

# Crescent of Cambridge Ltd.

## TERMS & CONDITIONS OF SALE (STANDARD)

1. GENERAL
  - 1.1 IN these conditions "we", "us" "our" refers to CRESCENT OF CAMBRIDGE LIMITED, "you", "your" refers to the person or organisation placing an order with us. "Goods" means the goods supplied by us hereunder.
  - 1.2 UNLESS otherwise agreed in writing by us these conditions of contract will supersede any earlier sets of conditions issued by us and shall override any terms or conditions stipulated incorporated or referred to by you notwithstanding that such are subsequent in time to these conditions and are stated to take precedence over any other conditions.
  - 1.3 WE shall not be bound by any variation waiver of or addition to these conditions of contract except as agreed by us in writing and signed by one of our Directors.
  - 1.4 ALL quotations are given subject to acknowledgement by us in writing upon receipt of your order and no binding contract shall be or deemed to have been effected by your acceptance of our quotation until your order constituted by such acceptance has been confirmed in writing by our official acknowledgement.
  - 1.5 YOU shall not assign or transfer any of your interests hereunder.
  - 1.6 THE headings in these conditions are included for convenience and shall not affect the interpretation of these conditions.
2. VALIDITY AND LIMITS
  - 2.1 OUR quotations are valid only for the period stated on them or when no period is given for sixty days from the date of issue.
  - 2.2 OUR quotations include only the Goods and work specified in them. All other goods and work will be charged extra.
  - 2.3 IF your order is received by us after the expiration of the period stated in clause 2.1 the price, delivery date or other conditions may be subject to variation.
  - 2.4 WHERE an order is accepted on the terms that the whole or part of the Goods is to be delivered by us after the expiration of three months of the acceptance of order, we reserve the right to increase the price of the Goods due for delivery after the expiration of such period.
3. PRICE
  - 3.1 UNLESS otherwise stated in our quotation and order acknowledgement, our prices are in £ Sterling and do not include VAT or any other government tax, charge or duty, exchange rate, packing, insurance, delivery freight, installation or similar charges which items will be charged extra. The cost to us of conforming with any legal requirements in connection herewith imposed or coming into force after the date of our quotation shall be payable by you on demand.
  - 3.2 THE price on our order acknowledgement will be that covered by a valid quotation, where a valid quotation does not exist the price will be that ruling at the time of despatch of the Goods from our works and subject to these conditions or any later agreement in writing signed by us will remain save that we may make an additional charge to you to cover the fixed rise in the cost of manufacturing and materials arising between the date of quotation and the date of delivery.
  - 3.3 ALL prices quoted or agreed to by us are based on existing currency exchange rates and we reserve the right at any time to increase the quoted or agreed price of Goods to reflect any increased cost to us in supplying such Goods which results from any change in currency exchange rates and where the price quoted is in a currency other than £ Sterling to compensate us for any relevant rate fluctuation.
4. DELIVERY
  - 4.1 WE shall deliver to the place named in our order acknowledgement or if no place is so named at a place agreed by both parties in writing. Where a definite place of delivery has not been agreed by the time the Goods are ready for delivery, we shall give you seven days notice of availability of the Goods and if no place for delivery shall have been agreed within the said period of seven days the risk in the Goods shall pass to you and we shall be entitled (but not bound) to store the Goods at any available place at your expense and to make a reasonable additional charge.
  - 4.2 WE reserve the right to specify the method of delivery of the Goods.
  - 4.3 WE reserve the right to make part deliveries unless otherwise stated in the contract.
  - 4.4 RISK in the Goods shall pass to you on delivery, whether you accept delivery of the Goods or not.
  - 4.5 WHERE the Goods are to be delivered in instalments and payment for one or more such instalments is overdue, we shall be entitled to suspend deliveries until payment is made in full for all Goods delivered, or at our option to cancel the order in respect of the undelivered Goods without liability to you.
  - 4.6 WE shall not be liable for any non-delivery unless you give us written notice of the non-delivery within seven days of the date when the delivery should have occurred.
5. SUPPLY OF INFORMATION
  - 5.1 YOUR order is accepted on the basis that you will provide us where necessary with all information to enable the design, manufacturing and commissioning of the Goods to proceed without delay. We reserve the right to increase the contract price where the correct information is not provided within a period of fourteen days or our requesting such information or within such shorter period as may reasonably be required by us.
  - 5.2 UNLESS we specify otherwise in writing all our drawings, weights, dimensions, specifications and other descriptive matters are approximate only and do not form part of the contract. In any event we shall be entitled to make modifications to any contract description of the Goods provided that these modifications do not substantially affect performance or cost.
  - 5.3 ALL specifications, drawings, technical descriptions and all other material or information supplied to you by us or relating in anyway to the Goods is confidential and copyright. Without our prior written consent no such material or information shall be disclosed to any third party nor copied, imitated or used for the manufacture of the same or similar Goods and must be returned to us upon demand.
  - 5.4 WHERE standard structural calculations have been made by us in respect of our standard Goods we will supply such calculations to you free of charge. Where we agree to provide you with structural calculations for non-standard Goods, we will charge for this service at our rates then in force.
6. ERECTION AND INSTALLATION
