operation of these clauses nor constitute express or implied notice in writing of any potential or actual shortage

#### 7. Performance

The Customer shall ensure that: (i) the Goods are sufficiently suitable and fit for the purpose intended and comply with all applicable requirements whether statutory, regulatory, municipal or otherwise; (ii) its premises are safe and suitable for the delivery, installation, use and operation of the Goods and comply both before and after such delivery, installation and during such operation with all relevant legislation (including without limitation safety legislation); (iii) any item of equipment provided by it which relates to the installation or operation of the Goods or is ancillary to or is for use in connection with the Goods shall not adversely affect their suitability or fitness for purpose.

#### 8. Warranty

(a) Subject to Condition 9(a) the Company agrees (in its discretion) to repair (if possible), replace free of charge or refund any sums paid by the Customer for any Goods which in the reasonable opinion of the Company are defective due to a manufacturing fault but only if: (i) such fault is notified to the Company in writing within 7 days of delivery; and (ii) the Company and/or its representative is given a reasonable opportunity after receiving the notice of examining such Goods in situ or the Customer (if asked to do so by the Company) returns such Goods to the Company, at such address specified by the Company, for the examination to take place there.

(b) The Company shall not be liable for a breach of the warranty in Condition 8(a) if: (i) the Customer makes any further use of such Goods after giving notice of a defect; or (ii) the defect arises because the Customer failed to follow the Company's or the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or (iii) the Customer alters or repairs such Goods without the written consent of the Company.

(c) The Company is not responsible either for the cost of removing or re-installing any repaired or replacement Goods, unless previously agreed in writing by a Company director.

(d) Any defective Goods or parts thereof replaced by the Company in accordance with this Condition or otherwise shall become, or remain, the property of the Company.

(e) Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

#### 9. Liability

(a) Nothing in these terms shall be deemed to exclude or restrict the Company's liability for: (i) death or personal injury resulting from its negligence; (ii) fraudulent misrepresentation; or (iii) any breach on its part of any undertaking as to title implied by Section 12 of the Sale of Goods Act 1979 (as amended) or by Section 8 of the Supply of Goods (Implied Terms) Act 1973 (as amended).

(b) Subject to Condition 9(a), the Company's total aggregate liability under or in connection with the Contract (howsoever such liability arises, whether in contract or tort or otherwise, including for negligence) shall be limited to the value of the Goods supplied under the Contract.

(c) Subject to Condition 9(a), the Company shall not be liable (howsoever such liability arises, whether in contract or tort or otherwise, including for negligence) for any indirect or consequential loss or for damage to or for loss of profit, business, savings, production or goodwill which arises out of or in connection with the Contract.

(d) Where the Company sells Goods to a Customer who is not a Consumer and the Customer sells those Goods directly or indirectly to a person who is such a Consumer, without prejudice to its rights under the Contract the Customer shall indemnify the Company against any liability or loss whatsoever arising directly or indirectly pursuant to the Consumer Protection Act 1987.

(e) The Customer shall indemnify the Company from and against all loss, damage, or liability suffered or incurred by the Company or any third person for or arising out of the negligence, breach of statutory duty, breach of contract or other duty of the Customer or its officers, employees, agents or contractors, in each case in the course of performance of or otherwise in any way arising out of or in connection with the Contract.

(f) These Conditions set out the Company's entire liability in respect of the Goods and rights granted under them are in lieu and to the exclusion of all other warranties, conditions and other terms express or implied by statute, common law or a course of business except for any which cannot legally be excluded.

#### 10. Misrepresentation

(a) The Company shall not be liable in respect of any misrepresentation made by the Company its servants or agents to the Customer its servants or agents as to the condition of the Goods, their fitness for any purpose or as to quantity or measurements unless the representation is made or confirmed in writing by the Company and/or is fraudulent.

(b) Without prejudice to Condition 10(a), whilst the Company takes every precaution in the preparation of its catalogues technical circular price lists and other literature, these documents are for the Customer's general guidance only and statements made in them (in the absence of fraud on the part of the Company) shall not constitute representations by the Company and the Company shall not be bound by them.

#### 11. Ownership

(a) Unless the Company agrees otherwise in writing, ownership of the Goods shall not pass to the Customer until the Company has received from the Customer payment for the Goods and all other sums which are due to the Company from the Customer.

