

DEFINITIONS

In these terms and conditions "The Company" shall mean Brickmongers (Wessex) Ltd and "The Purchaser" shall mean the firm, company, corporation, person or body by whom an order is given to the Company

1. APPLICATION OF TERMS

These terms and conditions shall apply to all quotations and sales of goods and services by the Company and unless otherwise agreed in writing shall be the only terms and conditions relating to any contract arising there from. Any conditions or other terms put forward on behalf of the Purchaser in his order or otherwise are expressly excluded other than such statutory conditions or warranties as may not be capable of exclusion.

2. QUOTATIONS

Any variation and or modification to a contract to be effective must be forthwith confirmed by the Purchaser and approved by the Company in writing

Quotations are open to acceptance within thirty days of the date of the quotation only. Prices quoted by the Company are subject to increase without notice in the event of there being any rise in the market price of the goods after the date of the quotation or order and prior to delivery occasioned by any cause outside the control of the Company. We shall be entitled to add to the invoice price and to recover from the Purchaser any Value Added Tax or other tax that is in force at the time of execution of the contract or any taxes which may be added thereafter and which shall apply to this contract.

3. PRICES

Goods will be invoiced and paid for at the Company's prices current at the date of dispatch of the goods, such prices superseding and replacing all previous quotations or other prices unless otherwise specifically agreed in writing. The Company will do its best but shall not be bound to inform the Purchaser of any such increase. Prices for services will be those agreed in the relevant quotation or confirmation of order issued by the Company. In relation to the supply of windows or door frames, if the price of materials increases after the order is agreed, or if completion is delayed through no fault of the Company, the Company reserves the right to increase the price to reflect the increase in costs.

4. VARIATIONS

Any variation and or modification to a contract to be effective must be forthwith confirmed by the Purchaser and approved by the Company in writing

5. AVAILABILITY OF GOODS

Any order may be cancelled by the Company without notice if the Company is prevented from obtaining, purchasing or manufacturing the goods or from delivering the same by any such reason(s) as set out in clause 18 of these terms and conditions, and the Company will not accept liability for delays, damages, breakages, or any other consequences arising from or contributed to by any such matters.

6. MIXING BRICKS

Where the goods order comprise bricks and the bricks are delivered in pack form the Purchaser shall in accordance with recognized practice and/or the brick manufacturer's recommendations ensure that several packs are used simultaneously to obtain, as far as possible, an even blend of colour and size.

7. PAYMENT

Payment will be made in cash at the time an order is placed unless the Company has agreed monthly credit facilities or any other payment terms have been agreed in connection with the relevant order. Monthly credit facilities shall mean that all goods delivered in any one calendar month shall be paid for by the Purchaser in full on or before the last day of the month following delivery. Where the Company agrees to provide installation services in respect of the goods ordered, payment for both the goods ordered and the installation services shall be due in full on the date of delivery of the goods to site. In the event of non-payment of any amount due from the Purchaser on the due date the whole balance outstanding on the Purchaser's account shall become payable forthwith, and the Company reserves the right to withhold further deliveries until such payment has been effected, cancel any contract with the Purchaser without being liable to the Purchaser for any loss occasioned or arising there from, or at the Company's discretion to cancel the monthly credit facility with the effect that all further goods supplied to the Purchaser must be paid for in advance. The Company also reserves the right to disallow any discount that may be applicable to the contract entered into by the Purchaser and to charge interest on such outstanding accounts at the rate of 8% pa above the base rate for the Bank of England and to charge The Purchaser any and all cost incurred by The Company in recovering any outstanding accounts (including without limitation legal cost on an indemnity basis).

8. TITLE TO GOODS

Ownership of the goods shall not pass to the Purchaser until payment in full for the same has been made to the Company. If the goods concerned remain unsold in the custody of the Purchaser, they shall belong to the Company and be returnable to us on demand (either via writing to the Purchaser or verbal conversation with the Purchaser (or an authorised representative of the Purchaser) within 10 Business Days.

