

## **ITW CONSTRUCTION PRODUCTS – TERMS & CONDITIONS**

### **1. GENERAL**

1.1 In these conditions the following words have the meanings shown:

“Buyer” means the person, firm or company purchasing Goods “Company” means ITW Construction Products, a division of ITW Ltd, a private company registered in England and Wales with registered number 00559693 “Contract” means the agreement between the Company and the Buyer for the purchase from the Company by the Buyer of Goods “Contracts” includes all agreements between the Company and the Buyer for the purchase of Goods from the Company by the Buyer “Goods” or “Products” means the goods purchased by the Buyer from Company on the terms of this Contract

1.2 Unless expressly agreed in writing otherwise, these conditions shall be incorporated in all Contracts of the Company to sell Goods and shall be the sole conditions under which the sale takes place. All other terms, conditions or other representations are excluded from the Contracts between the Buyer and the Company including any terms and conditions which the Buyer may purport to apply under any order for Goods. In the absence of such acceptance the Buyer shall be deemed to have withdrawn or waived his said conditions or stipulations and to contract solely on the basis of these terms.

1.3 These conditions shall prevail unless expressly varied in writing and signed by the General Manager on behalf of the Company.

1.4 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to vary in any way any of the conditions under this Contract unless otherwise agreed in accordance with Clause 1.3 above.

1.5 Any written quotation, estimate and/or advertised price for the Goods shall be an invitation to treat and no binding contract shall be created by placing an order until the Company has acknowledged the order to the Buyer.

### **2. DELIVERY**

2.1 Where the Company agrees to arrange carriage of the Goods from the Company’s works to another location specified by the Buyer, it shall do so as the Buyer’s agent and risk (but not title) to the Goods shall pass on the Goods being collected by the carrier. The Company may arrange carriage at the cost of the Buyer in such manner as it considers appropriate. Times for delivery are (unless otherwise expressly agreed in writing) estimates ONLY and time shall not be of the essence of the contract.

2.2 Proof of delivery of Goods is available from our Customer Services Department for a period of 21 days from date of invoice. If a proof of delivery is requested more than 21 days after the date of invoice or requested again after the Company has supplied such proof of delivery, the Company shall be under no obligation to provide such proof of delivery.

2.3 Where the Company effects insurance over the Goods during transit, it shall do so as the Buyer’s agent and at the Buyer’s expense and such insurance shall (subject to any written instruction by the Buyer to the Company prior to the Goods leaving the Company’s works) be in such amounts, against such risks, with such insurers and for such periods as the Company considers appropriate. The proceeds of any such insurance shall be held in trust for the Company until all sums then remaining unpaid to the Company in respect of the Goods are made in full. The Company and the Buyer will on request give to each other all information with regard to insurances as may be reasonably required to protect their respective interests in the Goods under this clause.

2.4 The Buyer shall upon delivery of the Goods examine the Goods and shall promptly notify the Company, and the carrier where relevant, of any damage, defect or shortage reasonably apparent to the Buyer on reasonable examination of the Goods. Claims in respect of any damage, defect or shortage must be made within 7 days following delivery of the Goods.

2.5 Should the Company be prevented for any reason set out in clause 6 from delivering all of the Goods ordered by the Buyer, the Company shall deliver and the Buyer shall take such Goods as the Company shall be able to deliver and the Buyer shall be entitled to the same prices and discounts on such part of the Goods as are actually delivered to it as were chargeable on the whole order.

2.6 Each order for Goods subject to these Terms shall be a separate contract and the failure of any delivery in respect to one order shall not breach the contracts as to any other orders.

2.7 In the event of the Buyer failing to take delivery of the Goods within 14 days of their becoming available, the Company shall be free to store the Goods at the risk and expense of the Buyer and/or to re-sell any of them without prejudice to the Company's rights and remedies against the Buyer.

### **3. RETURN OF GOODS**

3.1 Goods which are not defective, and which have been supplied in accordance with the contract cannot be returned without the Company's prior written authorization in the form of an official company returns number ("Authorized Returns"). Authorized Returns will be subject to a handling charge of 20% of the invoice value of the Authorized Returns or £35.00 (whichever is the greater). Authorized Returns shall be delivered to the Company's premises at the Buyer's expense.