(b) Until ownership has passed in accordance with Condition 11(a), the Customer shall: (i) hold the Goods on a fiduciary basis as the Company's bailee; and (ii) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property; and (iii) not destroy, deface or obscure any identifying mark, serial number or packaging on or relating to the Goods; and (iv) maintain the Goods in satisfactory condition, keep them insured on the Company's behalf for their full Price against all risks and provide the Company with a copy of the insurance policy on request; and (v) deliver up the Goods to the Company on demand.

(c) The Customer may only resell the Goods before ownership has passed if such sale is made in the ordinary course of the Customer's business at full market value and is a sale of the Company's property on the Customer's own behalf dealing as principal. The Customer shall hold such part of the proceeds of sale as represents the amount owed by the Customer to the Company for the relevant Goods separately (in a bank account that does not contain any third party monies and is not overdrawn) on trust on behalf of the Company and the Customer shall promptly account to the Seller on such sale.

(d) The Customer's right to possession of the Goods shall terminate immediately if the Customer: (i) becomes insolvent (as defined in Condition 15(b)); or (ii) suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or (iii) fails to observe or perform any of its obligations under the Contract or any other contract it has with the Company; or (iv) encumbers or in any way charges any of the Goods.

(e) The Company may recover payment for the Goods notwithstanding the fact that ownership of any of the Goods has not passed from the Company to the Customer.

(f) The Customer grants, and in the case of third parties shall procure, the Company and its agents and employees an irrevocable licence at any time to access and enter any premises where the Goods are or may be stored to inspect, repossess and remove them.

(g) Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

(h) Should the Company repossess any Goods or the Customer delivers up any Goods, in accordance with this Condition 11, the Contract in respect of those particular Goods is rescinded.

(i) On termination of the Contract, howsoever caused, the Company's rights contained in this Condition 11 shall remain in effect.

#### 12. Sizes and Weights etc.

(a) All sizes stated by the Company or a manufacturer are subject to dimensional tolerances in accordance with the appropriate BSS.

(b) The Company may deliver to the Customer an excess and/or deficiency of up to 10% of the weight or volume it agrees to deliver without any liability to the Customer and in such circumstances the Price payable by the Customer shall be adjusted accordingly.

#### 13. Pallets and Packaging

(a) The Company may charge for any packaging provided on a time and materials basis. Charges levied by the Company for crates, cases, pallets or aggregate bags will be credited if reusable items in good condition are returned to the Company carriage paid within 28 days of delivery. Polythene sacks are non-returnable.

(b) The Customer is solely responsible for the disposal of any waste arising from the Goods once delivered and will comply with all applicable laws, regulations and waste management licences relating to such waste.

#### 14. Force Majeure

The Company may defer the date of delivery or cancel the Contract or reduce the volume of Goods ordered by the Customer (without liability) if it is prevented from or delayed in performing due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

#### 15. Default and Termination

(a) If the Customer becomes insolvent or commits any breach of the Contract the Company may, without prejudice to its other rights, stop any Goods in transit and/or suspend further deliveries and by notice in writing to the Customer terminate the Contract.

(b) For the purposes of Conditions 11(d) and 15(a) "insolvent" means the Customer becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, the levying of the threat of execution or distress on any property of the Customer, the appointment of a receiver or administrative receiver over all or any part of the Customer's property, a proposal for a voluntary arrangement or compromise between the Customer or its creditors whether pursuant to the Insolvency Act 1986 or otherwise, the passing of a resolution of voluntary winding-up or summoning a meeting to pass such a resolution other than for the purposes of a bona fide amalgamation or reconstruction, the presentation of a petition for the winding-up of the Customer or an administration order in relation to the Customer, the Customer ceasing or threatening to cease to carry on its business or the Company reasonably contemplating that any of the foregoing will occur.

(c) If the Company is entitled to terminate the Contract under Condition 15(a) the Customer's licence to sell in Condition 10(ii) ends automatically and the Company may, without prejudice to its other rights: (i) in the case of any sale involving more than one delivery forthwith suspend any further deliveries; (ii) demand immediate payment of all sums then payable by the Customer regardless of whether the Customer is in default of the contract under which such sums are payable, including such sums not yet due.

#### 16. Patent and Trade Marks

(a) No representation is made or warranty given that any Goods supplied do not infringe any letters patent, trademarks, registered designs, or similar industrial or intellectual property rights.

(b) The Customer will unconditionally fully and effectively indemnify the Company against all losses, damages, costs or expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company as a consequence of the Company supplying Goods to specifications or designs provided by or on behalf of the Customer, including in settlement of any claim for infringement of any patents, copyright, design, trademark or any other industrial or intellectual property rights of any other person.

