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**TERMS & CONDITIONS OF SALE – RUSSELL ROOFING LIMITED**

These terms and conditions (“Conditions”) govern the sale of goods (“Goods”) and/or services (“Services”) by Russell Roofing Limited (“Company”) to the person or firm who purchases the goods and/or services (“Customer”) as stated on the Customer’s order (“Order”). These Conditions apply to all quotations and orders to the exclusion of any other terms that the Customer seeks to impose, or which are implied by trade, custom, practice or course of dealing.

**1 BASIS OF CONTRACT**

- 1.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services which shall only be deemed accepted when the Company issues written acceptance on which date the contract for the supply of Goods and/or Services shall come into existence (“Contract”).
- 1.2 A quotation by the Company is not an offer and is only valid for 30 days from the date of issue (or such other time period stated on the quotation) and may be withdrawn by the Company within such period at any time.
- 1.3 No Contract shall be deemed to be a sale by sample. Any samples, drawings or descriptions issued by the Company are only intended to give the general character of the Goods and the Customer shall have no claim if the colour or composition of the Goods supplied fails to correspond with the sample unless the particular requirement is specified by the Customer and accepted by an authorised representative of the Company in writing.
- 1.4 Any illustrations, performance details, examples of installations and methods of assembly and other technical data issued by the Company is provided for general guidance only and forms no part of the Contract unless accepted by an authorised representative of the Company in writing.
- 1.5 The Company will only agree to a cancellation of an Order if all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other costs, loss or damage resulting from such cancellation will be paid by the Customer to the Company.

**2 GOODS**

- 2.1 The Company shall supply Goods to the Customer pursuant to each Contract in accordance with an agreed Order and the specification provided by the Company or as agreed in writing with the Customer (“Goods Specification”). The Customer accepts sole responsibility for ensuring the accuracy and completeness of the Goods Specification.
- 2.2 The Company reserves the right to amend the Goods Specification if required to comply with any applicable statutory or regulatory requirements. Dimensions specified by the Company are approximate only and the Company may alter the dimensions of the Goods within reasonable limits having regard to the nature of the Goods and that it meets its requirements.
- 2.3 The Customer shall be solely responsible for ensuring that all drawings, information advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer’s agents, servants, consultants or advisors are accurate, correct and suitable. Examination or consideration by the Company of such information shall in no way limit the Customer’s responsibility unless an authorised representative of the Company accepts responsibility in writing.

**3 DELIVERY**

- 3.1 Delivery dates are approximate only and time of delivery is not of the essence. The Customer shall have no claim for damages and may not cancel an Order for failure by the Company to meet any delivery time.
- 3.2 Delivery shall be dependent upon timely receipt of all necessary information or approvals from the Customer. Any alterations by the Customer following Order may result in delayed delivery.
- 3.3 The Company shall deliver the Goods to the location agreed on the Order or such other location as the Company may agree in writing ("Delivery Location") at any time after the Company notifies the Customer that the Goods are ready.
- 3.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Customer shall be responsible for unloading the Goods. The Customer must sign the delivery note upon delivery as acceptance of the Goods.
- 3.5 The Company is under no obligation to accept any request by the Customer for postponement of delivery. If the Company does accept such request then the Customer shall pay all costs and expenses incurred by the Company including without limitation storage and transport costs.
- 3.6 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately as a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 3.7 Where Goods are ordered by reference to numerical quantities the Company reserves the rights to under or over deliver the quantity of Goods ordered by plus or minus 5%.
- 3.8 Where the Company has agreed on the Order that the Customer can call off Goods under an Order over a period of time, all Goods must be delivered within 6 months of the date of Order (unless otherwise stated on the quotation).
- 3.9 The Customer shall ensure that the Delivery Location is suitable for the Goods to be delivered and that adequate access is available. The decision of the Company's representative as to the nearest point of accessibility shall be accepted as final and be deemed the Delivery Location.
- 3.10 The Company accepts no responsibility for damage of any kind caused by its transport vehicles to the Delivery Location or any access road. Any damage caused to the transport vehicles due to an unsuitable Delivery Location shall be at the cost of the Customer.
- 3.11 Unless otherwise agreed in writing by the Company, any packaging is intended to be only sufficient to protect the Goods for all normal conditions and periods of transit.

