

## 1. Definitions

Unless the context otherwise requires the following terms in these Conditions shall have the following meanings:-

1.1 "The Company" means F R Shadbolt and Sons Limited.

1.2 "The Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer.

1.3 "The Contract Price" means the total price to be paid by the Buyer (whether in a single payment or by instalments) for the Goods and all other amounts to be paid by the Buyer under the Contract, including, without limitation, in respect of carriage, packing and delivery charges.

1.4 "The Buyer" means the person, firm or company to whom goods are supplied subject to these Conditions.

1.5 "The Goods" means the items, goods or materials to be supplied by the Company to the Buyer in accordance with the Contract.

1.6 "The Contract" means the contract for the sale and purchase of Goods which expressly or by implication incorporates these Conditions.

## 2. Existence of Contract

2.1 In the event that any written quotation or estimate is issued by the Company, it shall constitute an invitation to treat. It shall be valid for a period of 30 days only after the date of its issue, provided that the Company has not previously withdrawn it. No binding contract shall in any event be created by the placing of an order by the Buyer, whether in accordance with any such quotation or estimate or otherwise unless and until the Company has accepted the Buyer's order by despatching the Company's written confirmation thereof. These Conditions shall apply to all contracts for the sale of goods by the Company to the Buyer to the exclusion of all other terms and conditions including, without prejudice to the generality of the foregoing, any terms or conditions endorsed upon, delivered with, or referred to in any purchase-order or other document delivered by the Buyer to the Company save to the extent that any amendment to or variation of these Conditions is expressly accepted by a director of the Company in writing. All orders for goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.2 These Conditions shall also apply to any future oral or written contract for the supply of goods by the Company to the Buyer save to the extent either that such Conditions in such future contract are in any way specifically varied or excluded or are inconsistent with what is expressly agreed in any such future contract or that the Company shall from time to time advise the Buyer in writing that it has adopted revised conditions in substitution for these Conditions.

2.3 For the avoidance of doubt, drawings, specifications, photographs and other illustrations, advertising matter and details in instruction books, catalogues and other publications supplied by the Company represent goods of the general type therein referred to, but not necessarily the type referred to in the Company's quotation and may be altered by the Company at any time without notice to the Buyer. No particulars contained therein nor any verbal representation by any employee or agent of the Company shall form part of the Contract between the Company and the Buyer nor shall they be treated as constituting a representation on the part of the Company.

2.4 No variations to, or amendments of, the Contract shall be binding on the Company unless made in writing and signed by a director of the Company. The Company expressly reserves the right to amend its prices as a precondition for agreeing to any such variation or amendment.

2.5 Subject to Condition 23, no person other than the Company and the Buyer shall have any right to enforce any term of the Contract.

## 3. Cancellation

The Contract may not be cancelled by the Buyer except with the written consent of a director of the Company and in the event of such agreed cancellation the Buyer shall indemnify the Company against all losses, liabilities and expenses of whatever nature incurred by the Company arising directly or indirectly from such cancellation and without prejudice to the generality of the foregoing the Buyer shall on demand pay to the Company by way of liquidated damages as a pre-estimate of the loss suffered by the Company a sum of 25% of the Contract Prices.

## 4. Letters of Intent

The issuing of an instruction to the Company to carry out work in preparation for an order ("a Letter of Intent"), if accepted by the Company, shall be on these terms and conditions and shall be deemed to constitute authority for the Company to proceed to procure such materials and to undertake such design work as may reasonably be required to produce the items referred to in the Letter of Intent. No production of such items will commence until a firm order has been placed with, and accepted by, the Company. If no such order is placed

within one month of the date of the Letter of Intent, or the terms of the Letter of Intent are cancelled or varied, the issuer of the Letter of Intent shall pay the Company for all work undertaken, all materials procured and all liabilities and expenses incurred by the Company in proceeding as aforesaid in accordance with the Letter of Intent.

## 5. Contract Price

5.1 Unless otherwise stated, prices quoted for the Goods are ex-works and exclusive of VAT or any similar taxes or duties levied by any Government on the value of the Goods. Carriage, packing and delivery charges will be payable by the Buyer and added to the invoice as a separate item.

