

# Terms and Conditions of Sale of ABL Architectural Limited (“the Seller”)

## 1. Definitions

In these Conditions “Buyer” means the party with whom the Seller contracts; “Contract” means the contract made between the Seller and the Buyer for the supply of the Goods and /or Services which is subject to these Conditions; “Order” means the Buyer’s order for the Goods as set out in the Buyer’s purchase order or the Buyer’s written acceptance of the Seller’s quotation or in the Buyer’s purchase order form, the Buyer’s written acceptance of the Seller’s quotation (as the case may be); “Services” means any services to be performed by the Seller, either in connection with the Goods or separately. “Goods” means all or any of the goods, works, or materials to be supplied by the Seller; “Force Majeure Event” means an event or circumstance beyond a party’s reasonable control and more specifically set out in clause 11(d). “Fit for Function Sample(s)” means a sample against which the Seller shall produce a benchmark for the Goods in respect of an Order, which will be made in accordance with such sample, irrespective of any engineering drawings and or specification provided by the Buyer to the Seller for those Goods.

## 2. Application of Conditions

(a) The Contract will be on these Conditions to the exclusion of all terms, conditions and warranties including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, or similar document, whether or not such document is referred to in the Contract. The signing by the Seller of the Buyer’s documentation shall not imply any modification of these Conditions.

(b) Each Order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services subject to these Conditions. The Contract is formed when any Order is accepted by the Seller issuing a written acceptance of the Order or where no such document is issued by the Seller despatching the Goods or commencement of performance of the Services. The Buyer is responsible for ensuring that the terms of the Order and any applicable specifications are complete and accurate.

(c) No employee, agent or representative of the Seller has any authority to give any representation, guarantee or warranty relating to the Goods or the Services unless expressed in writing; and signed on behalf of the Seller by a duly authorised officer of the Seller.

(d) Variations of these Conditions are not binding unless agreed in writing by authorised officers of each of the Seller and the Buyer.

(e) Subject to paragraph (c) above the Buyer acknowledges that it has not been induced to enter into the Contract by any representation guarantee or warranty made by the Seller, its employees, agents or representatives. The Seller is not seeking to exclude its liability (if any) for fraudulent misrepresentation.

(f) Quotations given by the Seller shall not constitute an offer and a quotation is subject to withdrawal at any time and in any event such quotation shall be withdrawn if not accepted within 30 days.

(g) The Buyer can only cancel the Contract or an Order once it is accepted, with the Seller’s prior consent.

(h) The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

## 3. Delivery

(a) The Seller shall deliver the Goods to the Buyer at the place stipulated by the Buyer in the Order or such other locations as may be agreed at any time after the Seller notifies the Buyer that the Goods are ready (“Delivery Location”). Delivery is complete on completion of unloading or loading the Goods at the Delivery Location. The Seller shall be entitled to deliver the Goods in one or more instalment unless otherwise expressly agreed. If delivered in instalments, each delivery shall constitute a separate Contract. Failure by the Seller to deliver any one or more instalments or any claim by the Buyer in respect of any or one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated. Each separate instalment will be invoiced and paid for in accordance with these Conditions.

(b) Any time quoted by the Seller for delivery of all or any of the Goods is an estimate only and time shall not be of the essence. The Seller shall not be liable for any failure to meet any such estimate, nor for any loss of whatever nature, resulting directly or indirectly there from and the Seller shall not be liable for delay in delivery of the Goods which is caused by a Force Majeure Event or the Buyer’s failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Seller reserves the right to deliver all or any of the Goods in advance of the estimated date.

(c) The Buyer should inspect the Goods on delivery to the Buyer. In the event of the Buyer claiming there is a shortage of Goods against the quantity advised by the Seller, the Buyer shall notify the Seller of such shortage within 3 working days of the date of delivery. If Goods are lost damaged or destroyed in transit the Buyer should make a claim within 10 working days of the date of despatch. The Seller upon confirming the shortfall, loss damage or destruction undertakes at its option either to deliver up to the Buyer a sufficient quantity of the Goods to make up the shortfall, loss or damage; or to credit the Buyer where applicable with the invoiced value of the undelivered Goods. The Buyer shall not have the right to reject deliveries of the Goods which are either 10% or less in excess of, or lower than the quantity ordered.