3.2 The Company will ONLY authorize the return of Goods in its own discretion if the Buyer notifies the Company of its wish to return the Goods within 14 days of delivery of the Goods, unless agreed otherwise.

3.3 Goods returned to the Company must be in a sufficiently good condition to allow them to be resold by the Company and in original packs. Goods not in a re-saleable condition will not be authorized for return.

3.4 Goods which incorporate an expiration date (such as Gas Fuel Cells) will ONLY be authorized for return if they comply with Clause [3.3] above and if there is minimum of 9 months shelf life remaining.

3.5 Goods which are not standard, or which have been modified or made to the Buyer's specifications will not be authorized for return.

### **4. RETENTION OF TITLE**

4.1 Title to the Goods shall not pass to the Buyer until the purchase price and any VAT thereon shall have been paid in full to the Company. Until such payment in full the Buyer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Goods and the relationship between the Company and the Buyer in respect of the Goods including any proceeds of sale or other consideration therefore shall be a fiduciary one.

4.2 If in breach of Clause 4.1 above the Buyer sells the Goods prior to making payment in full then any proceeds of sale in respect thereof and all rights arising under or in respect of the said sale shall be held (in the case of the proceeds of sale in a separate account) by the Buyer as trustee for the Company.

4.3 If the Buyer fails to make payment in full of all sums due hereunder by the due date or prior to such payment the Buyer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within the meaning of Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) the Buyer's creditors or if the Buyer is unable to pay its debt within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver,

administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Buyer or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Buyer or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) then the Company (without prejudice to any other legal remedies it may have) shall at any time thereafter be entitled to enter upon the Buyer's premises without notice and remove the Goods or otherwise exercise the rights set out in clause 5.5.1, 5.5.2 and 5.5.3.

## **5. PRICES AND PAYMENT**

5.1 Prices given in quotations or when accepting orders or at any time are subject to variation and any order accepted shall be subject to the express condition that prices supplied on the Company's order acknowledgement shall apply. In all quotations, offers, orders or contracts with the Company (unless otherwise stated) all the Company's prices are exclusive of value added tax and the amount of value added tax (if any) shall be deemed added to any price so quoted and be payable by the Buyer.

5.2 For Goods sold within the United Kingdom, payment shall be strictly net and shall be made in full on or before the last day of the month following date of invoice (unless otherwise agreed in writing by the Company).

5.3 For Goods sold outside the United Kingdom, payment shall be strictly net and shall be made in cash in full, on or before the last day of the month following date of invoice (unless otherwise agreed in writing by the Company). For the purpose of this clause 5.3 time shall be deemed to be of the essence of the contract.

5.4 Payment of the price or any part thereof from time to time outstanding (with interest as provided in clause 5.5) may if so, required by the Company and without prejudice to clauses 4.1 and 4.2. above be secured and/or effected by means (at the Company's option) of: (i) irrevocable Letters of Credit which have been confirmed by a Bank in London nominated or approved by the Company and valid for a period specified by the Company; or (ii) Bills of Exchange drawn in favour of the Company and accepted by a Bank or Confirming House in London nominated or approved by and payable at delivery or at such other date or dates (if any) as may be stipulated by the Company. Such letters or (as the case may be) Bills shall be transmitted to the Company on or prior to commencement of delivery of the Goods and shall be renewed or extended as required to ensure their continuing validity notwithstanding any delay (howsoever arising) in delivery of such Goods. Upon any default in payment upon or in respect of any such Letters or Bills the whole balance then remaining due to the Company shall forthwith become payable upon demand.

5.5 In the event of any default by the Buyer in making payment of any amount payable to the Company under any contract with the Company or any payment not being received when due, the Company may at its option and without prejudice to its other rights:

5.5.1 Suspend or cancel further deliveries under any Contract with the Buyer and/or resell the Goods, and/or

5.5.2 Charge interest at a rate of 8 per cent per annum above Bank of England base rate from time to time on the overdue amount. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount. All invoice queries need to be raised by the Buyer to ITW within 21 days of invoice date.