  - 6.1 WHERE we are responsible for installing or erecting the Goods, you will ensure that at the time of the arrival of our servants or agents all necessary preparations have been made for such erection or installation of the Goods. Loss of time incurred by the omission of any such preparations and the cost of any extra work carried out by our servants or agents will be charged to you. You will indemnify us against any claims made against us by our employees, agents or contractors or any other person whatsoever, whether in respect of death, personal injury, or any other loss or damage which arises during the erection or installation of the Goods and is attributable to the negligence of you or your employees, agents or contractors.
  - 6.2 THE integrity of the structure or building, to which the Goods are attached is exclusively your responsibility. Whilst we will give general advice on the preparation of suitable concrete thresholds, pads or foundations, we cannot be held responsible for the design and application for any particular structure or building. You should seek advice from an architect, surveyor or consultant, who knows the local and particular conditions of the building, in order to ensure that the foundations and points of attachment to the building are adequate to support the Goods and any load which may be applied thereto.
  - 6.3 ANY materials and consumable parts required on site in connection with the installation will so far as possible be specified in our quotation and will be included in the contract together with materials and consumables required in connection therewith but we reserve the right to charge for additional materials and consumables parts the need for which was not foreseen at the time of our quotation.
  - 6.4 ALL material parts and other items used by us in connection with the erection and installation on site shall be at your sole risk and in the event of any loss or damage thereto and in the event of work done by us being damaged or destroyed by whatever cause you will be liable to compensate us in full therefore.
  - 6.5 IF the erection and installation is delayed or takes longer than would normally be the case because of any breach by you of the terms of the contract, then you will pay us on demand at our daily rate for the extra time our employees, agents or contractors have to spend on site and for any additional costs (including storage costs) which we may incur in carrying out the erection and installation.
  - 6.6 IF you do not provide scaffolding or craneage which is required to install the Goods, and we provide the same, then we will hire it locally and you will reimburse us the cost thereof plus 15% by way of handling charge.
7. TERMINATION OR CANCELLATION OF CONTRACT
  - 7.1 WE shall have the right to terminate or cancel the contract if you commit a material breach, which includes (but is not limited to) a failure by you to accept delivery, interference by you with the installation of the Goods and failure by you to pay all sums due by the date specified in clause 8.
  - 7.2 IN the event that we accept the termination or cancellation of an order prior to completion we reserve the right to charge for work done in relation to the order including but not limited to site surveys and preparation of drawings.
8. PAYMENT TERMS
  - 8.1 IN consideration of the Goods and work specified in them (including installation), you shall pay us the fee or fees set out in the invoice or invoices that we issue you at the times and in the manner set out in this clause 8. The final date for payment of any sum shall be fourteen days from the date stated in the invoice and shall be paid in £ sterling and we reserve the right to charge interest which shall accrue both before and after any judgment at the rate of four per cent over National Westminster Bank PLC Base Lending Rate from time to time per annum calculated from day to day on all amounts due but unpaid but this right shall be exercisable without prejudice to any other rights we may have hereunder. You shall, when making a payment, specify the amount of the payment and the basis upon which it is calculated.
  - 8.2 WE shall be entitled to payment even if the title to the Goods has not passed to you.
  - 8.3 IF we make part deliveries then an appropriate proportion of the contract price is payable on the above terms.
  - 8.4 FOR despatches overseas, payment in full must be received by us prior to despatch of the Goods unless an irrevocable letter of credit confirmed and drawn on a United Kingdom Bank is first opened in our favour or equivalent arrangements to our satisfaction are made.
  - 8.5 NOT later than five days before the final date for payment of the amount due in clause 8.1 above, you may give a written notice to us specifying any amount proposed to be withheld and/or deducted from that due amount, the ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground.
9. TITLE
  - 9.1 NOTWITHSTANDING any earlier passing of risk in the Goods, until we have received full payment of all sums due to us under the contract the property in the Goods shall remain in us as legal and equitable owner thereof and you shall be entitled to possession of the Goods only which shall be held by you as bailee on our behalf and you shall keep the Goods separate from all other goods and clearly identifiable as our property and shall keep the Goods insured against all risk and in their full replacement value naming us as the loss payee and providing us with a Certificate or other evidence of such insurance and shall fully indemnify us against all loss of or damage to the Goods and shall permit us at any time prior to the passing of the property in such Goods to you to enter upon any premises and repossess the Goods (using whatever means may be reasonably necessary and whether or not the Goods have been affixed to any land or building) and you hereby irrevocably grant us a licence so to enter upon any premises where we believe such Goods to be stored and (using whatever means we consider reasonably necessary) to repossess the Goods and you shall promptly reimburse us our costs and expenses in so doing.
  - 9.2 YOU shall have the right to resell the Goods or part thereof at full market value before payment for the same shall have been received by us provided that you shall pay the proceeds of such a sale into a separate bank account clearly denoted as an account containing monies deposited for our benefit by you acting in fiduciary capacity.
  - 9.3 YOU shall grant us an irrevocable licence to enter the premises to inspect the Goods, or to recover the Goods, where you have no right to possess them.

