

and such invoice shall be payable in accordance with Condition 4. If You do not then collect the Goods or Supplies within twenty (20) Working Days from the date of invoice (for which We require payment in any event), We may resell the Goods or Supplies to another customer or destroy or dispose of the Goods or Supplies in any way whatsoever and shall invoice You for a storage rent.

- 5.8** Unless otherwise agreed the unloading of the Goods or Supplies is Your responsibility. If We are required to assist or provide unloading facilities or equipment an extra charge will be made.
- 5.9** If Goods or Supplies are to be deposited other than on Your private premises You shall be responsible for notifying Us of all relevant laws, regulations, site rules and other information necessary for Us to make the delivery and shall ensure that the place of delivery is adequate and appropriate for such delivery. If You fail to notify Us in accordance with this Condition 5.9 You will indemnify Us and keep us indemnified in respect of all claims, losses, damages, costs and expenses We incur as a result of such failure.
- 5.10** You will indemnify Us in respect of all claims, losses, damages, costs and expenses incurred as a result of loading, unloading or delivery of Goods and/or Supplies in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such claims, losses, damages, costs and expenses are due to Our negligence.
- 5.11** We will have fulfilled Our contractual obligations in respect of each delivery of Goods or Supplies provided that the quantity actually delivered is not in excess of five percent (5%) more or less than the quantity specified in any order issued under the Contract. You shall pay for the actual quantity delivered and shall not be entitled to reject the Goods or Supplies or any part of them.

6. INSPECTION

- 6.1** You shall inspect the Goods or Supplies at the place and time of loading (if collected by You) or unloading (if delivered by Us) but nothing in these Terms shall require You to break packaging and/or unpack Goods or Supplies which are intended to be stored before use (such inspection hereinafter referred to as 'Reasonable Inspection').
- 6.2** Unless You advise Us immediately on collection or by endorsing the haulier's receipt note on delivery and written notice is received by Us within three (3) Working Days of loading or unloading (as appropriate) of any claim apparent on Reasonable Inspection for loss or damage in transit, short delivery or failure to conform to the Contract, the Goods or Supplies will be deemed to have been delivered in accordance with the delivery documents and You shall not be entitled to reject the Goods or Supplies.
- 6.3** Our liability for loss or damage in transit or short delivery in respect of any order apparent on Reasonable Inspection is, subject to notification by You to Us in accordance with the provisions of Condition 6.2, limited to supplying the Goods or Supplies ordered. You remain liable to pay the full invoice price of all Goods or Supplies delivered in accordance with the Contract. Any claim for damages is subject to Condition 9.
- 6.4** Where We create Goods or provide Services which are not to a standard design of Ours at Your request whether or not to a specification, drawing, design, measurement or calculation provided by You (which shall include Specials), We shall seek Your approval of the final design before full production. Once the Order is approved by You, You shall thereafter be responsible for and shall promptly reimburse Us for any additional costs We incur as a result of the implementation of any variations to such specification, drawing, design, measurement or calculation, as the case may be.

7. TITLE AND RISK

- 7.1** Risk in the Goods shall pass to You when the Goods are delivered.
- 7.2** The title to Goods supplied by Us (whether separate and identifiable or incorporated in or mixed with other Goods) shall remain with Us until You have paid the agreed price of the Goods (together with any accrued interest at the rate specified in Condition 4.7) and paid any other sums outstanding between You and Us whether in respect of this Contract or any other agreement with Us. For the avoidance of doubt Conditions 7.1 to 7.3 inclusive shall not apply in respect of any Supplies.
- 7.3** Until title passes:
- 7.3.1** You shall hold the Goods as Our fiduciary agent and bailee;