5.2 The price to be paid for the Goods shall be that ruling at the date of the acceptance of the Buyer's order by the Company PROVIDED ALWAYS THAT such price may be increased by the Company to reflect the occurrence of any of the following, prior to the date of delivery:-

5.2.1 any amendment of the order (including an alteration to the specification);

5.2.2 an alteration of any instruction given to the Company by the Buyer regarding the order or a failure by the Buyer to give any instructions as may reasonably be required by the Company to produce or to deliver the Goods;

5.2.3 the performance of the Contract by the Company is delayed or hindered in any way by the Buyer or those for whom it is responsible; or

5.2.4 any increase in the cost of materials, labour or transport.

## 6. Payment

6.1 Unless otherwise specifically agreed in writing, the Contract Price (or any instalments thereof pursuant to Condition 7.4) shall be paid within thirty days of the date of the invoice sent by the Company. The Buyer will reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

6.2 The Company may in its discretion require the Buyer to pay all or part of the Contract Price at any time before delivery by way of deposit by the Buyer on account of the Contract Price and the Buyer shall comply with any such requirement.

6.3 Payment of all invoices shall be made in England and in the currency stated on the relevant invoice.

6.4 For the purpose of the provisions contained in this Condition 6 only, time shall be of the essence of the Contract.

## 7. Delivery

7.1 Delivery of the Goods shall take place at the Buyer's premises or at such other location as may be agreed. The Buyer will provide reasonable assistance in the unloading of the Goods.

7.2 Times quoted for delivery of Goods are intended as estimates only and are not therefore to be treated as being of the essence of the Contract.

7.3 The Company shall not be liable in any way for any direct or indirect loss damage or expense (including loss of profits and liability to third parties) suffered or incurred by the Buyer as a consequence of any delay in delivery.

7.4 The Company reserves the right to deliver the Goods by instalments in any sequence and to tender a separate invoice in respect of each instalment. Where the Goods are delivered by instalments, the Contract shall become severable and each instalment shall be deemed to be the subject of a separate contract to which these Conditions shall apply. No default or failure by the Company in respect of any one or more instalment contracts shall entitle the Buyer to treat the Contract as a whole as repudiated or to claim damages or any other remedy for failure to perform the Contract as a whole. The Buyer's right to treat the Contract as repudiated and/or to claim any damages and/or any other remedy shall be limited to the instalment contracts in respect of which the Company is in breach.

7.5 Deviations in the quantity of the Goods delivered (representing not more than 10% by value) from that stated in the acceptance of order shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the Contract rate for the quantity of Goods delivered.

## 8. Storage of Undelivered Goods

If fourteen days after notification by the Company that the Goods are ready for despatch, the Company shall, by reason of instructions or lack of instructions from the Buyer, have been unable to effect delivery of the Goods, the Company shall be entitled to arrange storage either at its own premises or elsewhere on the Buyer's behalf and at the Buyer's risk and expense. The Goods shall be invoiced on the day on which they are put into storage and such Goods shall thereupon be deemed to have been delivered.

## 9. Force Majeure

The Company shall not be liable for failure to deliver the Goods or for failure to comply with the Contract in any other respect by reason of force majeure or any industrial action, strikes, lock outs, shortages of labour or other labour troubles, non-availability to the Company of supplies of stock, parts or material delay in delivery to it of goods or materials therefor by suppliers or other persons, civil commotion, riots, war or threat of or preparation for war, breaking off of diplomatic relations, fire, explosion, accident, sabotage, storm, flood, earthquake, fog, subsidence, pestilence or epidemics or mandatory compliance with any direction, request or order of any person having or appearing to have authority for defence or other Governmental or national purpose, Government action or legislation or regulation or any Act of God, any requisition for materials or services apparently or stated to be for the purpose of defence, inability to obtain fuel, power or transportation or any circumstances howsoever outside the reasonable control of the Company. Such failure shall not affect the obligation of the Buyer to pay for Goods already delivered. In the event that such circumstances shall continue for an unbroken period of sixty days either party shall have the right by notice in writing to terminate the Contract or Contracts in question to the extent that they shall not already have been performed.

## 10. Damage, Shortage and Loss in Transit

10.1 The Buyer shall inspect the Goods on delivery.

10.2 No liability in respect of Goods found to be damaged on delivery, or, had a careful inspection been carried out by the Buyer on delivery, would have been found to be damaged, or for shortages, or not complying with their description, will be accepted by the Company unless (a) written notice thereof is received by the Company within three days of delivery and (b) the Company is given an opportunity to inspect the Goods within a reasonable time and before any use is made of any of them or any alteration or modification is made thereto by the Buyer.