## **6. DEFAULT OR INSOLVENCY OF BUYER**

6.1 In the event that:

6.1.1 the Buyer shall be in breach of any of its obligations under the Contract;

6.1.2 any distress or execution shall be levied on the Buyer's property or assets

6.1.3 if the Buyer (being an individual or partnership) shall make or offer to make any voluntary arrangement or composition with its creditors or become bankrupt or if any bankruptcy petition be presented against them;

6.1.4 (if the Buyer is a company) has an administrative receiver or administrator appointed or makes a voluntary arrangement with its creditors or commences to be wound up; or

6.1.5 otherwise if the Buyer fails to pay its debts as and when they fall due; or 6.1.6 such equivalent event in Clauses 6.1.1 to Clause 6.1.5 occurs to the Buyer in its local jurisdiction; the Company at its discretion and without prejudice to any other right or claim may by notice in writing forthwith determine wholly or in part any and all of the other Contracts between the Company and the Buyer or may (without prejudice to the Company's rights subsequently to determine the Contract for the same cause should it so decides by notice in writing suspend further deliveries of Goods.

## **7. DATA PROTECTION**

The Company shall comply with the provisions of the Data Protection Act 2018, and the European General Data Protection Regulations (GDPR, 2018), as may be amended from time to time and all other applicable data protection legislation in relation to the processing of any personal data it obtains from the Buyer. The Company shall comply with its on-line Privacy Policy when the Buyer purchases the Goods from the Company through the Company's website.

## **8. WARRANTIES AND REPRESENTATIONS**

8.1 The Company warrants that for a period of 6 months from the date of delivery to the common carrier (the "Warranty Period"), under normal use and given proper installation and maintenance as determined by the Company, the Goods:

(a) will conform to mutually agreed upon written specifications or other descriptions; and

(b) will be free from substantial defects in material and workmanship. In the event of a breach of the warranties set forth above (the "Warranties"), Company's sole liability and Buyer's sole remedy will be (at Company's option), for Company to repair, replace or credit Buyer's account for, any Goods that fails to conform to the Warranties, provided that

(i) during the Warranty Period Company is promptly notified in writing upon discovery of such failure with a detailed explanation of any alleged deficiencies;

(ii) Company is given a reasonable opportunity to investigate all claims; and

(iii) Company's examination of such Product confirms the alleged deficiencies and that the deficiencies were not caused by accident, misuse, neglect, alteration, improper installation, unauthorised alteration or repair or improper testing. No Products may be returned to Company until inspection and approval by Company.

8.2 All Goods are sold with the benefit of and subject to the conditions of the warranty supplied with them, which is available for inspection on request.

8.3 Nothing herein or in any warranty given by the Company shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants and agents including without limitation any failure by the Buyer to comply with any recommendations of the Company as to storage and handling or use or servicing of the Goods, use of the Goods with other goods or other misuse of the Goods or accident or fair wear and tear of the Goods.

8.4 Except as provided for in these conditions, any warranties, (whether express or implied by statute or common law or howsoever) including without limitation those of satisfactory or merchantable quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication of the Company) are hereby excluded.

8.5 No warranty is given that the detail in illustrations and in data supplied as to weights and measurement are accurate unless they are specifically described to be, and they are otherwise provided by way of identification of the Goods ONLY. Defects in quality and dimension where specifically mentioned shall be deemed accepted by the Buyer. In the case of Goods sold by samples as well as by description it shall be sufficient that the bulk of the Goods correspond with the sample without also corresponding with the description. The Company reserves the right to modify the manufacture of any Goods at any time and this condition shall be held to be implicit in all quotations or communications sent out by the Company.

8.6 The Buyer acknowledges and agrees that all contracts are entered into by the Company on the basis that (unless otherwise expressly agreed in writing at the time of concluding the contract) the Buyer is not placing reliance on any representation made by the Company or by its servants or agents as to the fitness, suitability, description, design, specification or quality of the Goods and or services to be supplied by the Company, thereunder.

8.7 The Company gives no guarantee to any parts of the Goods which are not manufactured by the Company but the Company so far as possible will pass on to the Buyer any benefit received by the Company under a guarantee or warranty from the manufacturer of such parts.

