

1. Definitions and Interpretation

- 1.1. In these Conditions of Sale, the following words and expressions shall have the following meanings:
 - 1.1.1. "Business Day" means any day, other than a Saturday or Sunday or public holiday, when the banks in London are open for business;
 - 1.1.2. "Company" means Singleton Birch Limited (company number 00009433) whose registered office is at Melton Ross Quarries, Barnetby, North Lincolnshire, DN38 6AE; or the supplier of the Goods pursuant to these Conditions, as identified on any Quotation, Contract, conveyance note or invoice issued by the Company;
 - 1.1.3. "Company Signatory" means a Director of the Company;
 - 1.1.4. "Conditions" means these standard Conditions of Sale, as set out herein;
 - 1.1.5. "Contract" means any contract between the Purchaser and the Company for the supply of Goods, incorporating the Quotation and these Conditions;
 - 1.1.6. "Goods" means the goods set out in the relevant Quotation, including any parts thereof and any services performed in association with the supply of Goods;
 - 1.1.7. "Purchaser" means the person, firm or company to whom the Goods are to be supplied, as identified in the Quotation; and
 - 1.1.8. "Quotation" means the relevant quotation provided by the Company in respect of each Contract.
- 1.2. In these Conditions of Sale:
 - 1.2.1. references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
 - 1.2.2. references to the masculine include the feminine and references to the singular include the plural, and vice versa as the context admits or requires; and
 - 1.2.3. any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.

2. Contract

- 2.1. All Goods shall be supplied subject to these Conditions, which may not be altered unless expressly agreed in writing by a Company Signatory.
- 2.2. The Contract (incorporating the Conditions and relevant Quotation) contains the entire agreement between the parties in respect of the supply of the Goods to the Purchaser by the Company. Except to the extent otherwise agreed by the Company in writing, these Conditions shall apply to the Contract to the exclusion of all other terms and conditions and shall replace any previous agreement or understanding between the parties, including any terms that the Purchaser may seek to introduce through any orders or any other documentation or correspondence. No addition or variation to these Conditions shall form part of the Contract unless agreed in writing by a Company Signatory.
- 2.3. No cancellation or variation of the whole or any part of the Contract is permitted except with the written agreement of a Company Signatory.
- 2.4. Each order or acceptance of a Quotation for Goods shall be deemed to be an offer by the Purchaser to purchase Goods subject to these Conditions. Such offer shall not be accepted by the Company until it sends written acceptance to the Purchaser or commences performance of the Contract, (whichever event occurs earlier), at which point the Contract shall take effect and become binding as between the Purchaser and the Company.
- 2.5. Acceptance of the Goods will be deemed conclusive evidence of the Purchaser's acceptance of these Conditions and the terms of the Contract.

3. Quotations

- 3.1. Subject to Condition 4, any Quotation given by the Company is valid for the period stated in the Quotation or, if no such validity period is quoted, for a period of sixty (60) days from its date of issue. The Company reserves the right to reject an order received after that period and to withdraw the Quotation on written notice at any time.
- 3.2. Quotations are made subject to the availability of Goods and the Company reserves the right to cancel in whole or in part any order to the extent that the Goods required are not, or cease to be, available.

4. Price

- 4.1. The price for the Goods shall, unless otherwise expressly agreed between the parties or amended pursuant to this Condition 4, be the price set out in the Quotation.
- 4.2. The price of Goods shall be subject to the addition of Value Added Tax and any other applicable government duty, levy or tax.
- 4.3. The prices quoted in any Quotation are based on costs at the time of writing and the Company reserves the right to pass on to the Purchaser any increases which might be incurred in its costs such as raw materials, labour, haulage etc. or any other items over which it has no control, between the date of the Quotation and the date of supply of Goods.