10.3 Subject to Condition 10.2 above, the Company shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonably able so to do but otherwise shall be under no liability whatsoever for such shortage or damage.

## 11. Property, Title and Risk

11.1 Risk of loss or damage in the Goods shall pass to the Buyer at the time of delivery.

11.2 Notwithstanding delivery and the passing of risk in the Goods or any of them to the Buyer, the property in the Goods or any of them shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of (a) the Contract Price, including (if the Goods are to be delivered by instalments pursuant to Condition 7.4) that part of the Contract Price relating to any Goods which have yet to be delivered, and (b) all other sums which the Buyer is liable to pay the Company on any account and under any contract whatever at the date of payment of receipt by the Company of the amount identified in Condition 11.2(a), whether or not (in each case) such sums have become due for payment.

11.3 Until payment pursuant to Condition 6 is made to the Company, the Buyer shall hold the Goods, the property in which remains vested in the Company, on a fiduciary basis only and as bailee only for the Company and the Buyer shall store the Goods at no cost to the Company separately from its own goods or those of any other person and marked in such a way that they are clearly identifiable or identified as the property of the Company.

11.4 The Buyer shall, while property in the Goods remains with the Company pursuant to this Condition 11, insure the Goods to their full value against "All Risks" to the reasonable satisfaction of the Company and whenever reasonably required to do so, shall produce to the Company a copy of the policy or policies of such insurance and a receipt or receipts for the current premium or other evidence of the existence of payment therefor. The interest of the Company shall be noted on the policy and a certificate to this effect shall be produced to the Company on request.

11.5 In the event that the Company is entitled to exercise any of its rights under Condition 14, provided that the Buyer has not exercised its rights under Condition 11.6:-

11.5.1 the Company shall (without prejudice to any of its other rights and remedies) have the right to re-possess and use and/or re-sell the Goods and for that purpose to sever, detach or unmix by itself, its servants or agents, the Goods from anything to which they are attached or in which they are installed or mixed without being responsible for any damage reasonably caused thereby and may by itself, its servants or agents enter upon any land or building, vehicle or vessel or other place upon which the Goods are reasonably thought to be situated; and

11.5.2 any right of the Buyer to sell, dispose of, deal or in any way use the Goods shall cease forthwith.

11.6 Notwithstanding Conditions 11.2 and 11.3, before the property in the Goods has passed to the Buyer in accordance with Condition 11.2, the Buyer shall be entitled to sell the Goods in the ordinary course of the Buyer's business at full market value and in such event shall account to the Company for all the proceeds, tangible and intangible (and including

without limitation insurance proceeds and proceeds of proceeds) thereof. Provided that before property in the Goods has passed to the Buyer as aforesaid the entire proceeds of sale of the Goods shall be held on trust for the Company and shall not be mixed with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.

11.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company.

11.7 The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

## 12. Guarantee

12.1 In the event that the Goods or any part thereof prove to be defective by reason of materials or workmanship under normal use and service during the period of twelve months from the date of delivery thereof, the Company shall at its own expense, repair, or, at its sole option, replace, the defective Goods or the defective part thereof.

12.2 The provisions of Condition 12.1 above shall not apply if:-

12.2.1 the defect to the Goods results from fair wear and tear or from negligence or a wilful act on the part of the Buyer;

12.2.2 the Goods have been altered, modified, treated, installed, stored or repaired other than (a) by the Company, (b) with the Company's consent or (c) in accordance with guidelines or recommendations issued by the Company;

12.2.3 the Buyer fails within two weeks of discovery of the defect to give the Company full written details of the description of the Goods under complaint the nature of the defect in question and the circumstances in which it occurred and the Company's invoice number and the Buyer's order number (if any);

12.2.4 the Buyer fails within two weeks after being so requested by the Company to return the defective Goods, carriage paid by the Company to the Company's premises in a package clearly marked on the exterior with the Buyer's name and address and a description of the defective Goods;

12.2.5 the Buyer fails within two weeks after being so requested by the Company to permit the Company to visit the Buyer's premises for the purposes of inspecting the Goods and investigating the cause of the defect in question;

12.2.6 the Goods are manufactured in accordance with specifications supplied by the Buyer and the defect arises out of such specification;

12.2.7 the Goods have been improperly handled by any person (other than a person duly authorised by the Company);

12.2.8 the Goods in question is a door or panel and the defect results from:-

12.2.8.1 the exposure at any one time of each face to different temperatures;

12.2.8.2 the fact that one face is subjected to a different stress factor to the other; or

12.2.8.3 its exposure to abnormal humidity levels.