# Crescent of Cambridge Ltd.

## TERMS & CONDITIONS OF SALE (STANDARD)

### 10 WARRANTY

- 10.1 FOR new Goods manufactured by us (excluding components thereof not manufactured by us) we will make good either by repair or by the supply of replacement parts at our option defects which arise during the period of twelve calendar months from the date of delivery or six months from the date of installation (whichever is the shortest period) which are attributable to faulty materials or workmanship and any repaired or replacement part shall be subject to the same guarantee. This warranty shall only apply to Goods supplied in the UK and shall not apply unless for the said period of twelve months or six months from the date of installation (whichever is the shortest period) we, our servants and agents have full and free access to the Goods at any time.
- 10.2 OUR warranty does not apply if the Goods have been mishandled or misused by you in any way including repairs, replacements, additions or modifications to or movement of the Goods not authorised by us in writing or if the Company's trademark or serial number has been removed defaced or altered or if the Goods have been improperly installed but only if the Goods have been located, installed and maintained strictly in accordance with our manuals, instructions and drawings. Our warranty does not apply to damage sustained in transit save as specifically provided for in Clause 11 below.
- 10.3 YOU must inform us in writing within fourteen days if any defect for which you claim warranty occurs and the Goods must not be used after a defect occurs until repairs are carried out unless our written agreement is given. Defective parts should be returned to us carried at your risk. Repairs or replacements will be sent to you free of charge. When warranty repair is claimed a full written description of the fault must be sent to us before the warranty will operate.