9. DELIVERY

- (a) Quotations (unless otherwise expressed) include the Company's charge for delivering full lorry loads of goods to the site nominated by the Purchaser, such charges, being based upon the assumption of unrestricted site access: level stacking space, firm standing, assistance for unloading on site and a maximum unloading time of 1 hour. Should the Purchaser take longer than the 1 hour allowed or having failed to provide the above facilities, the Company reserves the right to re-imbursment of any charges incurred as a result of delays in unloading, or to withhold delivery and charge for the wasted journey.
- (b) Whilst the Company will make even effort to deliver goods to such points on a site as may be requested by the Purchaser, the Company does not undertake to deliver to any specific point but merely to the nearest accessible point or a good hard road. Where the Company agrees to provide installation services in respect of goods delivered, the Company will deliver to the agreed installation site.
- (c) The Company will not be liable for any damage done to goods from unloading or handling on site, unless such damage is occasioned by the act or neglect of the Company's agent or servant.
- (d) Although the Company will use its best endeavours to comply with the Purchaser's delivery requirements, the Company will not be liable for delays in delivery howsoever occasioned and time shall not be deemed to be the essence of the contract.
- (e) If there is no proper site access, storage space or unloading facilities the Company reserves the right to withhold delivery and charge for the wasted journey.
- (f) If the Company holds goods for more than 14 days from receipt of delivery instructions from the Purchaser or the Purchaser does not accept the goods within that period the Company may invoice and is entitled to be paid for such goods as also for the storage of same.
- (g) Where goods are collected ex-works by the Purchaser or his servant or agent the Company's responsibility ceases when the goods are handed over to the Purchaser or his servant or agent.
- (h) The Company will not accept liability for shortage or loss of goods unless written notification thereof is given to it by the Purchaser in compliance with clause 13(a) hereof.

10. SUITABILITY OF GOODS

The Company will accept no liability as to the suitability of the goods for the purpose for which the Purchaser may require them.

11. SAMPLES

Samples submitted by the Company are an indication of texture, size, colour and general appearance only. Bulk supplies cannot be Guaranteed to correspond in every respect with any samples provided. Any reference in a quotation to "British Standards", "Technical Data" or other specifications are intended as a guide only, and if the Purchaser wishes to rely on any such matter as a term of the contract the same must be put in writing by him or it and agreed by the Company prior to or at the time of entering into any such contract.

12. QUALITY OF GOODS

The Company warrants that the goods shall be of sound materials and workmanship. In the event of a defect in the goods being notified to the Company in writing within 5 days of the date of delivery, in respect of which notification time shall be of the essence, and the Company being satisfied that the defect is the result of unsound materials or workmanship the Company will replace the goods. In such circumstances, the Company reserves the right to charge to the Purchaser a Restocking Fee of 50% of the purchase price paid by the Purchaser for the defective goods in question. Any cost of haulage or return by any means of the defective goods in question by the Purchaser (or an agent of the Purchaser) to the Company shall be payable by the Purchaser.

In the event of the goods delivered not being those ordered by the Purchaser and of the Purchaser notifying the Company thereof in writing within 7 days of delivery, in respect of which notification time shall be of the essence, the Company will at its own cost and as speedily as practicable replace the said goods with a like quantity of goods of the nature ordered by the Purchaser. Save as aforesaid the Company shall not be liable in contract, tort or otherwise in respect of any loss or damage suffered by the Purchaser as a result of any defect in the goods supplied. Whilst even effort will be made to avoid variation of shades and sizes in goods delivered, the Company neither guarantees nor warrants that such variations will not occur or that they will conform to sample, either in quality or in colour.

The Company agrees to accept the return of the goods from the Purchaser, subject to the goods being a stock item of the Company, so long as the goods are returned to the Company in such a condition that the Company deems the goods (individually and in their entirety) to be unblemished, unblemished and undamaged in any way whatsoever. Any cost of haulage or return by any means of the goods in question by the Purchaser (or an agent of the Purchaser) to the Company shall be payable by the Purchaser. The Company reserves the right to reject the return of goods from a Purchaser where the said goods have been purpose-made or specifically sourced for the Purchaser, outside of the goods being a stock item of the Company.

13. QUALITY OF SERVICES

Services will be provided with reasonable skill and care. The Purchaser acknowledges that services may be subcontracted by the Company to a third party.

14. PROVISIONS IN RELATION TO WINDOWS AND DOOR FRAMES

(a) Window and Door Frames

In the event of any fault appearing in window frames or door frames supplied and fitted by or on behalf of the Company during the first 11 months from the date of installation thereof, and such fault being proved to be due to workmanship in the course of manufacture or installation, the Company will procure the service of the same free from labour or material costs, reserving only the right to charge travel time or the cost of glass replacement. This applies to P.V.C. and Aluminium only.

(b) Double Glazed Units

Double Glazed Units are guaranteed for the first 11 months as in (a) above. For the following 4 years, in the event of any manufacturing fault appearing in Double Glazed Units, same will be replaced or repaired free of charge, reserving only the right to charge travelling time and the cost of labour in the removal or replacements of the defective unit, which must be borne by the Purchaser.

(c) Teak products are guaranteed for two months only. (This applies to (a) and (b) above).

(d) Deal products are not guaranteed.

(e) The Company do not carry out major alterations or constructional works. The Company reserves the right in its absolute discretion to cancel a contract should this be found to involve any major alterations or constructional work or should it suspect any structural weaknesses or defect. If the Company cancels out any contract on these grounds, the Company will only charge for work and materials already done/supplied.

