



## **1. Definitions**

1. In these terms “we” or “us” means Robert Price (Builders’ Merchants) Limited and/or Robert Price (Distribution) Limited or any other member company of the Robert Price Group as specified in the contract for the sale of goods and/or services to you; “you” means the person, firm or company who purchases the goods and/or services from us; and “our” and “your” shall be construed accordingly and “contract” means any order which has been accepted by us.

## **2. The Contract**

- 2.1. These terms apply to all sales of goods and/or services by us to the exclusion of all other terms (including any put forward by or on behalf of you in any order negotiations or otherwise) unless agreed in writing by one of our Directors.
- 2.2. Each order or acceptance of a quotation for goods and/or services by you shall be deemed to be an offer by you to buy goods and/or services subject to these terms. No order or acceptance of a quotation by you shall be deemed to be accepted by us until we begin to process your order or give you written confirmation of it (if earlier). We reserve the right to withdraw any quotation at any time (whether or not already accepted by you).
- 2.3. You must satisfy yourself that all goods and/or services ordered are correct. You acknowledge that you have not relied on any statement or representation made or given on our behalf. Any estimate of quantities needed, advice as to the suitability of any goods for a particular purpose and any plan or measurement given by us is given for guidance only and without liability on our part. You must ensure due allowance is made for wastage when ordering.
- 2.4. You shall be responsible to us for ensuring the accuracy of any design drawing or specification provided by you.

## **3. Samples and Specifications**

- 3.1. Our catalogues, technical circulars, price lists, literature, advertising, samples, website and other descriptive matter are prepared, issued and published for your general guidance only. They shall not form part of the contract. This is not a sale by sample.
- 3.2. We shall have the option of supplying goods in either metric or imperial measurements, and goods may be charged in metric allowing for conversion.

## **4. Delivery of goods**

- 4.1. Delivery of the goods shall take place at our premises unless otherwise agreed by us. Delivery shall occur when you take possession of the goods at our premises or (where we agree to transport or procure transportation of the goods) when the goods are ready for unloading at the designated address.

- 4.2. Any time or date given by us for delivery or collection of all or any of the goods or performance of any services is an estimate. We shall not be liable for any failure to meet such estimate nor for any loss, whether financial or otherwise, resulting directly or indirectly therefrom (including any liability to any third party). Time for delivery shall not be made of the essence by notice.
- 4.3. If you fail to accept delivery of any goods when they are ready for delivery, or we are unable to unload the goods at the designated address because of inadequate access, instructions or consents we shall be entitled to immediate full payment and risk in the goods shall pass to you. We may store such goods at your risk and cost until delivery and we may recover from you all related costs and losses incurred.
- 4.4. If we agree to transport or procure transportation of the goods to the site address we will deposit the goods as near as possible to the designated address as a safe hard road permits. We reserve the right to refuse to unload the goods at premises which in the driver's opinion are considered to be unsuitable.
- 4.5. You must provide the necessary labour for unloading goods except at our discretion where we offer and provide a mechanical offloading facility. If our vehicle is kept waiting for an unreasonable time or if we are required to provide additional staff to unload the goods, an additional charge may be made.
- 4.6. We shall not be liable for any shortages in quantity delivered unless you advise our supplying branch of the shortages by telephone as soon as reasonably practicable and you also give written notice to us of such shortages within two working days of delivery. In any event our liability shall be limited to making good the shortfall or (at our option) issuing a credit note or refund at the pro rata contract rate against any invoice raised for such goods.
- 4.7. If goods are to be deposited other than on your private premises you will be responsible for compliance with all regulations and for all steps which need to be taken for the protection of persons or property and will indemnify us in respect of all losses damages costs and expenses we may incur as a result of such delivery whether on the public highway or elsewhere.
- 4.8. You shall indemnify us in respect of all losses, damages, costs or expenses ('losses') incurred as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such losses are due to our negligence.
- 4.9. We reserve the right to make delivery by separate instalments and to tender a separate invoice in respect of each instalment. Cancellation or termination of one instalment shall not entitle you to cancel any other instalment.
- 4.10. Any query about delivery shall be made within fourteen days of the date of invoice failing which the goods shall be deemed to have been delivered in accordance with your order.
- 4.11. An administration fee may be charged by us for providing proof of delivery.