### 11. LOSS OR DAMAGE IN TRANSIT

- 11.1 WE will repair or at our option replace free of charge any part of the Goods lost or damaged in transit to the place stated for delivery in our order acknowledgement provided that:
- (a) in the case of Goods for delivery in the United Kingdom the Goods are signed for "not examined" and we and the carrier are given written notice of such loss or damage within the time required by the carrier's conditions of carriage or where delivery is made by our own transport within seven days of the receipt of the Goods or of the day upon which the Goods would have been reasonably likely to arrive had they not been lost and provided that any such damaged Goods or parts thereof are returned carriage paid by you to our works; or
- (b) In the case of Goods for delivery outside the United Kingdom the Goods are signed for "not examined" and we or our agents are given written notice as set out in Clause 11.1(a) above (with the substitution of fourteen days for seven days) and in addition you produce to us or our agents an insurance assessor's report and if required by us and where possible photographic evidence of the damage, and provided further that nothing in this clause shall make us liable for the repair or replacement of Goods lost or damaged in transit where you are responsible for insurance of the Goods during transit.
- (c) For the avoidance of doubt, the 12 month warranty period described in clause 10 above does not re-commence on the replacement or repair of any part of the Goods.

### 12 EXCLUSIONS

#### 12.1 EXCEPT as may be provided by these conditions of contract we shall not be liable for:-

- (i) Any loss or damage of whatsoever kind or howsoever caused (other than death or personal injury arising from our negligence) caused to you or any other person or organisation and any term, condition, warranty or representation to the contrary whether expressed or implied by statute, common law or otherwise is expressly excluded except insofar as such exclusion is not permitted by law.
- (ii) Any representation written or oral made to you by us or by anyone on our behalf before the contract is made. Any such representation shall be of no effect and shall not be binding upon or affect us and is hereby expressly excluded from the contract unless it shall be specifically agreed in writing by us and that the said representation is or shall be a term of the contract. You acknowledge that you have not relied on any statement, promise or representation made or given by us or on our behalf which is not set out or incorporated in these conditions.
- (iii) Any loss or damage arising directly or indirectly as a consequence of any defect in the installation of the Goods except where such loss or damage is caused solely by us.
- 12.2 WITHOUT prejudice to the operation and effect of any of these conditions our liability to you in respect of Goods which are defective or defectively installed by us or otherwise not in accordance with the contract (including any liability in respect of negligence) shall be limited to the contract price PROVIDED THAT any liability in respect of the death or injury of any person resulting from our negligence shall be unlimited.
- 12.3 EXCEPT as otherwise stated herein you shall indemnify us against all third parties including costs, charges and expenses which we may incur or suffer of whatsoever kind and howsoever caused in connection with the existence and/or use of the Goods supplied under the terms of the contract whether or not the property in the said Goods shall have passed to you at the time when the third party's claim arises.
- 12.4 IN the case of a contract for the international sale of goods all guarantees, warranties and/or conditions (including without limitation any conditions and/or warranties as to quality or fitness for any particular purpose) whether express or implied by statute, common law or otherwise are hereby expressly excluded. In the case of a contract for the sale of Goods which is not an international sale of Goods all guarantees, warranties and/or conditions (including without limitation any conditions and/or warranties as to quality or fitness for any particular purpose) whether express or implied by statute, common law or otherwise are hereby expressly excluded. Save and except that the exclusions in this Clause 12.4 shall not apply to or include the provision of section 12 of the Sale of Goods Act 1979.
- 12.5 WE will use all reasonable endeavours to meet any agreed delivery schedule but any timing agreed to by us is a business estimate only and we shall not be liable for any delay or the consequence of any delay in the production, delivery or commissioning of any Goods howsoever caused and whether or not the delay is our fault. If any such delay occurs then (unless the cause thereof shall frustrate or render impossible or illegal the performance of the contract or shall otherwise discharge the same) and subject to a right on our part to cancel or suspend the contract without liability the period for performing our obligations shall be extended to such period (not being limited to the length of the delay) as we may reasonably require to complete the performance of our obligations. Time shall not and shall not ever be of the essence of the contract in terms of delivery, but time shall be the essence of the contract in respect of payment under clause 8 of these conditions. Any dates specified by us for delivery are an estimate only and you shall not be entitled to terminate or rescind this contract due to a reasonable delay.