(d) If the Buyer fails to take delivery of the Goods or if the Buyer has failed for 28 days to give delivery instructions after the same has been requested by the Seller or where the Seller has notified the Buyer that the Goods are ready for delivery and the Buyer has not taken delivery of them, the Seller may, without prejudice to its other rights and remedies, dispose of the Goods and charge the Buyer with the cost of storage from the date the Goods were tendered for delivery, the cost of any additional transport and a sum equal to any loss suffered by the Seller in any re-sale caused by the Buyer’s default and or deliver the Goods to the Delivery Location.

(e) The Buyer agrees that it shall sign the Seller’s delivery note upon receipt of the Goods and failure by the Buyer to

do so shall not invalidate delivery of the Goods by the Seller pursuant to these Conditions and the Contract shall be deemed to have been fully performed by the Seller.

## 4. Price and Payment

(a) The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price shall be the higher of the price set out in the Seller’s published price list in force as at the date of delivery or the price of the last delivery of similar Goods by the Seller and the prices quoted are based on the cost of labour, materials and energy ruling at the date of the Seller’s confirmation of Order or where no confirmation of Order is issued, on the date on which the Contract is formed; and the Seller reserves the right to increase such prices should the costs of labour energy and materials change between such date and the date of delivery, by notice to the Buyer.

(b) Unless otherwise expressly stated in writing, all prices are exclusive of VAT, which will be charged where appropriate at the rate prevailing at the relevant tax point.

(c) The Seller shall be entitled to invoice the Buyer for the price of the Goods and Services on or at any time after the Seller has tendered delivery of the Goods (and proof of delivery shall be conclusive evidence as to delivery) and payment of all charges under the Contract shall be made in full upon delivery unless the Buyer has agreed credit terms with the Seller and where there are agreed credit terms (subject to the Buyer making an application to the Seller for credit and such application being successful (“Credit Application”)), payment shall be made in accordance with the terms of the Credit Application unless a different payment period has been confirmed in writing by the Seller to the Buyer. For the purposes of this Condition time of payment is of the essence and interest at the annual rate of 4% over the base rate of the Royal Bank of Scotland plc may be charged on a daily basis on all amounts outstanding after the due date until the actual date of payment (both before and after judgement).

(d) Any period of credit offered to the Buyer pursuant to these Conditions shall immediately terminate in the event of the Seller exercising its rights under Condition 10 hereof and all sums owing from the Buyer to the Seller shall then immediately become due and payable.

(e) The Seller may appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Seller and the Buyer) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer).

(f) The Seller shall have the right by notifying the Buyer, to suspend deliveries under the Contract and/or under any other contract the Seller may have with the Buyer (even though the Buyer may not be in arrears with any payment) if the Seller considers that the amount outstanding to the account of the Buyer (whether due for payment or not) has reached the limit to which the Seller is prepared to allow credit to the Buyer whether or not such a limit has been notified to the Buyer.

(g) If any amounts are outstanding after the due date for payment or if the Seller reasonably believes that payments will not be made by the due date, then in addition to the Seller’s other rights under the Contract, the Seller may suspend deliveries or further deliveries of Goods until the outstanding amount has been received by the Seller. Additionally all amounts due to the Seller under the Contract or any other contract the Seller may have with the Buyer (even though amounts due under such other contracts are

not then due for payment) shall become immediately due and payable notwithstanding any other previously agreed payment terms.

(h) The Seller may increase the price of the Goods where the Buyer changes the delivery date, quantities or types of Goods ordered or the specifications and or there is any delay caused by any instructions of the Buyer or failure by the Buyer to give the Seller adequate or accurate information or instructions.

(i) The price of the Goods excludes the costs and charges of packaging, insurance and transport of the Goods which shall be invoiced to the Buyer.