- 7.3.2** the Goods shall be stored separately from any other Goods and shall remain readily identifiable as Ours and You shall not interfere with any identification marks, labels, batch numbers or serial numbers on the Goods;
- 7.3.3** You will notify Your customer that We remain the legal owners of the Goods until title passes in accordance with Condition 7.2 and We reserve the right to label the Goods accordingly;
- 7.3.4** We agree that You may use or agree to sell the Goods as principal and not as Our agents in the ordinary course of Your business subject to the entire proceeds of any sale or insurance proceeds received in respect of the Goods being held in trust for Us and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as Our money;
- 7.3.5** You will at Our request and at Your expense assign to Us all rights You may have against Your customer in such Goods.
- 7.4** At any time before title to the Goods passes to You (whether or not any payment to You is then overdue or You are otherwise in breach of any obligation to Us), We may (without prejudice to any other of Our rights):
- 7.4.1** retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so on our behalf) which You hereby authorise (and in respect of any third party premises, you shall procure such authorisation as is required for Us to exercise this right);
- 7.4.2** require delivery up to Us of all or any part of the Goods.
- 7.5** Any property of Yours in Our possession or under Our control and all property supplied to Us by or on behalf of You (including Supplies) is held by Us at Your risk.
- 7.6** From the time of delivery until title in the Goods passes to You in accordance with Condition 7.2, You shall store the Goods in reasonable and appropriate conditions so as to maintain the quality of the Goods and You shall insure the Goods for their full value with a reputable insurer and, if We so request, ensure that Our name is noted on the insurance policy. Until title in the Goods passes to You, You shall hold the proceeds of any claim on such insurance policy on trust for Us and shall immediately account to Us with the proceeds.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1** All Intellectual Property Rights in or arising out of or in connection with the Goods or Services shall be owned by Us.
- 8.2** You acknowledge that, in respect of any third party Intellectual Property Rights in the Goods and Services, Your use of any such Intellectual Property Rights is conditional on Our obtaining a written licence from the relevant licensor on such terms as will entitle Us to license such rights to You.
- 8.3** We retain copyright in all Our drawings, sketches, plans, prints and other documents or data. No reproduction thereof shall be made without Our written permission and neither the drawings nor reproductions thereof shall be transferred to any third party without Our written permission.
- 8.4** No trade mark or name carried on the Goods may be erased or replaced without Our consent.
- 8.5** All of Our materials, equipment, documents and other property are Our exclusive property.
- 9. LIABILITIES**
- 9.1** Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or Our liability for fraudulent misrepresentation or any other liability which cannot otherwise be excluded or restricted by law.
- 9.2** Subject to Condition 9.1, We are not liable to You in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseen, foreseeable or known, or We were advised of the possibility of them in advance:
- 9.2.1** loss or damage incurred by You as a result of third party claims;
- 9.2.2** loss of actual or anticipated profits;
- 9.2.3** loss of business opportunity;
- 9.2.4** loss of anticipated savings;