12.2.9 the Goods in question is an external door which has not been adequately sealed and waterproofed by the Buyer before exposure to the elements.

12.3 The Company's liability to the Buyer for any breach of its obligations shall not in any event exceed the Contract Price and the Company shall be under no liability for the costs of installing any replacement Goods or for any consequential or indirect loss suffered, or liability to third parties incurred, by the Buyer.

12.4 Subject to the provisions of this Condition 12, all warranties and conditions whether implied by statute or otherwise are hereby excluded to the fullest extent permitted by law.

12.5 Notwithstanding the provisions of Condition 12.4 above, nothing in this Condition 12 or in any other provisions of these Conditions shall:-

12.5.1 restrict or exclude any liability for death or personal injury caused by the negligence of the Company; or

12.5.2 affect the statutory rights of a Buyer dealing as a consumer (as defined in Section 12 of the Unfair Contract Terms Act 1977).

## 13. Exclusions

13.1 Unless otherwise stated in writing, no allowance is made by the Company for trimming panels to nett sizes, trimming veneered doors to length, supplying and fitting Intumescent strips in the edges of doors, lipping after veneering or laminating, supplying doors to external quality standards, priming, sealing or any form of polishing, any type of site work, fixing or measuring, glazing, screwing glazing beads, recessing for or applying kick or push plates, ironmongery and the like, hardwood frames or other joinery items.

13.2 All thicknesses are nominal and all tolerances are to the appropriate British Standard and Codes of Practice.

## 14. Effect of Default by the Buyer

14.1 In the event that:-

14.1.1 the Buyer fails to make payment for the Goods in accordance with Condition 6;

14.1.2 the Buyer fails to pay any other debt due and payable to the Company;

14.1.3 the Buyer fails to take delivery of any of the Goods or any other goods supplied by the Company (except in accordance with the Buyer's contractual rights);

14.1.4 any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with his creditors or commits an act of bankruptcy or if any petition in bankruptcy be presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if bankruptcy proceedings shall be commenced in respect of the Buyer or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business; or

14.1.5 the Buyer otherwise commits a breach of these Conditions all sums outstanding in respect of Goods shall become payable immediately and the Company may in its absolute discretion and without prejudice to any other rights which it may have:-

(a) suspend all future deliveries of Goods to the Buyer under the Contract in question or under any other contract and/or terminate any such Contract(s) without liability upon its part; and/or

(b) require payment or interest on all amounts due at a compound annual rate of 5% per annum above the Barclays Bank plc base rate for the time being prevailing from the date when payment for the Goods in question became due to the date of actual payment; and/or

(c) exercise any of its rights pursuant to Conditions 11.5.

14.2 In addition to any right of lien which the Company may have the Company shall, in any of the events described in Condition 14.1 above or breach by the Buyer of the terms of these Conditions, have a general lien over all Goods of the Buyer then in the possession of the Company for the unpaid price of the Goods and any other Goods sold and delivered by the Company to the Buyer under these Conditions or any other contract.

14.3 The Buyer shall pay the whole costs (including legal costs on a full indemnity basis) incurred by the Company in the enforcement of its rights hereunder and all such costs as may be incurred by it as a consequence (direct or indirect) of a breach by the Buyer of any of these Conditions.

## 15. Intellectual Property and Confidentiality

15.1 No right or licence is granted under the Contract to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use or to resell the Goods but no warranty is given as to whether such use or resale will infringe the rights of any third party.

15.2 In the event that any infringement or alleged infringement of the intellectual property rights of a third party shall result from the Company having manufactured the Goods to a particular design or specification for the Buyer or its advisers or consultants, the Buyer shall forthwith upon demand fully and effectually indemnify the Company against all costs, claims, expenses proceedings and demands arising out of or relating to such infringement or alleged infringement.

