

# elliottmarshall TERMS & CONDITIONS

## 1. INTERPRETATION

### 1.1 In these Conditions:

"Buyer" means the person whose order for Goods and/or Services is accepted by the Seller

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller. "Contract" means the contract for the purchase and sale of Goods and/or supply of Services.

"Goods" means the goods which the Seller sells to the Buyer under these Conditions.

"Order Confirmation" means the acknowledgement of the Quotation provided by the Seller to the Buyer whether written or oral.

"Quotation" means the quotation for the Goods and Services provided to the Buyer by the Seller whether written or oral.

"Seller" means the Elliott Marshall business, details of which are given in the Quotation and/or whose details have been provided to the Buyer either in writing or orally.

"Services" means any services provided to the Buyer (including all of them or any part of them) under a Contract.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Making the Contract

2.1 Each Quotation will be deemed to be an offer by the Buyer to buy the Goods and/or Services in accordance with these Conditions. The Contract is made when the Quotation is accepted by the Seller by the issue to the Buyer of an Order Confirmation. The Contract will not be made until an Order Confirmation has been issued by the Seller or the Seller commences provision of the Goods and/or Services.

2.2 The Contract is subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions and all previous oral or written representations made by the Seller, but subject to the provisions of Condition 2.3.

2.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Seller.

2.4 The Buyer must ensure that the terms of the Quotation and any applicable specification are complete and accurate. If the Buyer wishes to amend any aspect of the information the Buyer has given it must contact the Seller immediately. Although the Seller will use reasonable endeavours to implement any such amendment which the Buyer requests, the Seller cannot guarantee that it will be able to do so after the Order Confirmation has been issued. If such amendment changes any other aspect of the Quotation (for example the price) and the Seller is able and willing to amend it, then the Seller will send the Buyer a new Order Confirmation.

2.5 All Quotations are, unless agreed otherwise in writing, valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.

2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application, suitability or fitness for purpose for use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendations which is not so confirmed.

## 3. Provision of the Goods and Services

3.1 The quantity, quality and description of and any specification for the Goods and Services shall be those set out in the Quotation. It is the obligation of the Buyer to prepare surfaces to which the Goods may be applied so that they are suitable for such application.

3.2 If the Goods are manufactured or any process is applied to the Goods by the Seller in accordance with a specification submitted by the Buyer whether in writing or otherwise the Buyer shall indemnify the Seller against all loss damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade mark (whether registered or not) or other industrial or intellectual property rights of any third party which results from the Seller's use of any or all of the Buyer's specification.

3.3 The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to confirm with any applicable legal or regulatory requirements (including but not limited to safety requirements) or which do not materially affect their quality or performance.

3.4 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 used) damage charges and expenses incurred by the Seller as a result of cancellation.

3.5 Where a Quotation is based upon information supplied by the Buyer the Buyer is responsible for its accuracy and any increased costs of supply resulting in any inaccuracy are the Buyer's responsibility.

3.6 All samples, drawings, descriptions, specifications, illustrations and advertising issued by the Seller or contained in any of the Seller's catalogues or brochures or on any website connected with the Seller (together "Samples") are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. Samples do not form part of the Contract this is not a sale by sample.

3.7 At the request of the Buyer and at its cost, and at the sole discretion of the Seller, the Seller may remove materials (including but not limited to old signage) from the premises of the Buyer.

3.8 The Seller requires the Buyer, prior to the provision of the Goods and/or Services, to obtain any necessary consents and approval to:

3.8.1 The installation and/or application of the Goods, including but not limited to any planning and/or landlord consents;

3.8.2 the use of any logo, trade mark or design required for the Goods (included but not limited to the right to use the copyright and any other intellectual property rights in such logo, trade marks and design).

3.9 All intellectual property rights (including but not limited to copyright) arising from the creation of Goods by the Seller shall remain the property of the Seller and the Buyer shall not copy or reproduce the Goods without the prior written consent of the Seller.