- 9.2.5** loss of goodwill; and
- 9.2.6** any indirect, special or consequential loss or damage howsoever caused.
- 9.3** Our entire liability under or in connection with the use of, supply of or failure to supply the Goods, Supplies or Services whether for tort (including negligence), breach of contract, breach of statutory duty, misrepresentation or otherwise, is limited, in respect of each event or series of connected events: in the case of the Goods, to the repair of the Goods or supply of the replacement Goods or the net amount invoiced to You of the defective, damaged or undelivered Goods which gave rise to such liability; or, in the case of the Services, to the re-performance of such Services.
- 9.4** Subject to Conditions 9.7 to 9.10 inclusive, where We supply Goods only (and, for the avoidance of doubt, not where We provide any Services in respect of any Supplies), We warrant that:
- 9.4.1** We have legal title to sell the Goods;
- 9.4.2** the Goods will be substantially free from defects in materials and workmanship; and
- 9.4.3** the Goods will comply in all material respects with their specification.
- 9.5** Subject to Conditions 9.7 to 9.10 inclusive, where We provide Services in relation to any Supplies (but do not supply any Goods), We warrant that the Services will be performed with reasonable skill and care.
- 9.6** We do not warrant that the Goods will be fit for any particular purpose even if You advise Us of any purpose for which they may be used in advance.
- 9.7** We will not be liable under the Contract:
- 9.7.1** if a defect in the Goods or failure in the provision of the Services would have been apparent on a Reasonable Inspection under Condition 6.1 at the time of loading or unloading (as appropriate) unless You give Us notice in accordance with the provisions of Condition 6.2;
- 9.7.2** unless a defect in the Goods or failure in the provision of the Services save to the extent dealt with under Condition 9.7.1 is discovered within sixty (60) months of the date of delivery of the Goods or failure in the provision of the Services, as the case may be, and We are given written notice of such defect or failure within fifteen (15) Working Days of it being discovered;
- 9.7.3** unless after discovery of any defect in the Goods We are given a reasonable opportunity to inspect the Goods before they are used fixed or in any way interfered with. You may not continue to use the Goods once You have discovered any defect in the Goods or failure in the provision of the Services;
- 9.7.4** if the defect arises from variations in colour and/or texture or to the appearance of the Goods including efflorescence;
- 9.7.5** if the defect arises as a result of the Goods being used for a purpose or in a manner other than that specified to and agreed by Us or specified by Us;
- 9.7.6** if the defect arises from fair wear and tear;
- 9.7.7** if the defect arises as a result of a defect in any Supplies; and/or
- 9.7.8** if the defect arises from Your or a third party's negligence, mis-use, alteration or repair of the Goods or the Supplies or the Services, failure to follow British Standard or industry code or generally accepted practice or Our instruction relevant to the Goods or the Supplies or the Services, storage of the Goods or the Supplies in unsuitable conditions or use of the Goods or the Supplies or the Services in abnormal working conditions.
- 9.8** If the Goods are not manufactured by Us or have been processed by a third party whether or not at Our or Your request, Our liability in respect of any defect in or arising from the Goods will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.
- 9.9** If the Goods are supplied, manufactured or processed or the Services are performed in accordance with a drawing, design, measurement, calculation or specification of Yours or as approved by You or any third person nominating or specifying the Goods whether as provided in Condition 6.4 or otherwise then:
- 9.9.1** You warrant to us that You own or have appropriate licences in place to grant access to Us to use, for the purposes set out in the Contract, all relevant intellectual property rights in such drawing, design, measurement, calculation and/or specification for the purpose of this Contract; and

- 9.9.2** subject to Condition 9.1, We shall not be liable for any defect in such Goods or the performance of Services except in the event of:
- a) any misrepresentation, where it was reasonable in the circumstances for you to have relied upon it to your detriment and where the representation was made or confirmed in writing by Us;
 - b) Our material failure to comply with such drawing, design, measurement, calculation or specification; and/or
 - c) breach of a separate written warranty signed by Us that the Goods or the Supplies would be fit for a particular purpose made known to Us; and

9.9.3 You unconditionally fully and effectively indemnify Us against all claims, losses, damages, costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim for infringement of any intellectual property rights of any other person.

9.10 If the Goods are supplied or the Services are performed to a drawing, design, measurement, calculation or specification provided in writing by Us then subject to Condition 9.1 We shall not be liable except in the proportion and to the extent that such damages have resulted primarily from Our breach of Contract or gross negligence provided that We will not be liable under this Condition 9.10 if:

9.10.1 material information is withheld, concealed or misrepresented by You; and/or

9.10.2 the drawing, design, measurement, calculation or specification provided by Us is not in writing signed by one of Our Authorised Officers.

9.11 You unconditionally fully and effectively indemnify Us against all claims, losses, damages, penalties, costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods or the Supplies. Your liability under this indemnity will be reduced in proportion to the extent only that such claims, losses, damages, penalties, costs and expenses arise directly from Our gross negligence.

9.12 Except as expressly provided in these Terms all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.13 Where You resell the Goods or the Supplies to a third party and the third party brings any claim against Us, You will provide all reasonable assistance to Us at Your cost to enable Us to defend the claim and You will not make any admission, negotiate or settle any claim without Our prior written consent thereto.

10. CONFIDENTIALITY

10.1 When You or We, as the case may be, (**Receiving Party**) receive technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party, or its employees, agents or subcontractors (**Disclosing Party**), then such information shall be kept in strict confidence together with any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as strictly need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Condition 10 shall survive termination of the Contract.

11. ANTI-CORRUPTION

11.1 You will comply at all times with the provisions of the Bribery Act 2010 and will not, and will procure that your employees and sub-contractors will not in connection with any Contract, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010.

11.2 Breach of this Condition shall be deemed to be a material breach of the Contract which is not capable of remedy for the purposes of Condition 12.

