

PROCOAT (UK) LTD
CONDITIONS OF SALE

1. All orders are accepted on the clear understanding that these Conditions of Sale shall apply irrespective that of any conditions printed on Customer's orders. Any variation will only be accepted by written confirmation from the Company's authorised representatives.

2. Unless otherwise stated prices are based on costs current at the date of this Quotation and are subject to revision with any change in costs. Quoted prices hold good for the quantities stated and are subject to revision if the quantities are reduced.

Unless otherwise specified, quoted prices exclude delivery to the Customer's premises, packing, unloading and installation as appropriate. Unless otherwise stated, prices quoted are exclusive of VAT which will be charged additionally where relevant.

3. Goods offered from stock are subject to being unsold at the time of receipt of order or acceptance.

The delivery date quoted is an estimate only and although given in good faith cannot be guaranteed nor is it of the essence of the contract.

Whilst every effort will be made to complete the contract within the specified time, under no circumstances can liability be accepted for any loss or damage caused by delay in delivery of materials or in completion of the contract.

If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise that by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

(i) Store the goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.

(ii) Sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

4. Orders placed cannot be cancelled without the Company's consent and the Customer may be bound to accept materials ordered when available. If consent for cancellation is given a charge may be raised to expenses incurred and work performed.

5. Claims for Goods rejected as damaged can only be allowed if the Goods have been signed for as "damaged" or "unexamined" and the Company receives notification in writing within 7 days of delivery, or where the defect or damage was not not obvious on a reasonable inspection, within a reasonable time after discovery of the defect or damage.

The non-receipt of Goods must be notified to the Company within 14 days of the date of advice or despatch as otherwise such Goods will be deemed to have been received in satisfactory condition.

Where any valid claim in respect of any of the Goods based on their non-receipt or damage or defective materials is notified to the Company in accordance with these Conditions the Company shall be entitled to replace the Goods (or the part in question) free of charge or at the Company's sole discretion refund to the Customer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Customer.

6. Every effort will be made to ensure sound materials and good workmanship but no warranty can be given in this respect nor as to fitness of the Goods for any particular purpose.

The Company's agents and representatives are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. The Customer acknowledges this and waives any claims for any breach of any such representation not so confirmed.

7. All errors and omissions are subject to correction.

8. Unless otherwise stated this Quotation does not include for

(i) Cleansing or preparation of the site.

(ii) Provision of scaffolding or hoists.

(iii) Unloading, carrying and safe custody of materials and fittings.

(iv) Electrical supply 240 AC for lighting and operatives hand tools. If power is other than 240 AC the Company must be notified immediately as otherwise additional costs may be charged.

(v) Any civil work will be the responsibility of the Customer or main contractor.

(vi) The Customer accepts full responsibility for any loss

or damage incurred to the property during the performance of the Contract while the Company's agents employees and representatives are absent from the site.

(vii) The Customer is responsible for providing adequate and safe storage accommodation for the Goods and any tools employed by the Company on the Customer's premises and to effect adequate Insurance cover with a reputable insurance company for their full replacement value.

It is the Customer's responsibility to ensure that the walls, floors or building structure are adequate to withstand the loads imposed by the Company's equipment and that any installation does not contravene local authority or building regulations.

9. Application

(i) The Company is not responsible for any loss or damage caused by any delay on site whether before or during application.

(ii) Every effort will be made to carry out the specification as detailed but the Company reserves the right to effect minor modifications and improvements.

(iii) The Customer shall be responsible for obtaining all planning by law and any other requisite consents.

(iv) The Customer shall arrange at his own risk for the carriage of the Goods from the delivery vehicle to the building or room in which the Goods are to be used or stored.

(v) The Company shall not be liable for the death or personal injury caused to employees or visitors to the Customer or any other third parties (unless caused by the negligence of the Company, its agents or representatives) nor for any loss of or damage to any property of the Customer arising whether directly or indirectly from the carrying out of the contract and howsoever caused.

(vi) The Company reserves the right to make additional charges to the Customer to cover any additional costs incurred by the Company arising from any failure by the

Customer to comply with its obligations under these conditions.

10. Unless otherwise agreed all invoices shall be payable upon receipt or upon completion of the Contract whichever is the later. Interest will be charged on overdue accounts both before and after judgement at 4% above base lending rate for the time being as determined by Coutts Merchant Bank at the date of invoice.

The Company also reserves the right to cancel the contract or suspend any further work if payment of any instalment is not received.

11. Export Terms

(i) In these Conditions "Incoterms" means the International Rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter prevail.

(ii) Where the Goods are supplied for export from the United Kingdom the provisions of this Clause 11 shall (subject to any special terms agreed in writing between the Company and the Customer) apply notwithstanding any other provision of these conditions.

(iii) The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods onto the country of destination and for the payment of any duties thereon.

(iv) Unless otherwise agreed in writing between the Customer and the Company the Goods shall be delivered fob to the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

(v) The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.

(vi) Payment of all amounts due to the Company shall be made irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in ()

acceptable to the Company or if the Company has agreed in writing on or before acceptance of the Customer's order to waive this requirement by acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer payable 30 days after a sight to the order of the Company at such branch of () Bank of England as may be specified in the bill of exchange.

(vii) The Customer undertakes not to offer the Goods for resale in () or any other country notified by the Company to the Customer at or before the time the Customer's order is placed or to sell the Goods at any person if the Customer knows or has reason to believe that the person intends to resell the Goods in any such country.

12. Delivery of the Goods and passing of property and risk thereon.

(i) The Goods shall be deemed to be delivered when such Goods have been handed over to a carrier in the usual course of conveyance and the Customer agrees to take risk of loss or injury to any Goods from the time of such handing over.

(ii) Until such a time as the property in the Goods passes to the Customer the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Company 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 moneys or property of the Customer and third parties and in the case of tangible proceeds properly stored, protected and insured.

Until such times as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Customer to deliver the Goods to the Company and if the Customer fails to do so forthwith to enter upon any premises for the Customer or any third party where the Goods are stored and repossess the Goods.

13. Insolvency of Customer. This clause applies if:

(i) The Customer makes voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(ii) An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

(iii) The Customer ceases, or threatens to cease, to carry on business; or

(iv) The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding and previous agreement to the contrary.

14. The validity construction and interpretation of these conditions shall be governed in all aspects by English Law, and the parties submit to the non-exclusive jurisdiction of the English Courts.

15. All descriptions given by the Company in any drawings, plans, specifications, photographs or descriptive literature shall be taken as giving only a general indication of the goods to be supplied. Samples are, however, available to the Customer for inspection.

16. Where the Goods are to be delivered in instalments each delivery shall constitute a separate Contract and Failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.

17. If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault then the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

18. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or failure was due to any cause beyond the Company's reasonable control including but not limited to acts of God, war, statutory or other government restrictions, import regulations, strikes or any other industrial action, difficulties in obtaining labour or raw materials or power failure and breakdown of machinery.