## **9. FORCE MAJEURE**

9.1 The Company shall have no liability under the Contract in respect of any failure or delay in fulfilling any of the Company's obligation to the extent that fulfilment thereof is prevented, frustrated, impeded or delayed as a consequence of any "force majeure" or any occurrence whatsoever beyond the control of the Company including without prejudice to the generality of the foregoing:

9.1.1 compliance with any order, regulation, request or control of any national or local authority, governmental department or other competent authority of any country; or

9.1.2 any delays in or cancellations of deliveries or provision of services by third parties or shortages of goods, materials or parts; or

9.1.3 any strikes, lock-outs or trade disputes whether involving the Company employees or others, fire, explosion, accident, calamity or civil disturbance, action of elements, national calamity or Act of God; or

9.1.4 failure in whole (or in part) of any power of energy supply.

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9. FORCE MAJEURE 9.2 Whilst the Company undertakes to make reasonable endeavours within its power to overcome difficulties arising in connection with any of the events or circumstances referred to in sub-clause (9.1) of this condition, the Company reserves the right to terminate the Contract with the Buyer by giving adequate notice without incurring any liability whatsoever and in particular the Company shall not be obliged to purchase any goods from third parties to make good any such difficulty.

## **10. LIABILITY**

10.1 Notwithstanding anything to the contrary, the Company's liability shall not be limited for any losses or damage arising due to personal injury or death caused by negligence, its fraud or fraudulent misrepresentation or any other liability that may not be limited by law.

10.2 The Company shall not be liable (whether or not the Company has been advised of the possibility of such loss) in contract, tort, negligence or otherwise howsoever arising for any claim, damage, loss or costs in respect of:

10.2.1 any loss of profits, any loss of turnover and/or any loss of revenue; and

10.2.2 any indirect or consequential loss or damage howsoever caused including without limitation any losses special to the Buyer.

10.3 Subject to Clause 10.1, the aggregate liability of the Company (whether in contract, tort, negligence or breach of statutory duty or otherwise) to the Buyer for any loss or damage shall be limited to the price of the Goods.

10.4 The Buyer shall be liable for and shall indemnify the Company against any and all expenses, loss, liability or proceedings suffered by a third party arising as a result of or in connection with any act, omission, negligence, and/or breach of the terms of this Contract or otherwise arising due to the default of the Buyer.

## **11. CONFIDENTIALITY**

11.1 The Buyer shall during and after the termination of the Contract keep confidential all information, written estimates, plans and illustrations, proposals and all other quotation documentation acquired from the Company or which becomes known to the Buyer in connection with the Contract. Such documentation shall always remain the property of the Company and must be produced to the Company on demand.

11.2 All information furnished or made available by Company to Buyer in connection with the subject matter of these terms and conditions or of Buyer's purchase order shall be held in confidence by the Buyer. Buyer agrees not to use such information or disclose such information to others without Company's prior written consent. The obligations in this paragraph will not apply to any information which (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Buyer of any obligation herein, (b) the Buyer can show by written records was in the Buyer's possession prior to disclosure by Company, or (c) is legally made available to the Buyer by or through a third party having no direct or indirect confidentiality obligation to Company with respect to such information, or (d) which is required by a public administration in accordance with a legal regulation.

## **12. SALE PROMOTION DOCUMENTATION**

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, illustrations, price lists, weight and measurement estimates and its other literature, these documents are for the Buyer's general guidance ONLY and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby. The Company reserves the right to vary the design, materials and the specifications of the Goods without prior notice.

## **13. GOVERNING LAW AND JURISDICTION**

The Contract shall be governed by and construed in all respects in accordance with English law and all disputes shall be submitted to the jurisdiction of the English Courts.

## **14. BERR – WEEE REGULATIONS**

Please take this as confirmation that ITW Construction Products UK are passing on the obligation for financing the cost of the collection, treatment, recovery and environmentally sound disposal of any Business to Business electrical items we supply to your company. This is in accordance with The Waste Electrical and Electronic Equipment (Amendment) Regulations 2009. Please see our website [www.itwcp.com](http://www.itwcp.com) for further information

## **15. STORAGE**

If by reason of instructions or lack of instructions from the Buyer, despatch of the Goods in accordance with the contract is delayed for 14 days after the Buyer has been notified that the Goods are ready for despatch, the property in the Goods shall pass to the Buyer who shall take delivery or arrange for storage and for the purposes of clause (payment) the Goods shall thereupon be deemed to have been delivered. If and for so long as the Company's storage facilities permit, the Company shall store the Goods and the Buyer shall pay storage charges as notified to the Buyer by the Company.

