

# TERMS AND CONDITIONS OF SALE - REPUBLIC OF IRELAND

## Definitions

'Buyer' means the person who buys or agrees to buy the Goods from the Seller.

'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.

'Delivery Date' means the date specified by the Seller when the goods are to be delivered (if any).

'Goods' means the articles which the Buyer agrees to buy from the Seller.

'Price' means the price for the Goods excluding carriage, packing, packaging, insurance and VAT.

'Seller' means Hillcrest Joinery.

"Services" means the installation of the Goods by the Seller.

## Conditions applicable

These Conditions shall apply to all contracts for the sale of Goods and provision of Services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.

All orders for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase Goods and/or Services pursuant to and subject to these Conditions. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing and signed by an authorised signatory of the Seller.

Any typographical clerical or other error or omission in any sales literature quotation invoice or other documentation issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## The Price and payment

The Price shall be as stated in the Seller's quotation provided that the Buyer accepts the Seller's quotation within 60 days. The Price is exclusive of VAT and all costs or charges in relation to packaging, loading, unloading, carriage and insurance (if applicable) which shall be due at the rate ruling on the date of the Seller's invoice.

Unless otherwise agreed in writing, no quotation shall be subject to any discount.

The Seller reserves the right, at any time before delivery, to alter the Price of the Goods resulting from changes in Delivery Dates, quantities, or specification requested by the Buyer, or from any instructions of the Buyer or from any failure by the Buyer to give the Seller adequate and accurate information or instructions.

Except in the case of credit accounts, payment of the Price and VAT shall be due in respect of Goods supplied by the Seller (and for the avoidance of doubt, not installed by the Seller):

as to 50% of the Price with the Buyer's order; and

as to the balance of the Price on the date on which the Seller notifies the Buyer that the Goods are ready for collection.

Except in the case of credit accounts, payment of the Price and VAT shall be due in respect of Goods supplied and Services provided by the Seller:

as to 50% of the Price with the Buyer's order; as to 40% of the Price on the date on which the Seller notifies the Buyer that the Goods are ready for installation; and as to the balance of the Price on the date on which the Seller has provided the Services.



Time for payment shall be of the essence.

Interest on overdue payments shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2% per month above The Bank of England base rate from time to time in force (part of a month being treated as a full month for the purpose of calculating interest) and shall accrue at such a rate after as well as before any judgement. Interest shall become due and payable notwithstanding the fact that the account or part of it is subject to any dispute or query.

If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights, the Seller may:

suspend or cancel deliveries of any Goods due to the Buyer under any contract with the Buyer;

suspend or cancel the provision of Services due to the Buyer under any contract with the Buyer; and/or

appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.

No order which has been accepted by the Seller, may be cancelled by the Buyer, except with the agreement in writing of the Seller, and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials), damages, charges and expenses incurred by the Seller as a result of cancellation.

Prices are the Seller's ex works prices and where the Seller agrees to arrange for the Goods to be sent to the Buyer the Buyer shall be responsible for the costs of loading carriage and unloading.

## The Goods

Subject to Condition 4.2, the quantity quality and description of the Goods shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

Where the goods are manufactured or supplied in accordance with a description or specification provided by the Buyer, the Buyer shall be responsible for ensuring the accuracy and adequacy of the description or specification, and for giving the Seller all necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.

The Seller may from time to time make changes in the description or specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.

Except where the Buyer is dealing as a consumer (as defined in the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000), all implied terms, conditions and warranties relating to the quality and/or fitness for purpose of the Goods or any of the Goods are, to the fullest extent permitted by law, excluded.

Where any designs patterns or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs patterns or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the intellectual property or other rights of any third party. The Buyer shall indemnify and keep indemnified the Seller against any loss in respect of any proceedings or otherwise resulting from any infringement of any letters patent, copyright, registered design, registered trademark, or any other protection subsisting in favour of any third party in any such pattern or specification.