#### **4 RISK AND TITLE**

- 4.1 Risk in the Goods shall pass to the Customer:
- 4.1.1 where delivery has been made by the Company upon arrival of the Goods at the Delivery Location; or
- 4.1.2 where delivery has been made by a carrier (whether the Company has arranged carriage or not), once the Goods have left the Company's premises. Any claim for loss or damage in transit must be made by the Customer against the carrier.
- 4.2 Title to the Goods shall not pass to the Customer until the Company receives all sums due (in cleared funds) under the Contract and any other contract with the Customer.
- 4.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 4.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 4.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 4.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery; and
- 4.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 10.1.

- 4.4 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licences the Company, its officers, employees and agents to enter upon any premises of the Customer for the purposes either of satisfying itself that these Conditions are being complied with by the Customer or recovering any Goods in respect of which title has not passed to the Customer.
- 4.5 Subject to this clause 4, the Customer may re-sell or use the Goods in the ordinary course of business (but not otherwise) before title passes provided that the Customer shall have a fiduciary duty to account to the Company the proceeds of any sale of the Goods (which shall be kept separate and identifiable from the Customer's own monies).

## **5 QUALITY OF GOODS**

- 5.1 The Company warrants that on delivery the Goods shall conform in all material respects with any applicable Goods Specification.
- 5.2 The Customer shall have no claim for shortages or defects which should be apparent on visual inspection upon delivery unless the shortages or defects are clearly marked on the signed copy of the Company's delivery note at the time of delivery. The Customer acknowledges that rust, oxidation or discolouration, without limitation, are defects which it is reasonable for the Customer to be expected to notice at the time of delivery.
- 5.3 The Customer shall have no claim for shortages or defects capable of being apparent on subsequent visual inspection (not being shortages or defects falling within clause 5.2) unless:
- 5.3.1 the Customer inspects the Goods and notifies the Company in writing before fixing or otherwise using the Goods or cutting or removing bands and in any event within three (3) working days of delivery at the Delivery Location; and
- 5.3.2 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use is made of the Goods.
- 5.4 If a complaint is not made to the Company in accordance with clause 5.3 then the Goods shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to pay for such Goods.
- 5.5 The Customer shall have no claim in respect of defects not apparent on visual inspection at the time of delivery or within three (3) working days thereafter (and, for this purpose, rust, oxidation and discolouration shall be regarded as being a defect which is apparent on visual inspection at the time of delivery) unless:
- 5.5.1 a written complaint is sent to the Company as soon as reasonably practicable after the defect is discovered and no use ("use" for this purpose being taken to include any sale, disposal or the parting of possession) is made of the Goods after the defect is discovered and no alteration made thereto before the Company is given an opportunity to inspect the Goods in accordance with this clause; and
- 5.5.2 the complaint is sent within three (3) months of the date of delivery of the Goods or in within the guarantee period specified by the manufacturer of such item.
- 5.6 The Company may within 21 days of receiving such a written complaint inspect the Goods and the Customer shall if so required by the Company take all steps necessary to enable the Company to do so.
- 5.7 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.7.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.7.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice;
- 5.7.3 the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Customer;

- 5.7.4 the Customer alters or repairs such Goods without the written consent of the Company;
  - 5.7.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 5.7.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.8 If the Goods (subject to these Conditions) do not meet the warranty given in clause 5.1 the Company may at its option repair or replace the Goods. If the Company does repair or replace the Goods the Customer shall be bound to accept such repaired or substituted Goods to the exclusion of any other remedy.
- 5.9 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.10 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 5.8.

## **6 SUPPLY OF SERVICES**

- 6.1 The Company shall provide the Services (if any) to the Customer in accordance with the agreed specification in all material respects ("Service Specification").
- 6.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 The Customer shall:
- 6.3.1 ensure that the terms of the Order and the Service Specification are complete and accurate;
  - 6.3.2 co-operate with the Company in all matters relating to the Services;
  - 6.3.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Company to provide the Services;
  - 6.3.4 provide the Company with such accurate information and materials as the Company may reasonably require to supply the Services;
  - 6.3.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services; and
  - 6.3.6 keep and maintain all materials, equipment, documents and other property of the Company ("Company Materials") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions.
- 6.4 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation the Company shall without limiting its other rights or remedies have the right, without liability, to suspend performance of the Services until the Customer remedies such default.