## **5. Title and Risk**

- 5.1. The risk in the goods shall pass to you when the goods are delivered or deemed delivered in accordance with this contract.
- 5.2. Title to the goods shall not pass to you until you pay to us the price of the goods in full (in cleared funds) and all other sums due to us whether in respect of this contract or otherwise.

5.3. Until title passes to you:

5.3.1. you shall hold the goods as our fiduciary agent and bailee and store the goods (at no cost to us) in satisfactory condition, separately from any other goods and in such a way that they remain readily identifiable as our property.

5.3.2. you shall tell us immediately where the goods are situated and you shall not interfere with any identification marks labels batch numbers or serial numbers on the goods.

5.3.3. We agree that you may use or resell the goods as principal and not as our agents in the ordinary course of your business subject to the following express conditions:

5.3.3.1. that the entire proceeds of any sale or insurance proceeds received in respect of the goods are held in trust for us and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as our money;

5.3.3.2. that you notify your customer that we remain the legal owner of the goods until we receive payment in accordance with clause 5.2. and we reserve the right to label the goods accordingly;

5.3.3.3. that you will at our request and at your expense assign to us all rights you may have against your customer; and

5.3.3.4. that your right to use or sell the goods may be withdrawn by us on notice at any time and will automatically cease if you become insolvent (as defined in Clause 11)

5.3.4. If the goods are to come affixed to any land or building you must ensure that they are capable of removal without material injury to the land or building and you shall take all necessary steps to prevent title to the goods from passing to the owner or landlord of such land or building.

5.4. We shall be entitled to recover the price of the goods including VAT even though the property in any of the goods remains with us.

5.5. We shall be entitled at any time to recover any or all of the goods to which we have title and for that purpose we may with such transport as is necessary enter upon any premises occupied by you or to which you have access and where the goods may be or are believed to be situated.

**6. Installation and other services**

6.1 Where the goods supplied include services by us our agents or subcontractors, you shall (where necessary) allow us safe and reasonable access to the site within our normal working hours to carry out the services and shall ensure that the site is ready and suitable for the services to commence at the agreed time.

6.2 You shall provide all necessary consents, information and resources and a safe environment for us our agents and subcontractors to carry out the services.

6.3 The price quoted for the services assumes compliance with the conditions set out in 6.1 and 6.2 and if not we may vary the price.

- 6.4 In relation to any installation services, you are responsible for insuring the goods (whether before or after installation) and shall notify your insurers that we will be carrying out such services on site. You must protect any property which may be at risk during the installation.
- 6.5 All copyright and other intellectual property rights created, developed or used in the provision by us of design services remains our sole property.

## **7. Prices & additional charges**

- 7.1 Our quotations and prices are based on costs prevailing at the date when they are given or agreed. Unless we otherwise agree in writing we shall be entitled to adjust the price of the goods as at the time of delivery by such amount as may be necessary to cover any increase sustained by us after the date of acceptance of your order and any direct or indirect costs of making, obtaining, handling or supplying the goods.
- 7.2. Unless otherwise stated in writing, the price for the goods and/or services is exclusive of any value added tax which shall be due at the rate ruling at the tax point.
- 7.3. Prices quoted are applicable to the quantity, specification and information provided by you. If the order placed varies or delays are caused by your instructions or lack of instructions we shall be entitled to adjust the price.
- 7.4. We may make a charge for special packaging or returnable pallets. The charge for a returnable pallet will be refunded if the pallet is returned to us carriage paid and in good condition provided it is accompanied by the original invoice or advice note.
- 7.5. Unless otherwise agreed in writing we may charge you the cost of transporting the goods.

