

EXALL JONES LIMITED - TERMS & CONDITIONS OF SALE

1. General

"the Company" means Exall Jones Limited trading as Exall & Jones Timber & Builders Merchant whose registered office is at 38 Morfa Road Swansea SA1 2EN. Email: enquiries@exalljones.com. Tel: 01792 473748. VAT Registration Number: 380 8936 17.

"the Customer" means a customer of the Company purchasing or ordering goods or supplies from the Company

All business with the Customer is subject to these Terms and Conditions ("Conditions") and commencement of delivery or collection of goods by the Customer shall in the absence of any written acceptance be deemed an unconditional acceptance of these Conditions by the Customer

Any variation to these Conditions or additional terms must be expressly agreed by the Company and confirmed in writing

The benefit of these Conditions cannot be assigned by the Customer without the prior written consent of the Company

A person who is not a party to a contract with the Company has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the contract but this does not affect any right or remedy of a third party that exists or is available apart from that Act

The headings appearing above each Condition are included for reference purposes only and shall not affect or limit the interpretation and effect of these conditions

The Customer shall not have right of set-off nor withhold payments properly due to the Company in the event of any dispute with the Company

If any part of these Conditions is invalid illegal or unenforceable (including any provision in which the Company excludes its liability to the Customer) the validity, legality or enforceability of any other part of these Conditions will not be affected

The Company shall not be liable for any loss or damage caused by non performance or by delay in the performance of its obligations to the Customer due to any act of God, war, civil disturbance, government action, strike, lockout or trade dispute (whether involving its own employees or those of any other person) difficulty in obtaining materials breakdown of machinery fire or accident or any other cause whatsoever beyond the control of the Company. Should any such event occur the Company reserves the right to cancel or suspend the contract with the Customer without incurring any liability for any loss or damage thereby occasioned

No failure or delay by a Company to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy

A full description of the goods is available in the Company's catalogue, website (upon request), store, over the telephone (by request) and on the online shops from which the Company trades

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract

In the event that there is insufficient availability of a product ordered by the Customer and the Company supplies an alternative to the product ordered which is not to the Customer's satisfaction, the Company shall pay the cost of returning that product.

2. Quotations

Quotations provided by the Company are estimates of the cost of supply of goods and do not constitute offers by the Company

The Company reserves the right to withdraw or amend any quotation prior to the commencement of delivery or collection by the Customer of the goods

Quotations are valid for 28 days.

All prices quoted are exclusive of VAT.

3. Payment

- i) Credit accounts may be opened at the Company's sole discretion and subject to satisfactory credit references being obtained.
Payment for goods supplied on a credit account shall be due and payable on the 28th of the month following the delivery or collection of the goods
- ii) For all other transactions payment shall be made when the order is placed or at any other time before delivery. If payment is not made before delivery the Company has the right to refuse to deliver
- iii) If payment is not made then the Company reserves the right to charge interest on the total amount. Interest is payable at the rate of 5% over Barclays Bank plc's current base rate on the unpaid balance; this interest shall accrue on a day to day basis from the due date for payment until receipt by the Company of the full amount whether before or after judgement.
- iv) If any outstanding invoice or invoices remain unpaid after their due date the Company reserves the right to refer the matter to a debt recovery agency for collection. The total amount due under the invoice or invoices will be subject to a surcharge of 15% plus VAT to cover the collection costs incurred. This surcharge together with all other charges and legal fees incurred will be the responsibility of the Customer and will be legally enforceable.
- v) Additional charges may be incurred:-
 - a) if delivery is required outside the Company's normal working hours or outside a 8 mile radius of the Company's registered office;
 - b) if delivery is required in part load value rather than full load
 - c) if for any reason the delivery vehicle is unable to commence discharge of its load within 10 minutes of arrival at the site
 - d) if the Customer refuses to accept delivery or delivery has to be re-arranged due to circumstances beyond the Company's control
 - e) if a particular vehicle is requested or specified by the Customer to deliver the goods

4. Delivery

- i) Delivery will occur when the goods are ready for unloading at the kerbside of the address noted on the delivery note or when the goods are collected by or on behalf of the Customer at the Company's premises or when the Company delivers the goods to its nominated carrier for the purposes of onwards delivery to the Customer or when the nominated carrier collects the goods from the Company for the purposes of delivering them to the Customer.
- ii) The Company reserves the right to refuse to deliver the goods and charge the Customer for any costs incurred if safe and adequate access to the delivery site including adequate manoeuvring space for the delivery vehicle is not available
- iii) Unless previously agreed and confirmed in writing by the Company, the Customer will provide all labour and equipment required to unload the goods and will indemnify the Company against any cost claim loss or damage arising from unloading or delivery
- iv) Whilst the Company will use its best endeavours to meet prompt delivery, delivery dates and times mentioned in any acknowledgement of order or elsewhere are approximate and not of contractual effect. The Company accepts no responsibility arising from delayed delivery unless an undertaking for delivery on or before a specific date is given in writing by the Company
- v) If the Company fails to deliver the goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the goods.
- vi) The Company offers free local delivery but reserves the right to raise a delivery charge where the delivery is out of area, the delivery address is difficult to access or where exceptional circumstances prevail. Further details will be supplied upon request.