#### 17. Notices

Any notice under or in connection with the Contract shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned as its principal place of business or last known address and sent by first class pre-paid post. Such notice shall be deemed to be delivered 48 hours after posting

#### 18. Disputes and Set-Off

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Customer of all its obligations under these Conditions and the Customer may not withhold or delay payment or exercise any rights of set-off whatsoever and howsoever arising which might otherwise be available to it.

#### 19. Waiver

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall waive of those rights, nor shall any single or partial exercise of such rights preclude their further exercise. Any waiver by the Company of any breach by the Customer of any of its obligations under the Contract shall not affect the rights of the Company if there is any further or additional breach.

#### 20. Health & Safety

Certain Goods could, if incorrectly used, give rise to risks to health and safety. Information in respect of such Goods is available from the Company. The Customer undertakes that it shall ensure compliance so far as is reasonably practicable by its employees, agents, licensees and customers with any instructions given by the Company or the manufacturer for the purpose of ensuring that the Goods are 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 persons handling, using or disposing of them.

#### 21. Severability

Each and every obligation contained in these Conditions is a separate obligation and if any provision of these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining Conditions and the remainder of such provision shall continue in full force and effect. If any illegal, invalid, void, voidable, unenforceable or unreasonable provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### 22. Headings

The headings in these Conditions are for convenience only and shall not affect their interpretation.

#### 23. Governing Law

(a) Subject to Condition 23 (b), the Contract shall be governed by and construed in accordance with English law and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the English Courts.

(b) If the Customer is domiciled in Scotland (according to the Civil Jurisdiction and Judgements Act 1982) or Goods are delivered to the Customer in Scotland, the Company may elect that the Contract shall be governed by and construed in accordance with Scottish law and/or all disputes arising in connection with the Contract shall be submitted to the jurisdiction of the Scottish Courts.

#### 24. Credit Search

The Company will make a search with a Credit Reference Agency, who will keep a record of that search and will share the information with the Company and other businesses. In some instances the Company may also make a search on the personal credit file of principal directors. The Company may also pass or share Customer information with carefully selected third parties for the purposes of account opening, credit vetting and account management. Should it become necessary to review an account, then again a credit reference may be sought and a record kept. The Company will monitor and record information relating to Customer trade performance and such records will be available to Credit Reference Agencies who will share that information with other businesses when assessing applications for credit and fraud prevention. For the purposes of credit referencing the Company may also share information with other businesses.

#### 25. Assignment

The Customer may not assign the Contract without the prior written consent of the Company. The Company may assign or sub-contract the Contract or any part of it to any person, firm or company.

#### 26. No Rights to Third Parties

Subject to Condition 25, the parties to the Contract do not intend that any of its terms are enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

#### 27. Guarantee of Sums Due

(a) Where any person or persons ("the Guarantor") agree to guarantee the performance of the Company's financial obligations under the Contract that guarantee ("the Guarantee") shall be an unconditional and irrevocable guarantee, it is made in consideration of the Company making available to the Customer a credit account, it is a continuing security and shall not be discharged by any intermediate settlement of the Customer's credit account nor shall it be affected by any change in the Customer's credit limit.

(b) The Guarantee shall enure for the benefit of the Company, its successors and assigns and can be assigned in whole or in part by the Company without notice to the Guarantor, its parent or ultimate parent company or any subsidiary of the ultimate parent company.

(c) Where there are two or more Guarantors their obligations shall take effect as joint and several obligations and the Guarantee shall not be revoked or impaired as to a Guarantor by the death, incapacity or insolvency of another.

(d) Regardless of whether a Guarantor ceases to be a director, employee, agent, or otherwise leaves the service of the Customer (notice of any of which the Customer shall immediately give to the Company), no Guarantor shall be discharged or released from his obligations pursuant to the Guarantee unless and until the Company expressly confirms in writing that he is so discharged or released.

(e) The Company may, at its sole discretion, conditionally or fully release or discharge any Guarantor from his obligations under the Guarantee or accept any composition from or make any other arrangements with any Guarantor without releasing or discharging the other(s) or without prejudicing or affecting the Company's rights and remedies against them.

plc. VAT Reg. No. GB 663 3617 30 Registered Office: Aquis Court, 31 Fishpool Street,  
St Albans AL3 4RF Jan 2010