It is the responsibility of the Buyer to inspect the quantity, quality and conformity to description and specification of the Goods:

4.5.1.1 at or within 7 days of delivery or collection; or

4.5.1.2 in the case of a defect arising after delivery resulting from timber movement occurring within 3 months of delivery, within 14 days of the defect becoming apparent and to notify the Seller in writing within these periods and to supply full details of any defects or failure to conform or timber movement.



The Seller will (at the Seller's discretion) rectify or replace any defective Goods or Goods that materially deviate from the description or specification applicable to them, provided that they are notified strictly in accordance with clause 4.5.1, and provided that the Seller shall be given reasonable access to the Goods to inspect them and rectify any such defects.

The Seller's liability in respect of Goods shown to be defective or which materially deviate from the description or specification will be limited to rectification or replacement in accordance with clause 4.5.2.

The Seller shall be under no liability whatever to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Conditions.

In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. The Seller's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the Conditions shall be limited to the Price.

Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.

The Seller shall, in no circumstances, be required to enter into negotiations with third parties with regard to alleged defects.

## **Delivery of the Goods**

Delivery of the Goods shall be made, subject to clause 5.2, on the Delivery Date to the Buyer's address or to an address reasonably specified by the Buyer or at the Seller's address if the Buyer collects the Goods. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

Any time or date specified for delivery is an estimate only and time for delivery shall not be made of the essence by notice. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly, nor shall delay or failure to deliver the Goods promptly entitle the Buyer to rescind the contract.

If, for any reason, the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);

the Goods shall be deemed to have been delivered; and

the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the estimated delivery date. Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods.

## **Title and risk**

The Goods shall be at the Buyer's risk as from delivery.

Without prejudice to Condition 3.5 and in spite of delivery having been made, title in the Goods shall not pass from the Seller until:

the Buyer shall have paid the Price plus VAT in full; and no other sums whatever shall be due from the Buyer to the Seller.

Until title in the Goods passes to the Buyer in accordance with clause 6.2, the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in



such a way that they are clearly identified as the Seller's property. The Buyer shall maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller.

Notwithstanding that the Goods (or any of them) remain the property of the Seller if the Buyer sells or uses the Goods in the ordinary course of the Buyer's business he shall do so for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until title in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

Until such time as title in the Goods passes from the Seller, the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned or occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 6.4 shall cease.

- 6.6 The Buyer's right to possession of the Goods shall terminate immediately if:
- the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of a receiver, liquidator or examiner of the Buyer or notice of intention to appoint a receiver, liquidator or examiner is given by the Buyer or its directors or by any member or members of the Buyer (being a body corporate) or by a creditor or creditors of the Buyer, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the appointment of an examiner, receiver or liquidator in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 214 of the Companies Act 1963 or the Buyer ceases to trade; or
  - the Buyer encumbers or in any way charges any of the Goods.
- 6.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9 On termination of the contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 6 shall remain in effect.

### **Third party rights**

For the avoidance of doubt, nothing in these Conditions shall confer on any third party any benefit or the right to enforce any of the Conditions.

### **Force Majeure**

The Seller reserves the right to defer the Delivery Date or reduce the volume of the Goods ordered by the Buyer (without liability to the Seller) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the Seller's reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, 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.

### **Proper law of contract**

This contract shall be governed by and construed in accordance with the laws of Ireland.



## Jurisdiction

- 10.1 Each of the parties to this Agreement irrevocably agrees that the courts of Ireland are to have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement and, for such purposes, irrevocably submits to the non-exclusive jurisdiction of such courts. Any proceeding, suit or action arising out of or in connection with this Agreement (“the Proceedings”) may therefore be brought in the courts of Ireland.
- 10.2 Each of the parties to this Agreement irrevocably waives any objection to Proceedings in the courts referred to in clause 10.1 on the grounds of venue or on the grounds of forum non conveniens.
- 10.3 The submission to the non-exclusive jurisdiction of the courts referred to in clause 10.1 shall not (and shall not be construed so as to) limit the right of any parties to this Agreement, or any of them, to take Proceedings against any of the parties to this Agreement, in any other court of competent jurisdiction, nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.