12. DEFAULT AND TERMINATION

- 12.1** “**Insolvent**” means You becoming unable to pay Your debts within the meanings of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986 or You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.
- 12.2** If:
- 12.2.1** You fail to pay any invoice or sum due to Us or to any of Our Group Companies under any Contract on the due date; or
 - 12.2.2** Your credit limit is withdrawn or reduced to a level below the amount then outstanding to Us; or
 - 12.2.3** You or Your Group Companies become Insolvent; or
 - 12.2.4** there is a material change in Your or Your Group Companies’ constitution or ownership or shareholding; or
 - 12.2.5** You pledge by way of security for any of Your indebtedness any Goods for which title still remains with Us in accordance with condition 7; or
 - 12.2.6** You commit a material breach of the Contract which is not capable of remedy or commit a material breach of the Contract that is capable of remedy but fail to remedy that breach within seven (7) Working Days after being requested to do so;

then all sums outstanding between You and Us under this and any other Contract between You and any of Our Group Companies shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):

- a) require immediate payment in cleared funds of any outstanding invoice;
 - b) require payment in cleared funds in advance of further deliveries of Goods or performance of Services;
 - c) suspend or cancel any further deliveries of Goods or performance of Services to You under any Contract without liability on Our part;
 - d) resell any Goods ordered by You to any other person;
 - e) without prejudice to the generality of Condition 7 exercise any of Our rights pursuant to that Condition; and/or
 - f) terminate this or any other Contract with You without liability on Our part;
 - g) charge You interest on any sum due or overdue under these Terms at the interest rate set out in Condition 4.7;
 - h) require the return of the Goods in accordance with Condition 7.3.
- 12.3** You shall reimburse all of Our costs, including legal costs on an indemnity basis, which We incur in enforcing Our rights under the Contract including recovery of any sums due.

13. INTERNATIONAL TRADING TERMS

- 13.1** In these Terms ‘**Incoterms**’ means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.
- 13.2** Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 13 shall (subject to any special terms agreed in writing between You and Us) apply notwithstanding any other provision of these Terms.
- 13.3** You shall be responsible for complying with any legislation or regulations, including import licences, governing the importation of the Goods into the country of destination and for the payment of any duties on them, and if required shall make licences and consents available to Us prior to the relevant shipment.
- 13.4** Unless otherwise agreed in writing between You and Us, the Goods shall be delivered FOB the agreed sea port of shipment for Goods delivered by sea, and FCA the agreed airport for carriage for Goods

delivered by air and We shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

13.5 Where agreed and confirmed in writing by Us, payment of all amounts due to Us under any Contract shall be made by irrevocable letter of credit opened by You in Our favour and confirmed by a bank in the United Kingdom acceptable to Us.

14. DATA PROTECTION

14.1 Where the terms “*personal data*”, “*process*”, “*processing*”, “*processed*”, “*data controller*”, “*data processor*” and “*data subject*” are used in this clause, they shall have the meanings given to them in the Data Protection Legislation.

14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, You are the data controller and We are the data processor of any personal data provided to Us in connection with the Contract.

14.3 You acknowledge and agree that We shall be required to collect, store, share and otherwise process certain personal data (including names, addresses, email addresses and telephone numbers) relating to Your customers/employees/customers of customers, as the case may be, for the purpose of providing and delivering the Goods and/or Services and for the duration of the Contract. You have agreed to provide such personal data to Us for the purposes of such processing, only in accordance with the terms of this Agreement.

14.4 In respect of personal data We process on Your behalf pursuant to this Agreement, We shall:

14.4.1 only process that personal data for the purposes of, and in accordance with, this Agreement and only in accordance with documented instructions from You unless We are required to process such personal data otherwise by domestic laws or by the laws of the European Union applicable to Ibstock (**Applicable Laws**). Where We are relying on Applicable Laws as the basis for processing personal data, We shall promptly notify You of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Us from doing so;

14.4.2 notify You promptly, and in any event within forty eight (48) hours, from the point at which We become aware of any security incident affecting or relating to that personal data;

14.4.3 implement appropriate technical and organisational measures against unauthorised or unlawful processing of that personal data and against accidental loss or destruction of, or damage to, that personal data;