15.3 The Buyer acknowledges that drawings and other documents and information furnished to it by the Company are disclosed in confidence and will not without the prior written consent of the Company furnish copies of such drawings or documents or details of the information contained in such drawings or documents to any third party.

15.4 The copyright in drawings and information furnished to the Buyer by the Company is and shall remain the property of the Company or its supplier and the Buyer shall not without the prior written consent of the Company and where appropriate, that of the copyright owner, alter such drawings or information in any way, make further copies of such drawings or information or use such drawings or information for any purpose other than that for which they are provided.

15.5 The property in drawings and documents furnished by the Company to the Buyer belongs to the Company or as the case may be its supplier and such drawings shall be returned to the Company forthwith upon request.

15.6 The Contract and its subject matter are confidential and shall not be disclosed or used for any unauthorised purpose.

## 16. Set-Off and Counterclaim

The Buyer shall not be entitled to withhold payment of any sums after they become due by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any other reason whatsoever.

## 17. Compliance with Statute

The Buyer shall be responsible for ensuring that its use of the Goods complies with all relevant statutes, statutory instruments and regulations having the force of law and shall indemnify the Company and keep it indemnified against all claims and liabilities suffered or incurred by the Company as a result of any non-compliance by the Buyer.

## 18. Law and Jurisdiction

18.1 These Conditions and the Contract shall be governed in all respects by the laws of England and, subject to Condition 18.2, the parties submit to the exclusive jurisdiction of the English Courts, save that enforcement proceedings may be brought in any jurisdiction.

18.2 If any dispute or difference arises under or in connection with the Contract, either party may refer it to adjudication in accordance with the provisions of Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations (Statutory Instrument 1998 No. 649) ("the Scheme"), which are hereby incorporated into the Contract subject to and incorporating the following amendments:

18.2.1 in paragraph 1(1), the reference to "a construction contract" shall be amended to state "the Contract"; and references throughout to "the contract" shall be amended to state "the Contract"; and

18.2.2 the nominating body referred to in paragraphs 2(1)(b) and 6(1)(b) and the adjudicator nominating body referred to in paragraph 2(1)(c), 5(2)(b) and 6(1)(c), shall be the Royal Institution of Chartered Surveyors.

## 19. Notices

Any notice required to be given pursuant to these Conditions shall be given as follows:-

19.1 to the Company - at Springwood Drive, Braintree CM7 2YN or such other address as the Company may from time to time notify to the Buyer;

19.2 to the Buyer - at such address as the Buyer may notify to the Company or in default of notification to the address from which the Goods are or were ordered or if the Buyer is a company at the option of the Company to the Buyer's registered office.

A properly addressed notice sent by first class post to destinations in the UK shall be deemed to have been received two days after the date of its despatch. A notice sent to any other destination shall be sent by registered airmail and be deemed to have been received seven days after the date of its despatch.

## 20. Validity

All headings and paragraphs are for ease of reference only and shall not affect the construction hereof.

## 21. Severance

Any provision or term hereof which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision hereof.

## 22. Waiver

No waiver or forbearance by the Company, whether express or implied, in enforcing any of its rights hereunder shall prejudice its right to do so in the future.

## 23. Assignment

The Company may assign, license or sub-contract all or any part of its rights and obligations under the Contract without the Buyer's consent. The Buyer may not assign or in any way dispose of its rights or obligations under the Contract without the prior written consent of the Company.

## 24. Exports

All the Conditions set out above shall apply to sales of Goods to Buyers outside the UK subject to the following exceptions:-

24.1 all Goods shall, unless otherwise agreed in writing, be supplied F.O.B. (as defined by Incoterms 2000) to a UK port nominated by the Company;

24.2 no claim for Goods found to be damaged on receipt by the Buyer, for shortages or for non-delivery will be considered by the Company unless written notice of such damage or shortage is received by the Company within 28 days of receipt of the Goods by the Buyer, or within 28 days of the defect being discovered where the defect could not reasonably have been discovered earlier, or (in the case of non-delivery) 28 days from the date upon which the Goods could in the normal course of events have been expected to be received by the Buyer;

24.3 unless otherwise agreed in writing payment shall be made by irrevocable letter of credit confirmed by a UK bank; and

24.4 the provisions of Condition 12.5 shall not apply.