## **8. Payment**

- 8.1. For non credit account purchases, payment shall be made at the time the order is placed or, at our discretion on delivery or deemed delivery.
- 8.2. Payment for goods and/or services supplied on a credit account shall be due not later than the last day of the month following the month in which the goods or services are delivered or deemed delivered. You shall make all payments due in full without any deduction.
- 8.3. Time for payment shall be of the essence of the Contract. Your failure to comply with any provision as to time shall entitle us, without prejudice to any other right or remedy we may have, in our absolute discretion to:
- 8.3.1. treat the Contract as repudiated at any time after the time period specified has elapsed; and/or
- 8.3.2. recover from you all loss (including indirect and economic loss) damages costs and expenses (including legal expenses on an indemnity basis) we may incur or suffer by reason of your failure to comply with any such provision as to time.
- 8.4 In our sole discretion we may accept the payment of accounts by credit card subject to a 2% surcharge.

- 8.5. We reserve the right to refuse to execute any order or contract if the arrangements for payment are, or your credit is not, satisfactory to us and in our sole discretion we may require payment or security satisfactory to us for each consignment when it is available and before it is despatched in which case delivery will not be effected until we are in receipt of cleared funds or such security.
- 8.6. In the case of delivery of part only of your order you are liable to pay the full invoice price of all goods delivered or available for delivery.
- 8.7. You may not withhold payment of any invoice or other amount due to us by reason of any right of set off or counter claim which you may have or allege to have for any reason whatever.
- 8.8. We shall be entitled at all times to set off any debt or claim of whatever nature which we may have against you against any sums due from us to you.

## **9. Liability**

- 9.1. Nothing in these terms shall exclude or restrict our liability for death or personal injury resulting from our negligence or our liability for fraudulent misrepresentation or any other matter which it would be illegal for us to exclude.
- 9.2. In this clause 'Defect' shall mean the condition and/or any attribute of the goods and/or any condition or other circumstances which but for the effect of these terms would have entitled you to damages.
- 9.3. Subject to clause 9.1 we shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any loss damages costs or expenses of any kind whatsoever. Instead of liability in damages we undertake liability under clause 9.4 below
- 9.4. Where but for the effect of clause 9.3. of these Terms you would have been entitled to damages against us we shall not be liable to pay damages but subject to the conditions set out in clause 9.5. below we shall in our sole discretion either repair the goods at our own expense or supply replacement goods free of charge or refund all (or, where appropriate part) of the price paid for the relevant goods at the pro rata contract rate
- 9.5. We will not be liable under Clause 9.4. unless
  - 9.5.1. You give us written notice of the Defect within five normal working days of the date of delivery or completion of the services or, in the case of a Defect which is not discoverable on reasonable examination, within five normal working days of the time when you discover or ought to have discovered the defect (and in any event within six months from the date of delivery or completion of the services);
  - 9.5.2. We are given a reasonable opportunity after receiving notice to examine such goods and/or services and (if asked to do so by us) you return such goods to our place of business for the examination to take place there;
  - 9.5.3. You do not make any further use of the goods after giving us written notice of the Defect
  - 9.5.4. the Defect is not due to wilful damage, negligence (other than ours), fair wear and tear, abnormal working conditions, misuse, alteration or repair of such goods without our prior written consent, or the failure to follow British standard or industry instructions relevant to the goods, or incorrect storage, application,

movement, installation, commissioning, use or maintenance of the goods (other than by us); and