## 4. Price of the Goods

4.1 The price of the Goods and Services shall be the price set out in the Order Confirmation or (where the price is not referred to in the Order Confirmation) as set out in the Quotation, or (where no price has been quoted or a quoted price is no longer valid) the price calculated by the Seller from its normal price list from time to time.

4.2 The Seller reserves the right to increase the price of the Goods and/or Services to cover:

4.2.1 any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation, alteration of duties, significant increases in the costs of labour, materials, or other costs of manufacture);

4.2.2 any change in delivery dates quantities or specification of the Goods and Services which are requested by the Buyer;

4.2.3 any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions;

4.2.4 the costs of additional work carried out by the Seller to be able to perform the Services (including but not limited to the preparation of surfaces to which Goods are to be applied and the disposal of materials at the request of the Buyer);

4.2.5 to comply with any requirements referred to in Conditions 2.4, 3.5 and 3.7.

4.3 except as otherwise expressly set out in the Contract all prices are given by the Seller exclusive of:

4.3.1 packaging and delivery of the Goods to the Buyer's premises; and

4.3.2 any applicable value added tax or other applicable sales tax or duty and such sums shall be added to the price.

## 5. Terms of Payment

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods and the Services on or at any time after delivery of the Goods and/or performance of the Services unless the Goods are to be collected by the Buyer or the Buyer fails to take delivery of the Goods and/or accept performance of the Services after the Seller has notified the Buyer that the Goods are ready for collection and/or the Services are to be provided in which event the Seller shall be entitled to invoice the Buyer for the price at any time after such notification or (as the case may be) the Seller has tendered delivery of the Goods and the Buyer has failed to take delivery.

5.2 Subject to Condition

5.3 below the Buyer shall pay the price of the Goods and/or the Services within no more than 30 days of the date of delivery of the Goods and/or performance of the Services notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be the essence of the Contract. Receipts for payment will only be issued on request by the Buyer.

5.3.1 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

5.3.2 cancel the Contract or suspend further deliveries of Goods and/or provision of Services to the Buyer;

5.3.3 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any Contract between the Buyer and Seller) as the Seller think fit (not withstanding any purported appropriation by the Buyer)

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## 6. DELIVERY

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller by the Seller delivering the Goods to that place subject to Condition 4.3. Provision of the Services shall be made at the location notified by the Buyer at any time after the Seller has notified the Buyer that the Services are ready to be provided.

6.2 Any dates quoted for delivery of the Goods and/or provision of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods and/or provision of the Services howsoever caused. Time for delivery and/or provisions shall not be of the essence unless previously agreed in writing by the Seller. The Goods may be delivered and/or the Services provided to the Buyer in advance of the quoted date upon giving reasonable notice to the Buyer.

6.3 If the Buyer fails to take delivery of the Goods or accept provision of the Services or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) than without prejudice to any other right or remedy available to the Seller the Seller may;

6.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or

6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.4 The Seller may deliver the Goods by separate instalments and perform any Services in stages. Each separate instalment or stage will be invoiced and paid for in accordance with the provisions of this Contract.

6.5 Each instalment or stage will be a separate Contract and, unless specifically set out in these Conditions, no cancellation or termination of any one Contract relating to an instalment or stage will entitle the Buyer to repudiate or cancel any other Contract or instalment or stage

## 7. RISK & PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer

7.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of the Goods to be delivered otherwise than at the Seller's premises at the time of delivery to such premises or, if the Buyer fails to take delivery of the Goods, from the time when the Seller has tendered delivery of the Goods.

7.2 Not with standing delivery and the passing of risk in the Goods or any other provision of these Conditions ownership of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods and Services for which payment is due from the Seller.