## **7 PRICE**

- 7.1 Unless otherwise stated the price payable for the Goods and Services will be that set out in the Company's quotation and confirmed by its acceptance of the Buyer's order, or, if higher or if no such quotation was given, the price currently charged by the Company at the date of delivery of the Goods and/or Services. The price expressed to be payable to the Company shall be deemed to be exclusive of Value Added Tax unless expressly stated otherwise.
- 7.2 The Company reserves the right at its sole discretion at any time before delivery of the Goods to adjust the price to take account of any increase in the price to the Company of

- goods, or services, or raw materials, labour or other inputs used in the production of the Goods or Services, or to take account of any increase in taxation or duty payable, or to take account of any currency fluctuation increasing the cost of producing or purchasing the Goods or Services in each case measured in Sterling.
- 7.3 The prices quoted assume that delivery will be made on normal working days during normal working hours. For deliveries agreed to be made on Saturdays, Sundays, public holidays or outside normal working hours the Company reserves the right to make an extra charge.

## **8 PAYMENT**

- 8.1 The Company shall invoice the Customer on or at any time after completion of delivery of the Goods (or when the Goods would have been delivered if the Customer had not postponed delivery or defaulted).
- 8.2 The Customer shall pay each invoice submitted by the Company within 30 days of the end of the month in which a correctly rendered invoice is received, in full and in cleared funds to a bank account nominated in writing by the Company. Time for payment shall be of the essence of the Contract.
- 8.3 Payments shall be made in Pounds Sterling.
- 8.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of Goods at the same time as payment is due for the supply of the Goods.
- 8.5 If the Customer fails to make payment in accordance with the Contract the Company may, without prejudice to its other rights, charge interest in accordance with the Late Payment of Commercial Debts Act 1998. 8.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law including if a dispute has arisen. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## **9 LIMITATION OF LIABILITY**

- 9.1 nothing in the Contract shall limit or exclude the Company's liability for death or personal injury caused by its negligence; fraud or fraudulent misrepresentation or any liability which cannot be limited under English law.
- 9.2 Subject to clause 9.1:
- 9.2.1 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, indirect or consequential loss, special damages, business interruption, loss of business, contracts, opportunity or production, arising under or in connection with the Contract; and
- 9.2.2 the Company's total liability to the Customer (who shall be under a duty to mitigate any losses) in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the amount paid by the Customer for the Goods or Services being provided under the Contract.
- 9.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4 This clause 9 shall survive termination of the Contract.

**10 TERMINATION**

- 10.1 Without limiting its other rights or remedies the Company may terminate the Contract, without liability:
- 10.1.1 by giving the Customer not less than 1 months' written notice;
  - 10.1.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment;
  - 10.1.3 if the Customer commits a material breach of its obligations (except as set out in clause 10.1.2) under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
  - 10.1.4 if the Customer persistently breaches the Contract;
  - 10.1.5 If the Customer is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, take or suffers any similar action in any jurisdiction or any step is taken by it or by any other person in respect of these circumstances.
- 10.2 On termination of the Contract for any reason:
- 10.2.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices;
  - 10.2.2 the Customer shall return all of the Company Materials which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them; and
  - 10.2.3 the accrued rights and remedies of the parties as at termination shall not be affected.

**11 GENERAL**

- 11.1 The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of any issue beyond its reasonable control including without limitation act of God, government action, failure of a supplier, strikes or trade disputes, failure of transport or loading facilities.
- 11.2 The Customer shall keep in strict confidence the terms and conditions of each Order/Contract, all technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and have been disclosed by the Company and any other confidential information concerning the Company's business or its products or its services which the Customer may obtain. Without prejudice to its other rights and remedies the Company may seek injunctive relief for a breach of this provision. This clause shall survive termination.
- 11.3 The Company shall apply with all applicable laws including without limitation the Bribery Act 2010 and the Modern Slavery Act 2015.
- 11.4 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.5 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.
- 11.6 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing.
- 11.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 11.8 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

- 11.9 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 11.10 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.11 No variation of the Contract or the Conditions shall be effective unless it is agreed in writing by a Director of the Company.
- 11.12 The Contract, and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract (including non-contractual disputes or claims)