(j) The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

#### **5. Specifications**

(a) All descriptions and illustrations contained in the Seller's catalogues, price lists and advertisements or otherwise communicated to the Buyer are approximate only and are intended merely to present a general idea of the Goods described therein, and nothing contained in any of them shall form any part of the Contract other than where there is a Fit for Function Sample produced by the Seller.

(b) Any samples (excluding Fit for Function Samples) , drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them (and for the avoidance of doubt all engineering drawings need to express tolerances) Such samples, drawings, descriptive matter or otherwise shall not form part of the Contract nor have any contractual force, notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer, it is hereby agreed that such sample was so exhibited and inspected solely to enable the Buyer to judge for himself the quality of the bulk and not so as to constitute a sale by sample. The Seller excludes Sections 13-15 of the Sale of Goods Act 1979 (as amended).

(c) The Seller may make any changes to the specification, design, materials or finishes of the Goods which either are required to conform with any applicable safety or other statutory or regulatory requirements, or do not materially affect their quality or performance.

(d) Where Goods are made to the Buyer's specification and/or design, the Buyer undertakes full responsibility for the suitability, safety and accuracy of the specifications, instructions or design and undertakes to provide any information of a special nature to the Seller and any errors in any specification shall be at the Buyer's risk.

(e) The Buyer will indemnify the Seller against any claims from third parties arising from a breach of the provisions of clause 5 (d) above and against any infringement of any patent, registered design, trade mark or copyright and any loss, damage or expense which the Seller may incur by reason of any infringement in any country.

(f) All specifications in respect of Goods supplied to the Buyer are stated to the best of the Seller's knowledge, information and belief. No liability will arise for the failure of Goods to match any specifications and it is the Buyer's obligation to ensure that the Goods are suitable for their intended purpose.

#### **6. Title and Risk**

(a) Risk in the Goods will pass to the Buyer immediately on delivery to the Buyer, collection by the Buyer or into custody on the Buyer's behalf, whichever is the sooner and notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain with the Seller until the

Seller has received payment of the full price of (i) all Goods and/or all Services which are the subject of the Contract and (ii) all other Goods and/or Services supplied by the Seller to the Buyer under any other Contract whatsoever.

(b) Until property in and title to the Goods passes to the Buyer, the Buyer shall be entitled to deal with the Goods in the ordinary course of its business provided that it stores the Goods separately from all other Goods held by the Buyer so that they remain readily identifiable as the Seller's property and the Buyer does not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and the Buyer maintains the Goods in satisfactory condition and keeps them insured against all risks for their full price from the date of delivery and the Buyer notifies the Seller immediately if it becomes subject to any of the events listed in Clause 10 and the Buyer gives the Seller such information relating to the Goods as the Seller may require from time to time.(c) The Buyer's right to possession and power to deal with the Goods shall terminate immediately if any of the circumstances set out in Condition 10 occur or amounts due to the Seller are not paid by their due date. In such circumstances the Buyer shall place the Goods at the disposal of the Seller and the Buyer grants to the Seller an irrevocable licence to enter at any time any premises owned or occupied by the Buyer or in the Buyer's possession for the purpose of repossessing and removing any Goods the ownership of which has remained vested in the Seller. The Seller shall not be responsible for and the Buyer will indemnify the Seller against liability for any damage occurring during such repossession and removal where such damage could not reasonably have been avoided.

(d) The Seller will be entitled to recover payment for the Goods notwithstanding that property in and title to the goods has not passed from the Seller.

(e) Where the Seller is unable to determine whether any goods are the Goods in respect of which the Buyer's right to repossession and power to deal has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Seller in order in which they were invoiced to the Buyer.

#### **7. Warranties**

(a) No warranties are given in respect of the Goods other than those implied by statute which are not excluded by these Conditions.

(b) In the event of the Buyer receiving defective Goods and/or Services which do not comply with the specification the Buyer shall within seven days of the date of delivery or in the case of a latent defect not later than six months from the date of delivery of the Goods notify the Seller thereof and at the option of the Seller either afford the Seller the right of inspection of the Goods and/or Services or shall at the request of the Seller return the Goods to the Seller for inspection.

