

Barhale Construction Services Limited (hereinafter "The Supplier") will provide Goods and / or Services to the Customer on the terms and conditions set out below.

1. DEFINITIONS

- 1.1 In these conditions the following words have the following meanings:
"Contract" means a contract which incorporates these conditions and made between the Customer and the Supplier for the sale of Goods and / or Services;
- 1.2 "Customer" means the firm, company or other organisation purchasing the Goods and / or Services;
- 1.3 "Deposit" means any advance payment required by the Supplier in relation to the Goods and / or Services which is to be held as security by the Supplier;
- 1.4 "Force Majeure" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;
- 1.5 "Goods and / or Services" means Goods and / or Services including delivery supplied to the Customer by the Supplier;
- 1.6 "Services" means the work undertaken at the premises identified on the Customers Order, or any premises identified pursuant to the instruction;
- 1.7 "Supplier" means Barhale Construction Services Ltd trading as BCS Group (Fabrications Department) and will include its employees, servants, subcontractors, agents and/or duly authorised representatives;
- 1.8 "Order" means a written instruction detailing the price quoted by the Supplier including any carriage charges applicable, a correct delivery address, name of recipient and any relevant specific delivery instructions required.

2. ORDERING SERVICES

- 2.1 Goods are sold subject to them being available to the Customer at the time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Goods being unavailable where the Goods are unavailable due to circumstances beyond the Supplier's control.
- 2.2 Where the sale of Goods and / or Services is to a Customer who is an individual the sale would be covered by the Consumer Credit Act 1974.
- 2.3 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau.
- 2.4 Should the Supplier not be able to source Goods and / or Services to complete the Order the Supplier reserves the right to cancel the Order or offer an alternative to the Customer and will not be liable for any loss suffered by the customer as a result thereof.
- 2.5 The Supplier reserves the right to inform the Customer of price fluctuations that are outside the control of the Supplier prior to the delivery of the Goods and / or Services. Should an agreement not be made the Supplier reserves the right cancel the Order under clause 2.4.
- 2.6 All Orders must be made in writing as an official Customer order and the conditions contained in any Customer order shall be superseded by the conditions of this document which shall prevail over any conflicting terms of the customer's order including any amendments or variations thereof. Verbal Orders will not be accepted by the Supplier.
- 2.7 A "Confirmation of Sale" document will be sent to the Customer. The Customer must notify the Supplier within 24hours of any amendments, misunderstandings or incorrect information and failure to do so confirms the acceptance of the Order.

3. PAYMENT

- 3.1 The Customer shall pay the monies for any Products and/or any other sums payable under the contract to the Supplier 30 days from invoice date and in the manner agreed. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT or other taxes for which the Customer shall additionally be liable.
- 3.2 Payment by the Customer on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.
- 3.3 If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher.

- 3.4 Any monies received by the Supplier from the Customer may be applied by the Supplier at its option against any additional administrative costs and interest charged prior to application against any principal sums due from the Customer.
- 3.5 The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 3.6 The Supplier in its absolute discretion may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Customer account if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.
- 3.7 The Supplier may cancel or suspend deliveries or works without incurring any liability whatsoever to the Customer should the Customer's account be suspended for non-payment or any other reason for the suspension as detailed within these conditions.
- 3.8 Invoice queries must be made within 7days of receipt of the invoice, failing which the invoice is payable in full.
- 3.9 Any variation, omission or substitution to the initially specified work referred to in the Customers order must be requested in writing. Where there is no cost incurred by the Supplier then no cost will be passed to the Customer. Where cost is incurred by the Supplier that work shall be valued at fair rates and prices and charged accordingly to the Customer. The same shall apply to any stand-down, suspension or interruption to the work where cost may or may not be incurred by the Supplier.
- 3.10 Where the contract agreed is subject to re-measurement the Supplier reserves the right to adjust preliminary costs whether or not they are set out in the Supplier's quotation in addition to the extra items being calculated for the final account. Preliminary costs are defined as costs directly attributed to the operation of the contract that are not labour, plant or materials.
- 3.11 Any Deposit paid to the Supplier by the Customer should be assumed as non-refundable. The Supplier reserves the right to refund any sum, in which case shall be calculated upon the costs incurred by the Supplier to the point where the Customer requested the refund.