5. Payment

- 5.1. Unless otherwise stated, the credit terms set out in this Condition 5 are available only if the Company has approved credit accounts with the Purchaser. The Company may consider applications for credit facilities upon receipt of satisfactory trade or other references, provided that facilities are granted at the Company's sole discretion.
- 5.2. The Company reserves the right to refuse to accept or execute any order if the arrangement for payment or the Purchaser's credit is not satisfactory to the Company, and to suspend or discontinue supply of any Goods to any Purchaser whose account is overdue for payment. The Company also reserves the right in its absolute discretion and at any time to insist on payment by way of cleared funds for Goods before supply, or to demand security for payment before continuing with or supplying Goods, notwithstanding any subsisting agreement to provide credit to the Purchaser.
- 5.3. All invoices are payable in full before supply if required by the Company, or otherwise on or before the end of the month following the month in which Goods were supplied. Time shall be of the essence in respect of the Purchaser's payment obligations.
- 5.4. The Purchaser shall not be entitled to make any deduction or set off from any sums claimed by the Company. The Company shall be entitled to set off against any monies lawfully due or becoming due to the Purchaser from the Company, or from any of the Company's subsidiary or associated companies, any monies which are due or become due to the Company from the Purchaser, or any of the Purchaser's subsidiary or associated companies.
- 5.5. Without prejudice to any other remedies that may apply in respect of late payment, interest shall accrue on a daily basis on overdue invoices, from the date when payment becomes due until the date of payment (after as well as before any judgment), at a rate of four per cent (4%) above the base rate from time to time in force by Bank of England.

6. Risk and Title

- 6.1. The risk in the Goods shall pass to the Purchaser immediately upon delivery.
- 6.2. All Goods shall remain the property of the Company until either the Goods are delivered to the Purchaser or the Company has received cleared payment in full in respect of such Goods, whichever occurs later.
- 6.3. Until title to the Goods has passed to the Purchaser, the Purchaser shall:
 - 6.3.1. store the Goods separately from all other goods held by the Purchaser so that the Goods remain readily identifiable as the Company's property;
 - 6.3.2. not remove, deface or obscure any identifying mark or packaging on, or relating to, the Goods; and
 - 6.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
- 6.4. Until title to the Goods has passed to the Purchaser, the Company remains entitled to:
 - 6.4.1. require the Purchaser to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - 6.4.2. enter the Purchaser's property, or the property of any third party where the Goods are stored, to retrieve the Goods if necessary.

7. Termination

- 7.1. Without prejudice to any other rights or remedies, the Company may terminate any Contract or suspend any further performance under any Contract without any liability to the Purchaser with immediate effect by giving written notice in the following circumstances:

- 7.1.1. the Purchaser fails to observe or perform any of its obligations under the Contract, or any other contract between the Company and the Purchaser;
- 7.1.2. the Purchaser fails to pay any amount due under the Contract on the due date for payment;
- 7.1.3. the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
- 7.1.4. an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Purchaser;
- 7.1.5. the Purchaser ceases or threatens to cease to carry on business;
- 7.1.6. any distraint or execution or other process is levied or enforced on any property of the Purchaser and is not paid out, withdrawn or discharged within twenty one (21) days;
- 7.1.7. the Purchaser is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- 7.1.8. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser.
- 7.2. The termination of any Contract, howsoever arising, shall be without prejudice to the rights and duties of either party accrued prior to termination.

8. Specification of Goods

- 8.1. Any Contract between the Company and the Purchaser shall not be a sale by sample. Samples of Goods for which the Company has quoted and is satisfied would fairly represent the class of material which would be supplied may be submitted upon request, but it is the responsibility of the Purchaser to satisfy itself as to the suitability for the purpose for which the Goods are required.
- 8.2. Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 8.3. The Company reserves the right to make changes to the specification of the Goods which are required to conform with any applicable statutory requirements.
- 8.4. Where the Company complies with a request from the Purchaser, or from a person reasonably believed by the Company to be acting on the Purchaser's behalf, for a variation in the specification of Goods, the Purchaser will accept any consequential variation in the properties and/or the constituents of that supply of Goods.

9. Delivery

- 9.1. Any delivery times and/or dates quoted by the Company are estimates only and may not be made of the essence by notice. The Company shall not be liable for delay in supply of Goods, nor shall the Purchaser be entitled to refuse to accept Goods or terminate any Contract unless the delay:
 - 9.1.1. is of an unreasonable length of time; and
 - 9.1.2. is not due to any cause mentioned in Condition 11.
- 9.2. The Company does not undertake to deliver any Goods over roads or ground which it considers to be unsuitable. If a vehicle used for performing any delivery is required to deliver Goods to a place situated off a public road the Purchaser shall be responsible for providing safe and suitable road access to facilitate such delivery of Goods.
- 9.3. The Purchaser must provide safe and suitable facilities for supply and storage of Goods. The Company shall be entitled to refuse to supply Goods to any premises which it considers unsuitable. The Purchaser shall be liable for, and indemnify, keep indemnified and hold harmless the Company against, any accident or damage (with the exception of death and personal injury caused by the negligence of the Company or its nominated haulier, employees or agents) occurring due to unsuitable access or premises.
- 9.4. Without prejudice to any other rights or remedies available to the Company, an additional charge may be made for:
 - 9.4.1. deliveries of less than the quoted minimum loads;
 - 9.4.2. delivery or performance outside of the hours of 08.00 and 16.00 on Business Days (if requested by the Purchaser);
 - 9.4.3. re-direction of deliveries;
 - 9.4.4. delays in unloading delivery vehicles; or
 - 9.4.5. deliveries which cannot be effected due to unsuitable access or storage facilities.
- 9.5. The Company may deliver the Goods by instalments, which may be invoiced and paid for separately. The Purchaser may not cancel an instalment because of any delay in delivery or defect in another instalment.
- 9.6. If the Purchaser fails to take delivery of any of the Goods when they are ready for delivery or fails to provide any instructions, documents, licences or authorisations required to enable the Goods to be supplied on time (except because of the Company's fault), risk in the Goods will immediately pass to the Purchaser (including for loss or damage caused by the Company's negligence) and the Goods will be deemed to have been supplied and (without prejudice to its other rights) the Company may:
 - 9.6.1. store or arrange for the storage of the Goods until actual delivery, and charge the Purchaser for all related costs and expenses (including insurance); and/or
 - 9.6.2. following written notice to the Purchaser, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Purchaser for any shortfall below the price under the Contract.
- 9.7. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Purchaser on delivery, unless the Purchaser can provide conclusive evidence proving otherwise. Provided that the total volume of the consignment as recorded by the Company is within ten percent (10%) of the quantity of Goods ordered by the Purchaser: (i) the Purchaser may not reject the consignment (in whole or in part) by reason of the volume discrepancy; and (ii) the invoice issued by the Company in respect of the consignment shall reflect the quantity received by the Purchaser, rather than the quantity of Goods originally ordered by the Purchaser.
- 9.8. The Company shall not be liable for any non-delivery of Goods. (even if caused by the Company's negligence) unless written notice is given to the Company within two (2) Business Days of the date when the Goods would in the ordinary course of events have been delivered. In such event, the Company's liability shall, subject to Condition 10.4) be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods.
- 9.9. The Purchaser, or any person who reasonably appears to be authorised to sign the same on behalf of the Purchaser, shall confirm receipt of each load of Goods by countersigning a receipt (conveyance) note, and such countersignature shall be deemed to be acceptance of the Goods (subject to Condition 10).

10. Warranty and Liability

Warranty

- 10.1. Except as otherwise set out herein, the Company warrants that the Goods will correspond to any specification agreed between the parties. In the absence of an agreed specification, the Company warrants that the Goods shall be of satisfactory quality at the time of supply, and that any services will be performed with reasonable skill and care.
- 10.2. The Company shall not be liable for a breach of the warranty in Condition 10.1 unless the Purchaser gives written notice of the defect to the Company:
 - 10.2.1. within two (2) Business Days of the date of supply of the Goods; or
 - 10.2.2. where the defect would not be apparent to the Purchaser upon a reasonable inspection, within seven (7) Business Days of the date when the Purchaser knew or ought reasonably to have known of the defect; and
 - 10.2.3. the Company is given a reasonable opportunity after receiving such notice to examine the Goods and the Purchaser (if asked to do so by the Company) returns a representative sample of such Goods to the Company's place of business at the Purchaser's cost for the examination to take place.
- 10.3. The Company shall not be liable for a breach of the warranty in Condition 10.1 if:
 - 10.3.1. the defect arises because the Purchaser failed to follow the Company'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
 - 10.3.2. the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Purchaser.
- 10.4. If the Purchaser makes a valid claim against the Company based on a defect in the quality or quantity of the Goods, the Company may at its option replace or re-perform such defective Goods or refund the price of such defective Goods on a pro-rata basis against the total price of the Goods.

- 10.5. If the Company opts to comply with Condition 10.4 it shall have no further liability for a breach of the warranty under Condition 10.1 (including when such breach is due to negligence).