7.3 Until such time as ownership of the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property.

7.4 The Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.

7.5 Until such time as ownership in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8. WARRANTIES, LIABILITIES AND INDEMNITY

8.1 The Seller will within a period of 6 months from the date of delivery of Goods and from the date of provision of Services, in respect of Goods and/or Services which are proved to the reasonable satisfaction of both parties to be damaged or defective, or not to comply with the agreed specification due to defects in material, workmanship or design (other than a design made, furnished or specified by the Buyer), repair, or at its option replace, such Goods, and/or reperform or at its option refund the price of such Services. This obligation will not apply where:

8.1.1 the Buyer has improperly used the Goods in any way whatsoever, or the Goods have been subjected to misuse, unauthorised repair, damage, negligence, adverse weather conditions and/or alteration; or

8.1.2 the Buyer has not complied with any instructions relating to preparation of the surfaces and areas to which the Goods are applied, and/or such surfaces or

areas have been subjected to previous workmanship by third parties and/or contain latent defects; or

8.1.3 damage, discolouration or failure to painted surfaces has occurred through no fault of the Seller; or

8.1.4 the Seller carries out work which is not provided for in the Order Confirmation, and is beyond the scope of the Services; or

8.1.5 the Buyer has not complied with any instructions as to use and care of the Goods in all respects; or

8.1.6 the Buyer has failed to notify the Seller of any problem or suspected problem within 2 days of the provision of the Services and/or supply of the Goods.

8.2 Any repaired or replacement Goods or re-performed Services will be liable to repair or replacement (or re-provision or, at the Seller's option, refund) under the terms specified in Condition 8.1 for the unexpired portion of the 6 month period from the original date of delivery of the replaced Goods or from the original date of provision of the re-performed Services.

8.3 The above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.4 The Seller accepts liability for personal injury or death caused by the negligence of the Seller or its employees (acting within the course of their employment or duties and the scope of their authority and for any other matter for which it would be illegal to exclude or attempt to limit or exclude its liability).

8.5 Except as provided in Condition 8.4, the Seller will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or for any direct, indirect or consequential loss (all three of which terms include, but are not limited to, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:

8.5.1 any breach by the Seller of any of the express or implied terms of the Contract;

8.5.2 any of the Goods and/or Services (including but not limited to any use made by the Buyer of any Goods, or of any product incorporating any of the Goods), or the manufacture or sale or supply, or failure or delay in supply, of the Goods and/or Services by the Seller or on the part of the Seller's employees, agents or sub-contractors;

8.5.3 any non-fraudulent statement made or not made, or advice given or not given, by or on behalf of the Seller.

8.6 Except as set out in Condition 8.4, the Seller hereby excludes to the fullest extent permissible in law, all express (other than those set out in the Contract) or implied, statutory, customary clauses, warranties and stipulations or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.

8.7 The Buyer acknowledges that the above provisions of this Condition 8 are reasonable and reflected in the price which may be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods and/or Services if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control.

8.8.1 Act of God explosion flood tempest fire or accident

8.8.2 War or threat of war sabotage insurrection civil disturbance or requisition

8.8.3 Acts restrictions regulations bylaws prohibition of measures of any kind on the part of any governmental parliamentary or local authority

8.8.4 Import or export regulations or embargoes

8.8.5 Strikes lockout or other industrial actions or trade disputes (whether involving employees or the Seller or a third party)

8.8.6 Difficulties in obtaining raw materials labour fuel parts or machinery

8.8.7 Power failure or breakdown in machinery

8.8.8 Default of suppliers or sub-contractors.

8.9 The Buyer agrees to indemnify, keep indemnified and hold harmless the Seller from and against all direct, indirect or consequential loss (all three of which terms include, but are not limited to, loss of profits, loss of business, depletion of goodwill and like loss), costs, expenses, liabilities, injuries, damages, claims, demands, proceedings or legal costs and judgements which the Seller incurs or suffers as a consequence of direct or indirect breach or negligent performance or failure in performance by the Buyer of any of the terms of the Contract.