14.4.4 not transfer that personal data (or allow that personal data to be transferred) outside of the European Economic Area (EEA) without your written consent;

14.4.5 ensure that access to the personal data is limited to those employees and personnel who need access to the personal data to meet Our obligations under this Agreement;

14.4.6 ensure that all of Our employees and personnel who are involved in the processing of that personal data are subject to obligations of confidentiality;

14.4.7 not provide any third party with access to that personal data or sub-contract any of Our obligations under this Agreement that involve processing that personal data without Your prior written approval, such approval not to be unreasonably withheld or delayed;

14.4.8 ensure that any sub-contract entered into by Us (where personal data is processed by such sub-contractor) contains provisions which comply with the Data Protection Legislation and which, in any event, are no less onerous than those imposed under this Condition 14;

14.4.9 promptly assist You to respond to requests for exercising data subject rights laid down in Data Protection Legislation;

14.4.10 assist You in ensuring compliance with the obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

14.4.11 unless otherwise strictly required by law, upon termination or expiry of this Agreement for whatever reason or otherwise at Your choice, delete or return to You all personal data after the end of the provision of services relating to processing, and delete existing copies;

14.4.12 make available to You all information necessary to demonstrate compliance with the

obligations imposed on Us under this Condition 14 and allow for and contribute to reasonable audits, including inspections, conducted by You or another auditor mandated by You for the purposes of demonstrating such compliance, at reasonable times and on reasonable notice, not more than once in any 12-month period.

- 14.5** Neither party shall, through its acts or omissions, place the other party in breach of any Data Protection Legislation. Each party shall comply with all applicable requirements of the Data Protection Legislation. This Condition 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 14.6** Without prejudice to the generality of Condition 14.5 the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Ibstock for the duration and purposes of the Contract. The Customer shall be solely responsible for advising data subjects that personal data will be shared with Ibstock and for bringing Ibstock's privacy policy (accessible at <http://www.ibstockplc.co.uk/site-services/privacy>) to their attention. The Customer will ensure that any personal data it makes available to Ibstock is complete and accurate and shall provide any updated personal data to Ibstock without delay.
- 14.7** The Customer shall indemnify and keep indemnified and defend at its own expense (on an unlimited basis) Ibstock against all costs, claims, damages or expenses incurred by Ibstock, or for which Ibstock may become liable, due to any failure by the Customer or its employees, agents or sub-contractors to comply with any of its obligations under Condition 14.

15. GENERAL

- 15.1** Each Contract shall be governed and interpreted according to the laws of England and Wales and You agree to submit to the exclusive jurisdiction of the English Courts.
- 15.2** The headings in these Terms are for convenience only and shall not affect their interpretation.
- 15.3** Except as provided otherwise in these Terms We shall not be deemed to be in breach of contract nor liable for any delays or failures to perform any of Our obligations under any Contract due to any cause beyond Our reasonable control including industrial action, import or export regulations or embargoes, restraints or delays affecting carriers, difficulties in obtaining materials, parts, components, labour or fuel, power failure or breakdown in machinery. Should any such event occur We reserve the right to cancel or suspend by notice in writing all or any part of the Contract without incurring any liability and You will be liable to pay for any Goods delivered or Services performed prior to any such cancellation.
- 15.4** The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 15.5** Any written notice to be given under these Terms shall be sent by You to Our Credit Department, Ibstock Brick Limited, Leicester Road, Ibstock, Leicestershire LE67 6HS and by Us to You at Your trading address.
- 15.6** Nothing in these Terms or a Contract is intended to or will create any benefit for or right to enforce any of these Terms to any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 15.7** Termination of a Contract shall not affect rights and obligations which have already accrued at the time of termination.
- 15.8** You may not assign or deal in any way with all or any part of the benefit of Your rights or benefits under a Contract.
- 15.9** We are entitled at any time to assign or deal with the benefit of any Contract or sub-contract any work relating to any Contract.
- 15.10** If any Condition or part of these Terms or a Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from these Terms or a Contract and will be ineffective without, as far as is possible, modifying any other Condition or part of these Terms or a Contract and this will not affect any other provisions of these Terms or a Contract which will remain in full force and effect.

March 2019

TERMS AND CONDITIONS OF SALE