- 9.5.5. the Defect is not due to any act or omission of you, your agents or contractors.
- 9.6. Our entire liability for defective goods and services is set out in clauses 9.4 and 9.5 and in particular we shall not be responsible for either the cost of removing the goods from any place where they are installed or fixed (or making good the place after removal) or for the cost of installing or fixing any repaired or replacement goods unless due to our defective service.
- 9.7. If the goods are not manufactured by us or have been processed or milled by a third party, whether or not at our or your request, our liability in respect of any defect in workmanship or materials of the goods will be limited to such rights against the manufacturer or the third party as we may have in respect of the goods. We will on written request provide details of our rights against the manufacturer or third party and any other terms or conditions imposed by the manufacturer or the third party and so far as possible will on request assign to you any such rights.
- 9.8. If the goods are manufactured processed or milled by us to the design quantity measurement or specification of you then:
- 9.8.1. Subject to Clause 9.1 of these Terms we shall not be under any liability for any loss damages costs or expenses of any kind whatsoever or under Clause 9.4 of these Terms as the case may be except in the event of:
- (a) fraudulent misrepresentation;
  - (b) misrepresentation where the representation was made or confirmed in writing
  - (c) non-compliance with such design quantity measurement or specification; or
  - (d) breach of a written warranty by us that the goods are fit for that purpose
- 9.8.2. You will unconditionally fully and effectively indemnify us against all losses damages and costs on an indemnity basis and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim:-
- (a) for infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person; and/or
  - (b) arising from any such manufacturing processing or milling including but not limited to any Defect in the goods.
- This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to our negligence
- 9.9. Subject to clause 9.1 of these Terms we shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for:
- 9.9.1. any loss of profit, business, contracts, revenues or anticipated savings; or
- 9.9.2 any special, indirect or consequential damage of any nature whatsoever
- 9.10. You will unconditionally fully and effectively indemnify us against all losses damages and costs on an indemnity basis and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to our negligence

- 9.11. Without prejudice to any other provisions in these Terms in any event our total liability for any one claim or for the total of all claims arising from any one act of default on our part (whether arising from our negligence or otherwise) shall not exceed the purchase price of the goods the subject matter of any claim
- 9.12 Save as expressly set out in these Terms, all warranties and other terms implied by statute or common law (save for the term implied as to title) are, to the fullest extent permitted by law, excluded from the contract.

## **10. Cancellation and Returns**

- 10.1 We may, in our sole discretion, and on such terms as we specify, (including the imposition of a handling charge) accept or reject the cancellation of any contract or the return of any goods not required.
- 10.2 Where you are a “consumer” under a “distance contract” (both as defined in the Consumer Protection (Distance Selling) Regulations 2000) you may cancel a contract within seven working days after the date the goods are delivered. You must return the goods to the branch from which they were delivered or request us to collect the goods, at your cost. This term shall not apply to any goods specially obtained or made for you or which are liable to deteriorate or have a limited shelf life.

## **11. Non-Payment / insolvency**

- 11.1 ‘Insolvent’ means you becoming unable to pay your debts within the meaning of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986; the levying or the threat of execution or distress on any of your property, notice of intention to appoint or the appointment of a receiver or administrative receiver or administrator over all or any part of your property; a proposal for a voluntary arrangement or compromise between you and your creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for your winding-up (Company) or bankruptcy (Individual) or for an administration order in relation to you, if you suffer any analogous step or proceedings under foreign law or you ceasing to pay your debts in the ordinary course of business or ceasing or threatening to cease to carry on your business.
- 11.2. If you fail to pay any invoice or any sum due to us under any contract on the due date or you become insolvent or if there is a material change in your constitution or you commit a material breach of this contract and fail to remedy that breach or if we believe that one of the events described in clause 11.1 is likely to occur (whether or not any part of your account is subject to query) all sums outstanding between you and us shall become immediately due and payable and we shall be entitled to do any one or more of the following (without prejudice to any other right or remedy we may have):-
- 11.2.1. require payment in cleared funds in advance of further deliveries
  - 11.2.2. cancel or suspend any further deliveries to you under this or any other contract without liability on our part
  - 11.2.3. claim interest and compensation on the sums outstanding pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment is received after as well as before judgement
  - 11.2.4. without prejudice to the generality of Clause 5 of these Terms exercise any of our rights pursuant to that Clause; and/or

11.2.5. terminate this or any other contract with you without liability on our part

11.3. You shall reimburse our costs including legal costs on an indemnity basis which we incur in enforcing this contract including but not limited to recovery of any sums due. Such sums shall be in addition to statutory compensation payable.