### 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 YOU warrant that any manufacture of Goods to your design will not involve us in the infringement of any patent, registered design, copyright or trademark or any other intellectual property rights and shall indemnify us against all claims and expenses incurred by us by reason of any such infringement or alleged infringement.
- 13.2 YOU shall be entitled to make a claim for damages in respect of any claim made by a third party against you for infringement of United Kingdom patents or other intellectual property rights in connection with the Goods or any parts thereof made to our design and supplied hereunder subject however to the following conditions:-
- (a) The right to make a claim shall not apply in connection with designs and any other matters supplied by you for incorporation in the Goods nor shall it apply if the Goods are adapted or modified by you without our written consent or used in a manner or for a purpose not specified in your order or for which it was not designed or if the Goods or any parts thereof are used in combination with goods or other devices not made or supplied by us.
- (b) You must notify us immediately in writing of any allegation or infringement.
- (c) You must at our request allow us to conduct and/or settle all negotiations and litigation in such manner as we shall at our discretion decide and must give us all authority, information and assistance required in connection therewith within a reasonable time. The costs incurred or recovered in such negotiations or litigation shall belong to or be borne by us.
- (d) You must not by any act (including any admission or acknowledgement or omission) prejudice the negotiations or litigation above referred to nor must you enter into any compromise or settlement in respect of any such allegation.
- (e) This clause states our entire liability in respect of the rights above referred to.
- 13.3 IF at any time any allegation of infringement or the rights referred in 12.2 above is made in respect of the Goods or in our opinion is likely to be made, then we may at our option modify or have return of the Goods so as to avoid infringements but without any liability being incurred by us in so doing.

### 14 INSOLVENCY OR DEFAULT

- 14.1 IF you commit any breach of the contract or encumber or in any way charge the Goods or become insolvent or commit any act of bankruptcy (or being a limited company go into liquidation other than a voluntary liquidation for the purpose of reconstruction or amalgamation) or have a receiver appointed as to the whole or any part of your assets or cease or threaten to cease carrying on business or have a change of control then we reserve the right to terminate the contract forthwith but without prejudice to any right or remedy which we may lawfully enforce or exercise and without any obligation to return to you any sums paid to us hereunder. We shall be under no liability to complete any work started be it of design, manufacture or commissioning and may stop any Goods in transit to you unless paid for in full.

### 15 FORCE MAJEURE

- 15.1 WE shall not be in breach of this contract or under any liability or responsibility for any loss or damage whatsoever caused by delay in the performance or non-performance of any of our obligations under the contract where the same is occasioned by any cause whatsoever that is beyond our reasonable control including (without limitation) lock-out or trade dispute (whether involving our own employees or those of another person) or inability to obtain supplies.

### 16 NOTICES

- 16.1 ALL notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by telex or facsimile transmission (transmission confirmed) provided a copy shall be sent by first class post on the date of such a transmission or, on the third business day following posting, if posted by certified or registered post, postage prepaid.

### 17 ADJUDICATION

- 17.1 EITHER you or us may refer any dispute or difference under these conditions of contract to adjudication conducted by a person agreed between you and us, or if not agreed, appointed on the application of either you or us to the President or Vice President of the Royal Institution of Chartered Surveyors in accordance with the Construction Industry Council Model Adjudication Procedure in force as at the date of the application.

### 18 GENERAL

- 18.1 THE Contracts (Rights of Third Parties) Act 1999 shall not apply to these conditions and nothing in these conditions shall confer or purport to confer on or operate to give any third party any benefit or any right to enforce any term of these conditions except as expressly provided in these conditions.
- 18.2 IF any provision of these conditions shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from these conditions and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of these conditions which will remain in full force and effect.
- 18.3 THE failure or delay of a party to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any later time or times.
- 18.4 OUR rights and remedies under these conditions are without prejudice to any other rights and remedies that we may have under common law or statute.
- 19 LEGAL CONSTRUCTION
- 19.1 THESE conditions shall be governed by and construed exclusively in accordance with the Law of England and you and we hereby submit to the non-exclusive jurisdiction of the English Courts.