(f) In relation to the supply of windows, elimination of condensation is not guaranteed.

(g) In the case of special design, windows or doors/units where the Company has not received detailed drawings the Company undertakes only to adhere as closely as possible to the sketch on the order form where this is practical. The Company cannot accept responsibility if there is a variation between what the Purchaser has in mind and the finished product.

(h) All external doors must be treated by the Purchaser with four coats of Spinnaker Yacht varnish.

(i) In new homes, where timber windows have been contracted for before the opens are made, if the opens are not made to suit standard windows there will be extra charges.

15. TERM AND TERMINATION

Either party may immediately terminate a contract by giving written notice to the other party if:

- (a) the other party commits any other breach of any of the provisions of the contract in question and, if the breach is capable of remedy, fails to remedy it within 15 Business Days after being given written notice giving full particulars of the breach and requiring it be remedied;
- (b) an encumbrancer takes possession, or where the other party is a company, a receiver is appointed, of any of the property or assets of that other party;
- (c) the other party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- (d) the other party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under these terms and conditions);
- (e) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other party;
- (f) the other party ceases, or threatens to cease, to carry on business; or
- (g) control of the other party is acquired by any person or connected persons not having control of that other party on the date of a contract in question. For the purposes of this clause, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

A "breach" shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects.

The rights to terminate a contract in question shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

16. EFFECT OF TERMINATION

Upon the termination of a contract in question for any reason:

- (a) any sum owing by either party to the other under any of the provisions of a contract in question shall become immediately due and payable;
- (b) all clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the contract in question shall remain in full force and effect;

- (c) termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of the contract in question which existed at or before the date of termination; and
- (d) except in respect of any accrued rights, neither party shall be under any further obligation to the other.

17. CLAIMS

- (a) Any claim for alleged faults or short delivery must be notified by the Purchaser in writing to the Company within 5 days of the date of delivery, time to be of the essence.
- (b) The Company shall have the right to examine any goods claimed by the Purchaser to be faulty and shall have the right to require the Purchaser to return such goods to the Company at the Purchaser's own cost for examination.
- (c) The liability of the Company shall be restricted to replacing any goods found to be faulty or at its option to refund to the Purchaser only that part of the contract price relating to such faulty goods.
- (d) All liability for direct or consequential loss whether arising from delay in dispatch, delivery, failure of goods to meet specification or performance, defects in manufacture or otherwise is hereby expressly excluded.
- (e) The Company will not accept claims in the following circumstances:
- (i) Loss or damage in transit in the Purchaser's own transport or site
 - (ii) Where goods have been improperly used, stored or protected
 - (iii) Where goods are not suitable for the purpose to which the Purchaser has or wishes to put the same
 - (iv) In respect of general weathering of goods

18. FORCE MAJEURE

The Company shall not be liable for any failure or delay in performing its obligations where such failure or delay results from any cause that is beyond its reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Company.

19. ASSIGNMENT

Any contract entered into between the Purchaser and the Company shall be assignable by the Company but non-assignable by the Purchaser.

20. CANCELLATION

Contracts with and orders placed with the Company may only be cancelled with the Company's prior written consent. In cases where the Company has been required to pay a deposit to a manufacturer or supplier in respect of the Purchaser's order the Company may require reimbursement of such sum from the Purchaser as a condition of consenting to cancellation. In even case where the Company consents to cancellation the Company reserves the right to claim for any loss of profit or such proportion thereof as the Company at its absolute discretion sees fit, suffered by the Company as a result of such cancellation. In relation to the supply of windows or door frames, the Company reserves the right to cancel any order at any time by refunding any monies paid.

21. RELATIONSHIP OF THE PARTIES

Nothing in these terms and conditions shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Company and the Purchase other than the contractual relationship expressly provided for in these terms and conditions.

22. THIRD PARTY RIGHTS

No part of these terms and conditions shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to these terms and conditions. These terms and conditions shall continue and be binding on the transferee, successors and assigns of both parties as required.

23. NOTICES

- (a) All notices under these terms and conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Company or the Purchaser.
- (b) Notices shall be deemed to have been duly given:
- i. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - ii. when sent, if transmitted by e-mail, a successful transmission report or return receipt is generated; or
 - iii. on the fifth business day following mailing, if mailed by national ordinary mail
- (c) In each case notices shall be addressed to the most recent address or e-mail address notified to the other party.

24. ENTIRE AGREEMENT

- (a) These terms and conditions contain the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- (b) Each party acknowledges that it does not rely on any representation, warranty or other provision except as expressly provided in these terms and conditions and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

25. SEVERENCE

In the event that one or more of the provisions of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

26. LAW AND JURISDICTION

- (a) These terms and conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- (b) Any dispute, controversy, proceedings or claim between the parties relating to these terms and conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.