## **12. Guarantees**

12.1. Where you are a limited company with a credit account, the unconditional and irrevocable guarantee for payment of all the financial obligations of you to us granted by the director(s) of the limited company in consideration of our opening and making available to you a credit account ("the Guarantee") shall be a continuing security and shall not be discharged by any intermediate settlement of the credit account.

12.2. The Guarantee shall enure for the benefit of us, our successors and assigns and can be assigned in whole or in part by us to our parent company and any subsidiary of our parent company without notice to you

12.3. Where two or more directors of a limited company have granted the Guarantee the obligation shall take effect as joint and several obligations and the Guarantee shall not be revoked or impaired as to any of the guarantors by the death, incapacity or insolvency of the other.

12.4. We may at our sole discretion, release or discharge any of the guarantors from their obligations under the Guarantee or accept any composition from or make any other arrangements with any of the guarantors without releasing or discharging the other(s) or without prejudicing or affecting our rights and remedies against the other.

## **13. Data Protection**

13.1. If you are an individual or a group of individuals, you agree that we may:

13.1.1. seek, hold and process any information obtained about you as a result of applications you have made to us for credit and/or in connection with this or any other contract or agreement you may have with us and/or as a result of any information given by you for the effective management and servicing of your account;

13.1.2. use this information for credit assessment purposes and to administer and operate the credit account granted to you and to monitor and analyse the conduct of that credit account and to assess your credit limit and for the effective management and servicing of your account;

13.2. We will not disclose any information we hold about you except to licensed credit reference agencies, other suppliers and creditors to help us and others make credit decisions, to help prevent or detect fraud or other crimes and to trace debtors; on a confidential basis to our agents and sub-contractors and to suppliers and relevant third parties in connection with the effective management and servicing of your account; to insurance companies for the purposes connected with insurance products that relate or might relate to your credit account or any claim or potential claim; to any person to whom we propose to transfer our rights and/or responsibilities under this contract and to the extent we are required or permitted to do so by law.

## **14. Health and Safety**

Information is available from us about the use of certain goods which if incorrectly used could give rise to health and safety risks. It is your responsibility to bring this information to the attention of the user of the goods and to take any steps or precautions having regard to the

goods as are necessary to preserve the health and safety of any person handling, using or disposing of them.

## **15. Waste**

You will be responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licences relating to such waste except where you are a consumer and it is our legal responsibility to do so. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this clause.

## **16. General**

- 16.1. Any notices given pursuant to or in relation to the contract shall be in writing and addressed to the party concerned at its principal place of business or last known address. Any notice shall be deemed delivered two days after posting or on the next working day after fax transmission.
- 16.2. We may defer the date of delivery, cancel the contract or reduce the volume of the goods and/or services ordered by you (without liability to you) if we are unable to deliver or supply due to any cause beyond our reasonable control (including the acts or omissions of our suppliers or sub contractors).
- 16.3. Failure or delay by us in enforcing any contract term shall not be construed as a waiver of any of our rights under the contract.
- 16.4. The waiver by us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 16.5. Termination of this contract shall not affect rights and obligations which have already accrued at the time of termination.
- 16.6. You shall not be entitled to assign or subcontract any of your rights or obligations under the contract.
- 16.7. Save for any member company of the Robert Price Group who shall be entitled to enforce any provision of the contract, no person who is not a party to the contract shall have a right to enforce any term of the contract which expressly or by implication confers a benefit on that person.
- 16.8. Any provision of the contract found to be invalid or unenforceable shall, to such extent, be deemed severable and the remaining provisions of the contract shall continue in full force and effect.
- 16.9. References to any statute statutory provision or regulation includes a reference to that statute, statutory provision or regulation as amended extended or re-enacted at the relevant time.
- 16.10. The headings in these terms are for convenience only and shall not affect their interpretation.
- 16.11. Any dispute or claim arising in connection with the contract shall be governed by English law and you agree to submit to the exclusive jurisdiction of the English courts.