4. VAT

- 4.1 All sums payable under this agreement unless otherwise stated are exclusive of VAT and other duties or taxes.
- 4.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

5. RISK OWNERSHIP AND INSURANCE

- 5.1 Ownership of any Goods remains with the Supplier until all monies payable to the Supplier by the Customer for all Products supplied have been paid in full.
- 5.2 Risk of Goods shall be passed to the Customer upon the delivery or collection. The Customer warrants that it will maintain insurance to the full cost of the Goods until payment is received by the Supplier and ownership is transferred.
- 5.3 Unless otherwise agreed in writing, all surplus materials and / or salvage will remain in the ownership of the Supplier.
- 5.4 The Customer is responsible for the safe storage of materials, equipment or tools during works undertaken on site, the Supplier shall not be held liable for any losses whilst working on the Customer's premises or site.

6. DELIVERY, COLLECTION AND SERVICES

- 6.1 It is the responsibility of the Customer to collect the Hire Goods from the Supplier and return them to the Supplier at the end of the Hire Period. If the Supplier agrees to deliver or collect the Hire Goods to and/or from the Customer it will do so at its standard delivery cost and such delivery and/or collection will form part of the Services. Upon delivery acceptance of the Hire Goods implies acceptance to the conditions herein.
- 6.2 If the Supplier delivers the Goods and / or Services to and/or from the Customer it will do so at a delivery cost and such delivery and/or collection will form part of the service.
- 6.2 If any Goods and / or Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations, the Customer will be liable to pay the Supplier's costs incurred for the delay, postponement and/or cancellation.
- 6.3 Consignments must be inspected by the customer upon delivery. Where a claim for defect or shortage of Goods and / or Services is made by the Customer they must make a written claim within 24hours of delivery. If required by the Supplier the Customer will provide a freely accessible and safe environment for the Supplier to inspect the Goods. Upon inspection if the Goods are proven to be defective the cost of replacement shall be limited to the Supplier's cost of supply.

- 6.4 Delivery dates are an approximation and the Customer shall not be entitled to claim for damages as a result of late delivery.
- 6.5 The Supplier will follow the provided specific instructions stated on the Order, however will not be responsible for fines, costs and charges owing to situations not stated by the Customer and will be entitled to reimbursement thereof by the customer.
- 6.6 Where the Goods are to be unloaded, transferred or distributed on site by the Customer or an appointed 3rd party, the Supplier will not be liable for any damage or injury caused occurring from such activity. Notification of any damage is required immediately to ensure rectification or replacement can be made in a timely manner.
- 6.7 Any fines accrued by the Supplier's vehicles during the activity of waiting, unloading or being loaded are to be paid by the Customer unless originally stated in writing and agreed prior to the Order or commencement of works.
- 6.8 The Customer will indemnify the Supplier against any claims arising where reworking to items subsequent to the Supplier's completion of the works breaches any conditions of CE Marking.

7. DEFAULT

- 7.1 If the Customer:-
- 7.1.1 fails to make any payment to the Supplier when due without just cause;
- 7.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 7.1.3 persistently breaches the terms of the Contract;
- 7.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
- 7.1.5 being a company, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment order/ arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
- 7.1.6 appears reasonably to the Supplier due to the Customer's credit rating to be financially inadequate to meet its obligations under the Contract.
- 7.2 If any of the events set out in clause 7.1 above occurs in relation to the Customer then:-
- 7.2.1 the Supplier may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Goods owned by the Supplier may be and repossess any Goods;
- 7.2.2 the Supplier may withhold Goods and / or Services and cease any Orders in progress under this and/or any other Contract with the Customer;
- 7.2.3 the Supplier may immediately cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other contract with the Customer.
- 7.2.4 all monies owed by the Customer to the Supplier shall immediately become due and payable.
- 7.3 Any repossession of Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract.

8. LIMITATIONS OF LIABILITY

- 8.1 All warranties, representations, terms, conditions and duties implied by law relating to fitness for purpose, quality and/or adequacy are excluded to the fullest extent permitted by law.
- 8.2 If the Supplier is found to be liable in respect of any loss or damage to the Customer's goods or property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged goods or property.
- 8.3 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
- 8.4 The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
- 8.5 The Supplier shall have no Liability to the Customer for any:-
- 8.5.1 Consequential losses (including loss of profits and/or damage to goodwill);
- 8.5.2 Economic and/or other similar losses;
- 8.5.3 Special damages and indirect losses; and/or
- 8.5.4 Business interruption, loss of business, contracts and/or opportunity.