(c) If the defect is in the opinion of the Seller due to faulty workmanship or materials or to some other factor within its control, the Seller shall at its option either replace the same or credit the Buyer with the contract value of such defective

Goods once the Seller is in possession of the said Goods or make good by reimbursement of the Contract value attributable to the Services or by performance of the Services any defective workmanship in the performance of the Services.

(d) The Seller shall not be required to replace or credit any defective Goods if (i) the Goods have been improperly used, or (ii) any instructions as to storage of the Goods have not been complied with or the Goods have been otherwise inappropriately stored, or (iii) the Goods have been manufactured in accordance with the Buyer's specification and the defect arises from such specification, or (iv) the Buyer has failed to notify the Seller of any defect or latent defect within the respective periods set out in clause 7(b) above (v) the Buyer makes any further use of such Goods after giving notice in accordance with these Conditions (vi) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same (vii) the Buyer alters or repairs such Goods without the written consent of the Seller (viii) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions (ix) the Goods differ from their description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

(e) The Seller does not accept responsibility for damage, destruction or loss during carriage arranged by the Buyer. Where carriage is arranged by the Seller, any damage or destruction shall be notified by the Buyer to the Seller within three working days of the date of delivery and in the event of loss within ten days of the notified date of arrival of the consignment.

(f) Except to the extent that it may be rendered void or unenforceable under any statute this condition 7 shall apply to any Contract made between the Buyer and the Seller to the exclusion of any term, condition, representation or warranty express or implied by statute common law or otherwise and to the exclusion of the rights of the Buyer in contract or in tort as to the satisfactory quality workmanship or fitness for purpose of the Goods.

(g) All recommendations and advice as to methods of storing, assembling, applying or using Goods or the purpose for which Goods may be applied are given without responsibility on the part of the Seller.

(h) These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

#### **8. Liability**

(a) The Seller's aggregate liability to the Buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of any part of the Contract by the Seller its employees, agents or representatives is limited to the price which relates to the Goods or Services under the Contract that are the subject of any claim.

(b) Subject to Condition 8(a) the Seller shall not be liable to the Buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any economic loss, loss of profit, loss of business, loss of goodwill, loss of revenue, loss of anticipated savings, loss of use, loss of contract or any other similar loss whether consequential or otherwise which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of any part of the Contract by the Seller, its employees, agents or representatives.

(c) Nothing in these Conditions shall operate so as to exclude the Seller's liability (if any) to the Buyer in respect of death or personal injury caused by the negligence of the Seller, its employees, agents or representatives; for breach of the Seller's obligations under Section 12 of the Sale of Goods

Act 1979 (as amended) and/or section 2 of the Sale and Supply of Goods and Services Act 1892 and/or Section 2(3) of the Consumer Protection Act 1987; or for fraud or fraudulent misrepresentation; or for any other matter which it would be illegal for the Seller to exclude or attempt to exclude its liability.

#### **9. Intellectual Property**

(a) In the absence of an agreement in writing to the contrary, the Seller shall retain all rights in any patents, copyright and other intellectual property rights subsisting in any Goods, invention, drawing and/or design made or created wholly or partly by an employee or agent of the Seller in connection with the Contract and without prejudice to the generality of the foregoing all tooling designed by or for and on behalf of the Seller shall belong to the Seller notwithstanding it has been used (whether exclusively or otherwise) for the benefit of the Buyer.

(b) Where the Seller supplies the Goods or Services in accordance with a specification, drawing and/or other documentation provided by the Buyer, the Buyer by entering into the Contract warrants that the use of any specification, drawings and/or documentation shall not cause the Seller to infringe any patent, copyright, registered trademark or other intellectual property right owned by a third party and the Buyer shall (without prejudice to the other rights and remedies of the Seller) fully indemnify the Seller against all loss, damages, action, claim, demand, costs, charges, expenses and other liabilities awarded against or incurred by the Seller as a result or in connection with such infringement, whether actual or alleged and any other liability of any kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from the specification, drawings, documentation and/or any other instruction from the Buyer.

