

**1. Definitions**

- 1.1 “Company” shall mean Mannions Building Supplies its successors and assigns or any person acting on behalf of and with the authority of Mannions Building Supplies
- 1.2 “Customer” shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, or any other forms as provided by the Company to the Customer.
- 1.5 “Services” shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 3 of this contract.

**2. Acceptance**

- 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer’s acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 2.4 The Customer undertakes to give the Company at least fourteen (14) days notice of any change in the Customer’s name, address and/or any other change in the Customer’s details.

**3. Price And Payment**

- 3.1 At the Company’s sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
  - (b) the Company’s quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company’s quotation in writing within five business (5) days.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company’s quotation. At the Company’s sole discretion a deposit may be required.
- 3.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.4 At the Company’s sole discretion;
  - (a) payment shall be due on delivery of the Goods, or
  - (b) payment shall be due before delivery of the Goods or
  - (c) payment for approved Customers shall be made by instalments in accordance with the Company’s payment schedule, or
  - (d) payment for approved Customer’s shall be due thirty (30) days following the end of the month in which a statement is either emailed or posted to the Customer’s address or address for notices.

- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 3.6 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.7 The Customer agrees that any accounts queries will be raised within 30 days from the date of invoice/s. Any queries outside of that period shall not be entertained by the Company.

**4. Delivery Of Goods**

- 4.1 At the Company’s sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer’s address.
  - 4.2 On receipt of a booking deposit delivery of goods will be scheduled by agreement between the Company and the Customer. Variations to delivery dates may occur, the Company will keep the Customer advised of any likely change to the agreed schedule. The Company accepts no responsibility whatsoever for any loss or damage caused due to a schedule change.
  - 4.3 The costs of delivery are not always included in the Price and may be borne by the Customer.
  - 4.4 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
  - 4.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of this agreement. In the event that the recipient is not present at the time of delivery and the Company has been instructed to leave the goods, then any shortage in quantity or damages to goods will be the sole responsibility of the Customer. The Company may deliver the Goods by separate installments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
  - 4.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;
    - (a) such discrepancy in quantity shall not exceed 5%, and
    - (b) the Price shall be adjusted pro rata to the discrepancy.
  - 4.7 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
  - 4.8 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
- 5. Risk**
- 5.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
  - 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company’s rights to receive the insurance proceeds directly from the Insurance Company.
- 6. Title**
- 6.1 It is the intention of the Company and agreed by the Customer that ownership of the Goods shall not pass until:

- (a) the Customer has paid all amounts owing for the particular Goods, and
- (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.

6.2 Receipt by the Company of any form of payment other than cash (cleared funds) shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.

6.3 It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
- (f) the Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
- (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

#### **7. Customer's Disclaimer**

7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

#### **8. Defects**

8.1 The Customer shall inspect the Goods upon delivery and shall within two (2) days notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote to the Company in writing or in person'. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or

damage. For defective Goods, which the Company has agreed that the Customer is entitled to reject, the Company's liability is limited to replacing the Goods or at its sole discretion may issue a credit note or refund..

8.2 No Goods shall be accepted for return except in accordance with 8.1 above, and at the Company's sole discretion may apply a restocking fee of 20% may apply.

8.3 .

#### **9. Warranty**

9.1 Subject to the conditions of warranty set out in Clause 10.2 the Company warrants that if any defect in any goods delivered by the Company becomes apparent and is reported to the Company within seven (2) days of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) replace the goods or issue a refund or credit note.

9.2 The conditions applicable to the warranty given by Clause 10.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
  - (i) Failure on the part of the Customer to properly maintain any Goods; or
  - (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or
  - (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (v) Fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the goods are repaired, altered or overhauled without the Company's consent.
- (c) In respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or repairing the goods or in properly assessing the Customer's claim.

9.3 The warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

#### **10. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**

10.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).

10.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.

10.3 In particular where the Customer buys Goods as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.

#### **11. Default & Consequences Of Default**

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such

interest shall compound monthly at such a rate after as well as before any judgment.

11.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.

11.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.

11.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.

11.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## **12. Security And Charge**

12.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful

attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

## **13. Cancellation**

13.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

13.2 The Customer may cancel delivery of the Goods up to two (2) days from the date of acceptance of the Company's quotation.

13.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

## **14. Data Protection Act 1988, 2013 & 2018**

14.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:

- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- (b) to disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.

14.2 Where the Customer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.

14.3 The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.

## **15. General**

15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.

15.3 The Company shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.

15.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.

15.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.

15.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

15.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and

conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. Except where the Company supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.

- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.