## **16. PATENTS AND TRADEMARKS**

**16.1 Ownership of Intellectual Property.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Buyer by Company and all rights therein (collectively, intellectual property) will remain the property of Company and will be kept confidential by Buyer in accordance with these terms and conditions. Buyer shall have no claim to, nor ownership interest in, any intellectual property and such information, in whatever form and any copies thereof, shall be promptly returned to Company upon written request from Company. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any intellectual property, other than the limited right to use the Company's proprietary goods purchased from Company.

**16.2 Use of Trademarks and Trade Names.** Buyer shall not use, directly or indirectly, in whole or in part, Company's name, or any other trademark or trade name that is now or may hereafter be owned by Company (collectively the "Trademarks"), as part of Buyer's corporate or business name, or in any way in connection with Buyer's business, except in a manner and to the extent authorized herein or otherwise approved by Company in writing. Buyer hereby acknowledges Company's ownership of the Trademarks and the goodwill associated therewith. Buyer shall not infringe upon, harm or contest the validity of any Trademarks. Buyer shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Goods pursuant to the terms of the Contract. Buyer shall reproduce the Trademarks exactly as specified by Company. Buyer shall not use the Trademarks in combination with any other trademarks or names. Buyer agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any goods or for any purposes other than those set forth in the Contract. Buyer shall not at any time during or after termination of the Contract use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Buyer shall provide reasonable cooperation to Company with respect to any efforts of Company to protect, defend or enforce its rights to the Trademarks. Should Buyer cease being an authorized customer of Company for any reason, Buyer shall immediately discontinue any formerly permitted use of Company's name or the Trademarks.

**16.3 Infringement and Indemnification.** Except as set forth below, Company agrees to defend and indemnify Buyer against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of Company's proprietary Goods to Buyer as such pertains to the subject matter of the Contract (each, a "Claim"); provided, however, (a) Buyer supplies Company written notice of such Claim immediately after the Buyer has notice of such Claim, (b) Buyer cooperates with Company in the defense and settlement of such Claim; and (c) Buyer allows Company the right to defend and settle such Claim at Company's expense if a suit or claim results in any injunction or order that would prevent Company from supplying any part or Good falling under the Contract, or if the result of such a suit or claim would, in the reasonable opinion of

Company, otherwise cause Company to be unable to supply such parts or Goods, Company may do one or more of the following: (i) secure an appropriate license to permit Company to continue supplying those parts or Goods; (ii) modify the appropriate part or Good so that it becomes non-infringing; (iii) replace the appropriate part or Good with a non-infringing but practically equivalent part or Good; or (iv) if Company cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in Company’s sole discretion, Company may discontinue selling the part or Good without any further liability to Buyer. Notwithstanding the foregoing, Company shall have no liability or duty to defend and indemnify Buyer against any Claim relating to: (1) the use of any part or Good, (2) the combination of any part or Good with any other part or Good not supplied by Company, or (3) any part or Good or process that is designed or specified by Buyer.

#### **17. ASSIGNABILITY**

The Contract of which these Conditions form part is personal to the Buyer who shall not assign the benefit thereof without the Company’s written consent.

#### **18. WAIVER**

The waiver by the Company of any breach of any terms herein shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

#### **19. PARTIAL VALIDITY**

If at any time any provision hereof is or become illegal, invalid or unenforceable in any respect, the legality, validity and enforcement of the remaining provision hereof shall not in any way be affected or impaired thereby.

#### **20. STATUTORY AND OTHER REGULATIONS**

If the cost to the Company of performing its obligations under the Contract shall be increased or reduced by reason of making or amendment after the date of acceptance of any law or of any order, regulation or by-law having the Force of Law that shall affect the performance of the Company’s obligations under the Contract, the amount of such increase shall be added to or deducted from the contract price as the case maybe.