Liability

- 10.6. Except as set out in Condition 10.7, the Company hereby excludes to the fullest extent permissible in law, all conditions and warranties, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Purchaser.
- 10.7. The Company does not exclude its liability (if any) to the Purchaser for:
- 10.7.1. breach of the Company's obligations arising under Section 12 Sale of Goods Act 1979 or Section 2 Sale and Supply of Goods and Services Act 1982;
 - 10.7.2. personal injury or death resulting from the Company's negligence;
 - 10.7.3. any matter which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
 - 10.7.4. Fraud or fraudulent misrepresentation.
- 10.8. Subject to Conditions 10.7 and 10.9, the Company's aggregate liability to the Purchaser in contract, tort (including negligence), breach of statutory duty, restitution or otherwise howsoever arising in relation to any particular Contract shall be limited to the total price of the Goods supplied under that particular Contract.
- 10.9. Subject to Condition 10.7, the Company shall have no liability to the Purchaser under or in connection with the Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any loss of profit or indirect or consequential loss of any kind including pure economic loss, loss of business, depletion of goodwill and like loss (in each case whether direct or indirect).

11. Force Majeure

In the event of the Company's inability to supply Goods or perform any Contract due to any Act of God, war or threat of war, explosion, riot, sabotage, terrorism, civil commotion, Government order or legislation, fire, accident, strike or industrial action short of a strike (whether involving employees of the Company or a third party), lock out, adverse weather conditions, delays to transport, power failures, breakdown of plant or machinery, non-availability of or difficulty in obtaining Goods, raw materials, fuel, parts or machinery or due to any other matter outside the Company's reasonable control, the Company may suspend deliveries or performance under the Contract and shall not be in breach of the Contract and shall not be liable for any loss or damage suffered as a result of any failure to deliver or perform or delay in delivery or performance of the Contract.

12. Bribery and Corruption

- 12.1. For the purposes of this Condition 12, the following words and expressions shall have the following meanings:
- 12.1.1. **"Adequate Procedures"** means such procedures as are required so as to comply with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act);
 - 12.1.2. **"Anti-Bribery Laws"** means all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including the Bribery Act 2010;
 - 12.1.3. **"Anti-Bribery Policies"** means the Company's ethics, anti-bribery and anti-corruption policies and any relevant industry code on anti-bribery, in each case as the Company or the relevant industry body may update them from time to time; and
 - 12.1.4. **"Associated Person"** shall have the meaning given to such expression in Section 8 of the Bribery Act 2010.
- 12.2. To the extent that any Anti-Bribery Laws apply to any aspect of the relationship between the Company and the Purchaser, including any Associated Persons of either party, the Purchaser shall, in relation to any Contract:
- 12.2.1. comply with any Anti-Bribery Laws;
 - 12.2.2. comply with the Anti-Bribery Policies;
 - 12.2.3. have and maintain in place throughout the term of any Contract its own policies and procedures, including Adequate Procedures to ensure compliance with the Anti-Bribery Laws and the Anti-Bribery Policies and will enforce them where appropriate;
 - 12.2.4. promptly report to the Company any offer, promise, or giving of, or any request for, agreement to receive, or acceptance of any undue financial or other advantage of any kind, to or by the Purchaser or the Company or any Associated Persons of either of the same, in connection with the performance of any Contract; and
 - 12.2.5. if so required by the Company at any time, certify to the Company in writing, signed by an officer of the Purchaser, compliance with this Condition 12 by the Purchaser and all of its Associated Persons, providing also such supporting evidence of compliance as the Company may reasonably request.
- 12.3. The Purchaser hereby warrants to the Company that there has been no breach by it of the Anti-Bribery Laws and the Anti Bribery Policies in connection with the procurement and/or negotiation of any Contract.

13. Notices

- 13.1. Any notice or other communication given to a party under or in connection with any Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- 13.2. A notice or other communication shall be deemed to have been received:
- 13.2.1. if delivered personally, when left at the address referred to in Condition 13.1;
 - 13.2.2. if sent by UK pre-paid first class post or other next working day delivery service, at 5.00 pm on the second Business Day after posting;
 - 13.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 13.2.4. if sent by email, one Business Day after transmission, as evidenced by a confirmation of complete and successful transmission.

14. General

- 14.1. Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company whether or not under any Contract.
- 14.2. Any provision of any Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of any Contract and the remainder of such provision shall not be affected and shall remain in full force.
- 14.3. Failure by the Company to enforce or partially enforce any provision of any Contract will not be construed as a waiver of any of its rights under any Contract.
- 14.4. The Company may assign, licence or sub-contract all or any part of its rights or obligations under the Contract without the Purchaser's consent. The Contract is personal to the Purchaser who may not assign, licence or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 14.5. The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 14.6. These Conditions and the Contract to which they apply shall be subject to and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.