



Kingspan Steel Building Solutions

Standard Terms and Conditions

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1. Definitions

Agreement means the Confirmation of Order together with these Conditions as defined herein together with any amendments to the Conditions made in accordance with clause 2.9 hereunder.

Buyer the person named as such in the Confirmation of Order.

Conditions means these terms and conditions clauses 1 to 15 inclusive.

Confirmation of Order means the document provided by the Seller to the Buyer confirming, inter alia, the Purchase Price, the specification and the intended delivery date(s) of the Goods, all as hereunder defined

Documents means any drawings, specifications, calculations or other documentation supplied by the Seller to the Buyer as part of the Goods and as stated in the Confirmation of Order.

Goods Means the goods and/or services to be provided by the Seller to the Buyer in consideration of the payment of the Purchase Price as stated in the Confirmation of Order.
Purchase Price means the sum stated as such in the Confirmation of Order as consideration of the supply of the Goods by the Seller to the Buyer.

Seller means Kingspan Steel Building Solutions.

Seller's Costs means the materials and/or manufacturing costs properly expended by the Seller in respect of the design, manufacture and (where applicable) delivery of the Goods.

2 Governing law and interpretation

2.1 The law of this Agreement is English law and the English Courts shall have jurisdiction with regard to all matters arising from this Agreement.

2.2 Any reference to "person" "firm" or "company" includes any entity which has legal capacity.

2.3 Any term importing gender includes any gender.

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2.4 Any term importing the singular number includes the plural number and vice versa.

2.5 Clause headings are for convenience only and do not form part of or affect the interpretation of this Agreement.

2.6 Any reference to any clause schedule or appendix is a reference to that clause of or schedule or appendix to this Agreement.

2.7 Notwithstanding any other provision of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it, and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be of no effect in respect of this Agreement.

2.8 Nothing in this Agreement shall create or be deemed to create a partnership or joint venture nor shall it be construed so as to constitute either party to be the agent or employee of the other.

2.9 These Conditions shall apply to the Agreement unless variations have been accepted in writing by or on behalf of the Seller. In the event of conflict between these Conditions and any conditions stipulated by the Buyer these Conditions shall prevail.

2.10 No oral agreement in respect of the Goods shall be binding upon the Seller unless and until the same shall have been confirmed in writing by or on behalf of the Seller.

2.11 The Goods are supplied for professional and /or industrial use only and are packaged accordingly. They are not intended or suitably packaged for sale to or use by the general public and the Seller accepts no responsibility in respect of any packaging regulations that may exist for retail sale.

2.12 The Agreement, the Conditions and the Confirmation of Order together constitute the entire agreement between the Seller and the Buyer and supersede all prior negotiations, representations or agreements relating to the Goods, whether written or oral.

3 Purchase price

3.1 The Purchase Price shall be as stated on the Confirmation of Order. The Purchase Price shall be valid for a period of 30 days from the date of Confirmation of Order provided that the Seller has not cancelled the same.

3.2 The Seller shall be entitled to adjust the Purchase Price before or after the date of the Agreement in the event of any variation in the Seller's Costs caused by any reason whatsoever beyond the control of the Seller including (inter alia) changes in exchange rates or the action of any government or other authority and shall by written notice to the Buyer the Seller shall confirm the amended Purchase Price.

3.3 If the Purchase Price amended in accordance with Clause 3.2 shall be higher

than the Purchase Price previously notified by the Seller to the Buyer, the Buyer may within 7 days of receipt of said notice terminate the Agreement without further obligation or liability on the part of either party PROVIDED THAT the Goods are not already in transit.

4 Delivery

4.1 Goods are sold by the Seller and purchased by the Buyer on an ex-works basis.

4.2 The Seller will use his reasonable endeavors to meet any delivery date stated on the Confirmation of Order but the Buyer acknowledges that the Buyer has no right to damages in respect of loss or profits arising out of any delay by the Seller and time shall not be of the essence in this Agreement.

4.3 In the event of the Buyer failing to take delivery in accordance with the Confirmation of Order or any subsequent arrangements agreed by the Seller then the Seller shall, without prejudice to any other rights conferred on him by law, have the right to recover as a debt due from the Buyer all losses and expenses, including the invoicing of any balance of the Goods left with the Seller, together with any profit on the uncompleted order and costs for storage of the same, which may be incurred by reason of such failure.

5. Inspection and acceptance

5.1 The Buyer shall inspect and examine the Goods immediately on delivery. Any alleged defect in or damage to the Goods shall be notified to the Seller in writing within 7 days of delivery. Thereafter the Goods shall be deemed to have been accepted and any further claims for damages shall be of no effect.

6. Quality and Limitation of Liability

6.1 The Seller warrants that (subject to the other provisions of these Conditions) upon delivery and for a period of 12 months from the date of delivery, the Goods will:

6.1.1 be safe and fit for the use for which such Goods are manufactured;
6.1.2 be free from defects in materials and workmanship, and conform in all material respects to the approved samples and all other applicable specifications; and
6.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).

