

JAMES BURRELL LIMITED
TERMS AND CONDITIONS OF PURCHASE

1. **INTERPRETATION**
- 1.1 In these Conditions, the following definitions apply:
- "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- "Buyer" means James Burrell Limited (registered in England under company number 218384);
- "Conditions" means the standard terms and conditions of purchase set out in this document as amended from time to time in accordance with **clause 12.7**;
- "Contract" means the contract between the Buyer and the Seller for the sale and purchase of the Goods in accordance with the Conditions and the Special Conditions (together "the Conditions");
- "Goods" means the goods and materials (including any instalment of the goods and materials or any part of them) as set out in the Order;
- "Order" means the Buyer's order for the Goods, as set out in the Buyer's purchase order form;
- "Proof of Delivery" shall have the meaning to it in **clause 7.5**;
- "Seller" means the person or firm from whom the Buyer purchases the Goods;
- "Special Conditions" means any special conditions of purchase as are agreed in writing between the authorised representatives of the Buyer and the Seller;
- "Specification" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller;
- "Writing" includes facsimile transmission, e-mail and comparable means of communication.
- 1.2 The heads in these Conditions are for convenience only and shall not affect their interpretation.
2. **BASIS OF THE PURCHASE**
- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Contract, subject to these Conditions, which supersede any other terms appearing in the Seller's catalogue or elsewhere, and which shall govern the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate or which may be implied by trade, custom, practice or course of dealing.
- 2.2 An Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions and all Orders made by the Buyer shall be deemed to be made subject to these Conditions.
- 2.3 An Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Seller issuing a written acceptance of the Order; and
- 2.3.2 the Seller doing any act consistent with fulfilling the Order;
- at which point the Contract shall come into existence.
- 2.4 No variations to these Conditions shall be binding unless agreed in Writing between the authorised representations of the Buyer and of the Seller.
3. **THE GOODS**
- 3.1 The Seller hereby undertakes that the Goods:
- 3.1.1 correspond with their description and any applicable Specification;
- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller by the Buyer expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgement;
- 3.1.3 where applicable, be free from defects in design, material and workmanship and remain so for 12 months after delivery;
- 3.1.4 comply in all respects with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including (but not limited to) COSHH and environmental regulations, and provide all and any information or documentation evidencing such compliance to the Buyer upon request.
- 3.2 Where the Goods comprise of timber, either wholly or in part, the Seller shall ensure that all timber supplied to the Buyer is FSC or PEFC certified and comply with EUTR and, the Seller shall provide certification to the Buyer upon request. Any alteration or variation to this **clause 3.2** must be agreed in writing before supply.
- 3.3 All Goods supplied pursuant to an Order shall, in addition to the provisions of **clause 3.1.1 to 3.1.4** above, be equal to any samples or patterns or designs provided by the Buyer or submitted by the Seller and approved by the Buyer.
- 3.4 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.5 Either prior to or after the delivery of the Goods (or any part of them) the Buyer or any of its authorised representatives shall be entitled to inspect and/or test the Goods comprising of an Order at any reasonable time. If inspection and testing is to be carried out prior to delivery, the Seller shall provide such facilities as may reasonably be required by the Buyer for such purpose.
- 3.6 Notwithstanding any such inspection or testing in accordance with **clause 3.5**, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract.
- 3.7 If following such inspection or testing the Buyer considers that the Goods do not conform or the Seller is unlikely to comply with its undertakings at **clause 3.1**, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance and the Buyer shall have the right to conduct further inspections and tests after the Seller has carried out its remedial actions.
- 3.8 In the event the parties dispute whether any Goods comply with **clause 3.1**, either party may refer the matter to an independent expert for determination in accordance with **clause 9**.
- 3.9 The Seller acknowledges that all materials, equipment and tools, drawings, Specifications and data supplied by the Buyer to the Seller ("Buyer Materials") and all rights in the Buyer Materials are and shall remain the exclusive property of the Buyer. The Seller shall keep the Buyer Materials in safe custody at its own risk, maintain them in good condition until returned to the Buyer, and not dispose or use the same other than in accordance with the Buyer's written instructions or authorisation.
4. **DELIVERY**
- 4.1 The Seller shall deliver the Goods:
- 4.1.1 on the date (or dates) specified in the Order, or if not specified, then on such date(s) as may be reasonably instructed by the Buyer;
- 4.1.2 to the Buyer's premises or such other locations as is set out in the Order or as is instructed by the Buyer prior to delivery; and
- 4.1.3 during the Buyer's normal business hours, or as instructed by the Buyer.
- 4.2 The Seller shall deliver the Goods and shall ensure that:
- 4.2.1 the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
- 4.2.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- 4.2.3 all COSHH documentation in respect of any dangerous substances is provided to the Buyer or such other person as the Buyer may direct prior to dispatch of the Goods to the delivery location;
- 4.2.4 when delivering the Goods to the delivery location, its employees, agents and sub-contractors comply with all and any site safety procedures and policies in force at the delivery location; and
- 4.2.5 except in accordance with any Special Conditions, no charge is made for packing crates or other containers or for pallets, palletisation or any other packaging. If the Seller requires the Buyer to return any packaging material to the Seller, that fact must be clearly stated before delivery is agreed. Any such packaging material shall be returned to the Seller at the Seller's own cost.
- 4.3 Delivery of the Goods shall be completed once the Buyer's authorised representative has signed and returned the delivery note and Proof of Delivery to the Seller.
- 4.4 The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are to be delivered in instalments, they may be invoiced and paid for separately. However, failure by the Seller to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in **clause 5**.