(c) The Goods are sold and the Services are performed subject to the rights of any third party whether in respect of any patent, trademark, registered design, copyright or other intellectual property rights, confidential undertaking or similar matter, and the Buyer will in this respect accept such title to the Goods as the Seller may have.

(d) This clause 9 shall survive termination of the Contract.

#### **10. Termination and Suspension**

(a) The Seller may immediately terminate the Contract forthwith or suspend future deliveries if the Buyer; passes a resolution or presents a petition for winding-up, bankruptcy or for the appointment of an administrator, the appointment of a receiver and/or manager or administrative receiver over the whole or any part of its undertaking and assets; makes a proposal for a voluntary arrangement within the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with or the calling of any meeting of its creditors generally (otherwise in furtherance of a scheme for amalgamation or reconstruction); the levying of execution or distress on any of its assets; the failure to pay its proper debts as and when due; the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so; the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy and anything analogous to any of the foregoing under the law of the jurisdiction where the Buyer is established.

(b) Without prejudice to any other rights or remedies under the Contract the Seller may at its option forthwith on written notice suspend deliveries or terminate the Contract wholly or in part and any other contract with the Buyer in the event that the Buyer does not make any payments by the date

on which they become due under the Contract or any other contract between the Buyer and the Seller and/or if the Buyer commits any breach of any other contract (including without limitation the Contract) with the Seller.

(c) If the Buyer terminates the Contract for reasons other than those provided in Condition 10(a) which affect the Seller or due to a material breach entitling the Seller to terminate the Contract the Buyer shall be liable to the Seller for any costs or charges incurred by the Seller by reason of such termination together with all costs incurred by the Seller up to the date thereof and any difference between the Contract price and the price at which the Seller is able to sell the Goods elsewhere and the Seller shall have a general lien for any such sum on all and any property of the Buyer in its possession and without prejudice to the generality of the foregoing the Customer shall immediately pay to the Seller all unpaid invoices due to the Seller.

(d) In the event of a suspension of deliveries or performance (whether under this Condition or under Condition 4) the Seller shall be entitled to as a condition of resuming performance, to require pre-payment, or such security as it may deem appropriate.

(e) Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

(f) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

#### **11. General**

(a) No failure or delay on the part of the Seller to exercise any of its rights under the Contract shall operate as a waiver or nor shall any waiver by the Seller of any breach by the Buyer of any of its obligations under the Contract affect the rights of the Seller in the event of any further continuing breach.

(b) Each and every obligation contained in these Conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any such obligation.

(c) If any of the provisions of these Conditions shall be held to be invalid or unenforceable, such invalidity and unenforceability shall not affect the remaining provisions.

(d) The Seller shall not be liable for any inability, whether in whole or in part to comply with its obligations under the Contract due to strikes, lockouts or other industrial disputes, protest, act of God, war or national emergency, act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or contractors or any other cause whatsoever beyond its reasonable control. In the case of any partial inability to comply with its obligations under the Contract, the Seller reserves the right to supply the Buyer on a pro-rata basis proportionate to supplies to the Buyer and the Seller's other customers. Time for delivery shall be extended by a period corresponding to the period

of such inability provided that either party may give notice to the other cancelling deliveries which should have been made during a period of a Force Majeure Event in the event that such period extends beyond 30 consecutive days.

(e) The Contract is personal to the Buyer, who shall not assign or in anyway part with the benefit without the Seller's prior written consent.

(f) Any notice or legal process given under the Contract shall be in writing and shall be given to the Seller or the Buyer as the case may be at their respective addresses. Any notice or process sent by post shall be deemed to have been delivered or served 24 hours after the same shall have been posted in a properly addressed pre-paid envelope and proof of posting shall be sufficient proof of service.

(g) The contract shall be construed and governed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

(h) Nothing in these Conditions shall confer on any third party any benefit of the right to enforce any of these Conditions.

(i) These Conditions constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(j) No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).