6.2 The Seller shall not be liable for a breach of any of the warranties in clause 6.1 unless:

6.2.1 the Buyer gives written notice of the defect to the Seller, and (if the defect is as a result of damage arising during transit at the risk of the Seller) to the carrier, within 7 days of the time when the Buyer

discovers or ought to have discovered the defect; and

6.2.2 the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for the examination to take place there.

6.3 If any Product does not comply with the warranties set out in clause 6.1 ("Defective Product") the Seller shall at its cost and expense and discretion either:

6.3.1 repair or replace the Defective Product; or

6.3.2 give a full credit or refund for the price paid by the Buyer for such Defective Product.

6.4 The Seller shall not be liable for a breach of any of the warranties in clause 6.1:

6.4.1 to the extent that it is attributable to further use of such Goods after giving notice pursuant to clause 6.2.1; or

6.4.2 if the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (in the absence of such instructions) good trade practice;

6.4.3 that are attributable to fair wear and tear, abuse, improper use or use in an environment or for a purpose for which the Product was not designed or intended by the Seller; or

6.4.4 if the Buyer alters or repairs such Goods without the written consent of the Seller.

6.5 If the Seller complies with clause 6.3 it shall have no further liability for a breach of any of the warranties in clause 6.1 in respect of such Goods.

6.6 Any Goods or parts replaced will belong to the Seller and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.

6.7 Subject to clause 6.1 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

6.7.1 any breach of these Conditions; and
6.7.2 any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.

6.8 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

6.9 Nothing in this Agreement excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation.

6.10 Subject to clause 6.9, the Seller shall not be liable to the Buyer for:

- 6.10.1 any indirect, consequential, special or punitive loss, damage, costs and expenses;
- 6.10.2 loss of profit;
- 6.10.3 loss of business;
- 6.10.4 loss of reputation;
- 6.10.5 depletion of goodwill; or
- 6.10.6 loss of, damage to or corruption of data.

6.11 Subject to clauses 6.9 and 6.10, the Seller's total liability to the Buyer under or connected with the Agreement for:

- 6.11.1 damage resulting directly from the Seller's negligence or that of its employees shall not exceed £500,000 for any one event or series of connected events;
- 6.11.2 any other loss not covered by clause 6.11.1, shall not exceed 125% of the Purchase Price.

7. Payment

7.1 Payment shall be due 30 days after the 1st day of the month following delivery of the Goods. If the Provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996 apply to the Agreement then the final date for payment shall be the same as the due date. In respect of payment, time shall be of the essence.

7.2 Any settlement discount applicable to the Agreement will be disallowed in the event of late payment of any such invoice, and the Seller may, without notice and at any time, either withhold deliveries or terminate the Agreement.

7.3 The Seller reserves the right to charge interest on any overdue invoice at the rate of 10% compounded monthly.

8. Title and risk

8.1 The title in the Goods remains with the Seller until payment in full of any monies owed by the Buyer in respect thereof has been received by the Seller as cleared funds.

8.2 Where the Buyer collects the Goods from the Seller's premises risk in the Goods shall pass to the Buyer when the Goods have been loaded onto the Buyer's transport (which expression shall include any transport provided by independent hauliers at the Buyer's request).

8.3 Where the Agreement includes delivery of the Goods to the Buyer's premises or to any other UK mainland destination stipulated by the Buyer risk in the Goods shall remain with the Seller until the Goods arrive either at such destination on the Seller's transport (which expression shall include any transport provided by independent hauliers at the Seller's request).

8.4 The Seller transfers to the Buyer only such title to the Goods as he or any third party from whom he obtains them may have

immediately prior to the delivery of the Goods.

8.5 If the Buyer is in default in respect of the provisions of clause 7 hereof, the Seller shall be entitled to repossess the Goods. The Seller may for the purpose of recovering the Goods enter upon any premises or vehicles where the Goods are stored or where the Goods are reasonably thought to be stored. The exercise of this right shall not terminate this Agreement.

8.6 If the Buyer shall make a new object or new objects from the Goods or mixes or blends the Goods in any other way such that the Goods become a constituent part of another object or objects, the Seller shall automatically acquire the title therein. However, in respect of such part of the new object or objects which is not made from the Goods, but is made either from goods or materials belonging to the Buyer or a third person, the Seller shall automatically become the joint owner of such new object or objects with the Buyer or the said third person in the proportion of the commercial value which shall however not be less than the Purchase Price of the Goods used in the making of the new object or objects.

8.7 Until full payment of the Purchase Price, the Buyer shall keep the said object or objects as described under clause 8.6 for the Seller in the latter's capacity as a bailor and if required by the Seller, subject to the Buyer's right to sell them as hereinafter referred to, hold the said object or objects clearly marked as the property of the Seller.