5. **REMEDIES**
- 5.1 If the Goods are not delivered on the date they are due as referred to in **clause 4.1**, or do not comply with the undertakings set out in **clause 3.1**, then, without limiting any of its other rights or remedies, the Buyer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
- 5.1.1 to terminate the Contract;
- 5.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the Seller's own risk and expense;
- 5.1.3 to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 5.1.4 to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- 5.1.5 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods from a third party; and
- 5.1.6 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Contract.
- 5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 5.3 The Seller shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties and legal and other professional fees and expenses awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 5.3.1 any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors;
- 5.3.2 any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller, its employees, agents or subcontractors; and
- 5.3.3 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors.
- This **clause 5.3** shall survive termination of the Contract.
- 5.4 The Buyer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.
6. **TITLE AND RISK**
- Title and risk in the Goods shall pass to the Buyer on completion of delivery.
7. **PRICE AND PAYMENT**
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date the Contract came into existence.
- 7.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless previously agreed in writing by both parties.
- 7.3 The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.4 Subject to any Special Conditions applied in any particular case, the Seller shall invoice the Buyer for the Goods during the month in which the Goods were delivered, such invoice to be received by the Buyer no later than two days following the last day of the month in which the Goods were delivered. **Any invoice received after this time shall not be processed for payment until the end of the following month and any timescales for payment of such invoice by the Buyer shall be amended accordingly.**
- 7.5 Any invoice submitted by the Seller to the Buyer in relation to an Order must be accompanied by a duly executed Proof of Delivery. The Proof of Delivery must quote the purchase order number, date of delivery, quantity and price of the Goods delivered and contain the signature and printed name of the individual who accepted receipt of the delivery. Any invoice received by the Buyer without a Proof of Delivery will not be accepted.
- 7.6 The Buyer shall pay correctly rendered invoices within the period specified in the Order. If no due date for payment is specified in the Order, the Buyer shall pay the invoice, in the absence of any dispute or query of such invoice, within 60 days of the last day of the month in which the Buyer received the invoice or is deemed to have received the invoice in accordance with Clause 7.4. Payment shall be made to the bank account nominated in writing by the Seller.
- 7.7 Subject to any Special Conditions applied in any particular case, the Seller must ensure that all invoices are issued to the Buyer promptly in accordance with the timescales set out in Clause 7.4. **The Buyer shall not be obliged to pay any invoice received more than 3 months from the last day of the month in which the relevant Goods were delivered.**
- 7.8 The Seller warrants that it shall continue to accept Orders and shall not suspend delivery of any existing Orders due to any non-payment of invoices to which a query or dispute has been raised. Whilst any discussions or enquiries are ongoing in relation to a queried or disputed invoice, the Buyer agrees to continue to pay all undisputed invoices raised by the Seller, and the Seller shall not be entitled to allocate such payments as payment either in whole or in part to the disputed or queried invoice.
- 7.9 The Buyer shall be entitled to disregard any duplicates or copy invoices it receives in relation to the same Order.
- 7.10 If a party fails to make any payment due to the other under the Contract by the due date for payment (**due date**), then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above National Westminster Bank plc's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 7.11 The Buyer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Seller against any amounts payable by it to the Seller under the Contract (including any rebates).
8. **INSURANCE**
- 8.1 At all times the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 8.2 If the Seller fails to obtain or is unable to maintain insurance in accordance with **clause 8.1**, or fails to provide evidence that it has paid the current year's premium, the Buyer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Seller.
9. **EXPERT**
- 9.1 In the event of any dispute arising under **clause 3.8** the parties shall agree upon the appointment of an independent expert and shall agree with the expert the terms of its appointment.
- 9.2 In the event that the parties fail to agree to the appointment of an expert, or the terms of its appointment, within seven days of either party serving details of a suggested expert on the other, either party shall be entitled to request the Builders Merchants Federation to appoint an expert of sufficient repute with experience in the matter disputed and for the Builders Merchants Federation to agree with the expert the terms of its appointment.
- 9.3 The parties are entitled to make submissions to the expert and will provide (or procure that others provide) the expert with all such assistance and documentation as the expert may reasonably require for the purpose of reaching a decision. Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 9.4 The parties agree that the expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.
- 9.5 The expert shall act as an expert and not as an arbitrator. The expert's decision shall be final and binding on the parties in the absence of fraud or manifest error.
- 9.6 Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs it properly incurs in arriving at its determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties in equal shares or in such proportions as the expert shall direct.
10. **TERMINATION**
- 10.1 In the event that:
- 9.1.1 the Seller 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 purpose of amalgamation or reconstruction); or
- 9.1.2 an encumbrancer takes possession, or receiver is appointed, of any of the property or assets of the Seller; or
- 9.1.3 the Seller ceases, or threatens to cease, to carry on business; or
- 9.1.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller;
- then the Buyer may terminate the Contract with immediate effect by giving written notice to the Seller.
- 10.2 Termination of the Contract, however arising, shall not affect any of the Buyer's rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
11. **FORCE MAJEURE**
- Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Seller shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Seller from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, the Buyer may terminate the Contract immediately by giving written notice to the Seller.
12. **GENERAL**
- 12.1 The Buyer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- 12.2 The Seller may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Buyer's prior written consent.
- 12.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may, at the relevant time, have been notified pursuant to this provision to the party giving the notice.
- 12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable either in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.5 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.7 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Buyer.
- 12.8 The Contract shall be governed by the Laws of England, and the parties irrevocably submit to the exclusive jurisdiction of the High Court in England.
- 12.9 In performing its obligations under the Contract, the Seller shall comply with all applicable laws, statutes, regulations and codes from time to time in force and comply with the Buyer's business policies as set out on its website www.jamesburrell.com.