- 8.6 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

- 8.6.1 Liability for breach of contract;
- 8.6.2 Liability in tort/delict (including negligence); and
- 8.6.3 Liability for breach of statutory and/or common law
- 8.7 Nothing in this Contract shall exclude or limit the Liability of the Supplier for death or personal injury due to the Supplier's negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.
- 8.8 The Supplier shall not be bound by the conditions of any Main Contract or Head Contract in which the Customer is a party to.
- 8.9 The Supplier accepts no responsibility for materials with regards to usage, storage or waste quantities where it is supplied by the Customer, the Customer's nominated supplier or the Customer's sub-subcontractor.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer warrants that it holds the full rights to any architectural design, company livery, trademark, image, drawing or artwork that it requests the Supplier to reproduce during the manufacture of bespoke fabrications, and indemnifies the Supplier against any proceedings arising from any claim in connection therewith by a third party.

10. RETURN OF GOODS / CANCELLATION OF WORKS

- 10.1 Notwithstanding clause 6.0, returns must be agreed in writing by the Supplier. The Customer agrees to pay 100% of the total value of the transaction relating to the item returned to reimburse the Supplier's administrative costs of the Goods and / or Services. The Goods must be returned in the condition they were dispatched and in the packaging they were dispatched in. Should the Goods be returned due to faults or defects no charge will be levied and the Goods will be replaced within a reasonable time.
- 10.2 For the cancellation of fabrication components in partial completion the Customer will notify the Supplier to cease production in writing and will not officially cancel the order until a satisfactory reimbursement for the partially complete goods is agreed in writing.

11. ADVICE AND SAFE USAGE

- 11.1 Should any advice be provided by the Supplier the Customer shall indemnify the Supplier and its Employees against all claims including but not limited to personal injury and damage to property whether arising from negligence or a breach of common law or statute by the Supplier or its Employees.
- 11.2 The Customer confirms that the usage and / or installation of the Goods supplied are undertaken by fully trained and competent users and the Supplier accepts no responsibility to usage by persons not trained or not competent or any personal injury or damage to property by persons who are competent or trained through their own negligence.
- 11.3 The Customer is not permitted to make any representations concerning the Goods and / or Services unless the representations are confirmed by the Supplier in writing, and will indemnify the Supplier against claims arising from any misrepresentation caused or arising therefrom.

12. CUSTOMER OBLIGATIONS

- 12.1 In order for the Supplier to complete the works successfully, the Customer shall undertake the following obligations;
- 12.1.1 Co-operate fully with the Supplier in matters of deliveries, queries, change management of drawings and/or specification, making areas available and clear to undertake the works.
- 12.1.2 Obtain and maintain the required permissions for the Supplier to legally or rightfully work where requested prior to the commencement of the works;

13. GENERAL

- 13.1 Upon termination of the Contract the provisions of clauses 3.2, 3.4, 3.5 and Section 7 shall continue in full force and effect.
- 13.2 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
- 13.3 The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious/edictal act and/or omission and/or any breach of statutory duty by the Customer. The Supplier's total value of liability to the contract under these conditions shall be the total value of the Order.

- 13.4 No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 13.5 The Supplier shall have no Liability to the Customer for any delay and/or non-performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 13.6 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This shall not apply to any finance company with whom the Supplier has an outstanding finance agreement relating to the Goods and / or Services. Such finance company shall, subject to the Supplier's consent, have the right to enforce this Contract as if they were the Supplier. This Contract is governed by and interpreted in accordance with the law of the country where the Supplier is located and that country will have exclusive jurisdiction in relation to this Contract.
- 13.7 These terms and conditions and the confirmation of sale constitutes entire agreement between the parties and supersedes all previous agreements with respect thereto.
- 13.8 No variation of these terms and conditions will be effective unless agreed in writing by a Director of the Supplier. All terms other than those expressly set out in this agreement are hereby excluded.
- 13.9 These terms and conditions shall be governed in all respects by the law of England and English Courts shall have non-exclusive jurisdiction.