8.8 The Buyer shall be entitled to sell the Goods or such new objects as mentioned in clause 8.6 hereof within the usual and ordinary conduct of the Buyer's business and to deliver them to a third party, PROVIDED THAT whilst there still exists an indebtedness by the Buyer to the Seller in relation to the Goods, the Buyer shall sell or is respectively deemed to have sold the Goods as the Seller's agent, so that all rights accruing through such sale against a third party are those of the Seller. On the request of the Seller the Buyer shall without delay notify the Seller of all then outstanding debts against the party whose particulars are to be given to the Seller in order to enable the latter to collect such debts from the said party directly and forthwith. In the event of the

Buyer's accepting payment by a third party after such notification to the Seller, the Buyer shall also act as the agent of the Seller and account to the Seller forthwith in regard to any debt paid to the Seller on such resale. If the total price of the Goods in the case of such a resale exceeds the Purchase Price, such excess shall on receipt of the price of the resale of the Goods remain with the Buyer and if it should have been received by the Seller, be repaid to the Buyer, or if it is merely receivable by the

Seller, released by him to the Buyer. If and when the Seller exercises his rights arising from the reservation of ownership the Buyer shall co-operate with the Seller in the actual return of the Goods claimed by the Seller and shall bear all costs necessarily incurred by the Seller in connection with such return including costs of transport, insurance, custom duties, if any, to the Seller's place of despatch.

9. Intellectual property

9.1 The Seller warrants that any Documents provided by him as part of the Goods shall not cause the Buyer to infringe any patent, registered design, design right, trade mark, copyright or other intellectual property right protected by law.

9.2 The copyright in all Documents provided by the Seller as part of the Goods shall remain vested in the Seller but the Buyer shall have the right to use such Documents provided that the Seller shall not be liable for any use of the Documents by the Buyer other than those for which they were provided.

10. Force Majeure

10.1 The Seller shall not be liable to the Buyer by reason of the Seller's failure to perform any part of this Agreement resulting from any breakdown or plant or apparatus, fire, explosion, accident, strike, lock-out, shortage or unavailability of raw materials, reductions in or unavailability of power or fossil fuels at manufacturing locations or any other event beyond the control of the Seller. Where more than one delivery is to be made under this Agreement, deliveries will be resumed as soon as the circumstances causing the delay cease, but except where both parties otherwise agree, the period during which deliveries are to be made shall be extended by the period for which such conditions exist.

10.2 If the Buyer fails to accept delivery or perform any part of this Agreement by reason of any of the events specified in clause 10.1 herein, the Seller may at his absolute discretion suspend or cancel the delivery of the Goods and/or the performance of this Agreement and upon the cancellation dispose of the Goods at the Seller's absolute discretion without any liability to the Buyer.

11. Design

11.1 The Seller will only commence design once the Buyer has provided the Seller with all necessary information including (without limitation) a full set of architect's & structural engineer's drawings in AUTOCAD, building movements report, window/door schedule, wind loading report,

thermal/acoustic report, tolerance report, and proposed build/construction programme.

11.2 Where the Agreement includes a detailed design package, design liability will rest with the Seller for the light gauge steel framing only.

11.3 Where the Agreement includes a basic design package, the Seller will not be accountable for any variations to design outside that If the Buyer cancels, extends or delays or purports to cancel, extend or delay the Agreement or part thereof, or where the Buyer is to provide materials information or services and fails to provide the same to the basic design and bears no responsibility or liability for the specification. Any work required outside of these areas will be regarded as additional design work and will be subject to an amendment of the Purchase Price.

12. Cancellation

12.1 resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the Goods including the cost of any services, material, plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit. Where the Buyer requests alterations to the Agreement or part thereof it shall be at the Seller's absolute discretion whether or not to accommodate the Buyer.

13. Storage

13.1 If the Buyer fails to take delivery of the Goods and/or redelivery of the Goods when they are ready for delivery the Seller may, at his option, either store them himself or have them stored by third parties on such terms as the Seller may in it his absolute discretion think fit. In any event the cost of storage will be borne by the Buyer and insofar as the storage is done by the Seller then such cost will be the Seller's storage charges current at the time of storage. The cost together with any additional insurance or double handling charges will be added to and from part of the Purchase Price.

14. Insolvency of Buyer

14.1 If the Buyer makes any voluntary arrangements with his 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) or an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer or the Buyer ceases or threatens to cease to carry on business or the Seller reasonably apprehends that any of the events mentioned above are about to occur in

relation to the Buyer and notifies the Buyer accordingly then without prejudice to any other right or remedy available to him the Seller shall be entitled to terminate the Agreement or suspend any further deliveries under the Agreement without any liability to the Buyer and if the Goods have been delivered but not paid for the Purchase Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15. Notices

15.1 Any notice or demand to be given to either party hereunder shall be in writing and shall be given or sent by sending the same by prepaid post to such party's address as shown on the contract documents or if no such address, the last known address.

Agreed and Accepted

Signature

Please print Name & Position

Company

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Date