5. Complaints

- i) Where goods are proved to be defective, the Company will replace the goods as promptly as possible without charge provided:
 - a) the delivery note is marked accordingly with short details and signed by the Customer and the driver where the defect is visible on inspection on delivery
 - b) the Company receives notice in writing within 7 days of delivery where the defect is not visible on inspection upon delivery but will not be responsible for removing any defective goods if they have been installed or affixed nor the cost of installing or affixing any replacement goods and shall not be responsible for any consequential loss resulting from unsuitable application or wrongful handling of the goods or any fault in the design or specification provided by the Customer.
- ii) Claims for defects as to size colour or texture will not be considered if made after 7 days of delivery

- iii) No warranty of any nature is made by the Company: as to the match of any colours size or texture of any goods that the goods are suitable for any specific purpose if sizes vary from that stated on the delivery note and/or invoice

6. Cancellations

- i) The Customer will have seven working days after the day of delivery of the goods in which to cancel their order. The Customer should notify the Company in writing at their business address of their wish to cancel within the specified time period and the date of cancellation will be the date upon which the Customer gives this notice. Requests for cancellations submitted after this time shall only be accepted at the Company's entire discretion and such requests will only be considered upon the production of a valid proof of purchase by the Customer.
- ii) It will be in the Customer's interest to retain evidence of having given the Company the cancellation notice.
- iii) The Customer will be obliged by statute to take reasonable care of the goods throughout the cancellation period.
- iv) Assuming the Customer has paid for the goods, the Company will refund the Customer's money together with the delivery fee (if any) as soon as possible after the Customer has cancelled or in any event within 30 days of the cancellation.
- v) Unless there is a fault with the goods or they do not comply with this Contract, the Customer shall return the goods to the Company as soon as is possible following cancellation and if this is not possible then the Customer shall bear the cost of returning the same to the Company upon cancellation.
- vi) A notice of cancellation will also serve to cancel any credit agreement for which the Contract is the subject.
- vii) The cancellation rights referred to above do not apply in the case of a bespoke order. The Customer acknowledges that such orders are non-returnable.
- viii) The Company reserves the right to and shall exercise its discretion in charging the Customer a re-stocking charge in respect of returned goods.

7. Risk and Property

Risk in and responsibility for the goods shall pass to the Customer on delivery (which for the avoidance of doubt is defined above) and the Customer agrees that he will insure the goods from the point of delivery onwards

Property in the goods shall pass to the Customer when the Company has received full payment for the goods and until such times as title has passed to the Customer, the Customer shall:

- a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery but the Customer may resell or use the Goods in the ordinary course of its business.
- iii) If before title to the Goods passes to the Customer :-
 - a) the Customer admits inability to pay its debts
 - b) the Customer is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986
 - c) the Customer is deemed unable to pay its debts or as having no reasonable prospect of so doing or commences negotiations with all or any class of its creditors with a view to rescheduling its debts or action is taken in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer or the Customer is the subject of a bankruptcy petition or order
 - d) the Customer has a creditor or encumbrancer who attaches or takes possession of the whole or any part of its assets an application is made to court for the appointment of an administrator a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver
 - f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets
 - g) any event occurs that has an effect equivalent or similar to any of the aforementioned events
 - h) the Customer dies or by reason of mental/physical incapacity is unable to carry on the business
 - i) the Customer suspends or threatens to suspend or ceases to carry on all or substantially the whole of its business
 - j) the Customer's financial position deteriorates to such an extent that in the Company's opinion, the Customer's capability to fulfil its contractual obligations has been placed in jeopardy, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Customer may at any time require the Customer to deliver up the goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the goods are stored in order to recover them.
- iii) Termination of the Contract (howsoever arising) shall not affect any of the parties' rights and remedies that have accrued as at termination.

8. Limitation of Liability

- i) Nothing in these Conditions shall limit or exclude the Company's liability for:
 - a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors (as applicable)
 - b) fraud or fraudulent misrepresentation
 - c) breach of the terms implied by section 12 of the Sale of Goods Act 1979
 - d) defective products under the Consumer Protection Act 1987 or
 - e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- ii) Subject to i) above,
 - a) the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract and
 - b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the goods that the Customer has purchased from the Company within the 12 months preceding the date of this contract.

9. Termination

The Company reserves the right to suspend delivery or further supply of goods by notice in writing to the Customer if the Customer:

- a) is in breach of these Conditions
- b) becomes unable to pay its debts when they fall due or proceedings are commenced by or against the Customer alleging bankruptcy or insolvency. All outstanding payments to the Company become immediately due and payable

10. Jurisdiction

These Conditions shall be governed by in accordance with the laws of England & Wales

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I/we apply for credit facilities with Exall & Jones and in signing the application confirm that I/we have read, understood and accept the above Terms & Conditions.

Signed:

Date: