

## TERMS AND CONDITIONS OF SALE – ROOFBASE LTD

These terms and conditions of sale set out the conditions on which ROOFBASE LTD (with registered company number 10429072 whose registered office address is at Holland House, Valley Way, Rockingham Road, Market Harborough, Leicestershire, United Kingdom, LE16 7PS) ("**we, us, our**") will supply goods to you.

### 1. DEFINITIONS AND INTERPRETATION

**1.1.** In these Terms, the following definitions apply:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England

"**Commencement Date**" has the meaning set out in clause 2.2

"**Contract**" means the contract between you and us for the sale and purchase of the Goods in accordance with these Terms

"**Delivery Location**" has the meaning set out in clause 4.1

"**Force Majeure Event**" has the meaning given to it in clause 10.1

"**Goods**" means the goods (or any part of them) set out in your Order

"**Order**" means either: your order for the supply of Goods as set out in your purchase order form or otherwise in writing to us; your oral offer to us, to purchase Goods, in the simultaneous presence of you (or your authorised representative) and us (or our authorised representative) at our Premises; or your oral offer to us, to purchase Goods, made over the telephone to us (or our authorised representative) and "**Ordered**" shall be construed accordingly

"**Premises**" means a store, branch or yard (as applicable) owned or operated by us

"**Terms**" means these terms and conditions as amended from time to time in accordance with clause 11.7

"**we, us, our**" has the meaning given at the top of these Terms

"**you**" means the person or firm who purchases the Goods from us.

**1.2.** In these Terms, the following rules apply:

**1.2.1.** words in the singular include the plural and vice versa and words in one gender include any other gender;

**1.2.2.** a reference to:

(a) a "**person**" includes any individual (and their personal representatives), firm, body corporate, association, partnership, government or state (whether or not having a separate legal personality);

(b) clauses are to clauses of these Terms;

(c) any provision of these Terms is to that provision as amended; and

(d) statutes and statutory provisions shall be construed as amended or replaced and as including any subordinate legislation made under them in any such case from time to time.

**1.2.3.** Except where expressly stated otherwise, no provision of these Terms shall govern or limit the extent or application of any other provision.

**1.2.4.** The headings in these Terms are inserted for convenience only and shall not affect its construction.

### 2. BASIS OF CONTRACT

**2.1.** Your Order constitutes an offer to purchase Goods from us in accordance with these Terms.

**2.2.** Your Order shall only be deemed accepted when we issue written acceptance of it or, in the case of an Order which is an oral offer to purchase Goods made at our Premises, when we process that Order at our Premises or, in the case of an Order which is an oral offer to purchase Goods made over the telephone, when our authorised representative confirms to you that your Order has been accepted, at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

**2.3.** Unless otherwise agreed in writing, Goods Ordered in error can only be returned to us if they are of merchantable quality. We shall not be obliged to accept the return of Goods Ordered in error. A restocking charge of 20% of the price of those Goods will apply and shall be payable by you, on demand, for any Goods Ordered in error where we accept the return of those Goods.

**2.4.** The Contract constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in the Contract.

- 2.5.** Any samples, drawings, descriptive matter, particulars of weights, dimensions or advertising issued by us and any descriptions of the Goods contained in our advertising materials, price lists and/or at our Premises are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6.** These Terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7.** Any quotation given by us shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

### **3. GOODS**

- 3.1.** You acknowledge that we do not manufacture the Goods and that we act as a re-seller of those Goods.
- 3.2.** The manufacturer of the Goods may make available a description of some or all of the Goods on its website, in its catalogues or other advertising materials. We have no control over these descriptions therefore we shall not be liable to you in connection with such descriptions.

### **4. DELIVERY OF GOODS**

- 4.1.** We shall either:

- 4.1.1.** deliver the Goods to the location set out in your Order or such other location as we may agree at any time after we notify you that the Goods are ready for delivery; or
- 4.1.2.** make the Goods available for collection by you at our Premises, the agreed location pursuant to clause 4.1.1 or clause 4.1.2 shall be referred to as the "**Delivery Location**".

- 4.2.** If the Goods are made available for collection by you from our Premises in accordance with clause

- 4.2.1** you shall collect the Goods as soon as possible from the date we notify you that the Goods are ready for collection.

- 4.3.** Delivery of the Goods shall be completed:

- 4.3.1.** on the Goods arrival at the Delivery Location, where we are delivering the Goods to you; or
- 4.3.2.** when we make the Goods available for collection by you at the Delivery Location, where you are collecting the Goods.

- 4.4.** Any dates quoted for delivery of the Goods are approximate only and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or as a result of a delay in performance or delivery by our manufacturers, suppliers or sub-contractors.

- 4.5.** If we fail to deliver the Goods or make the Goods available for collection (as applicable), our liability shall be limited to the reasonable costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods or make the Goods available for collection (as applicable) to the extent that such failure is caused by a Force Majeure Event, your failure to provide us with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods and/or non-performance or a failure to deliver by our manufacturers, suppliers or sub-contractors.

- 4.6.** If you fail to accept or take delivery of the Goods or collect the Goods (as applicable) then:

- 4.6.1.** we may store the Goods for what we determine to be a reasonable period of time until delivery or collection takes place and we may charge you for all related costs and expenses (including insurance); or

- 4.6.2.** unless you have paid for the Goods in full (in cash or in cleared funds), we may resell or otherwise dispose of part or all of the Goods after what we deem to be a reasonable period of time, except where such failure or delay is caused by a Force Majeure Event or by our failure to comply with our obligations under the Contract in respect of the Goods.

- 4.7.** You shall not be entitled to reject the Goods if we deliver or make available for collection (as applicable) up to and including 5 per cent more than the quantity of Goods Ordered, but a pro-rata adjustment shall be made to your Order invoice on receipt of notice from you that the wrong quantity of Goods was delivered or made available for collection (as applicable). If we deliver or make available for collection (as applicable) more than 5 per cent of the quantity of Goods Ordered, you shall only be entitled to reject the amount delivered or made available for collection (as applicable) which is 5% more than the quantity of Goods Ordered.

**4.8.** You shall not be entitled to reject the Goods if we deliver or make available for collection (as applicable) less than the quantity of Goods Ordered, but a pro-rata adjustment shall be made to your Order invoice on receipt of notice from you that the wrong quantity of Goods was delivered or made available for collection (as applicable).

**4.9.** Where we are delivering the Goods:

**4.9.1.** we may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment;

**4.9.2.** you shall provide a safe and appropriate means of access to the Delivery Location. Our agents, subcontractors or other representatives shall determine the safety and suitability of the means of access to the Delivery Location. Delivery of the Goods shall not be made to the Delivery Location where the safety and suitability of the means of access to the Delivery Location is in their opinion unsafe and/or unsuitable or delivery may only be made to the nearest location to the Delivery Location which is deemed safe or suitable. You shall reimburse us for all liabilities, costs, expenses, damages and losses suffered or incurred by us resulting from or in connection with access to the Delivery Location being determined to be unsafe and/or unsuitable;

**4.9.3.** where we notify you, prior to delivery, that a time constraint applies to the offloading of the Goods at the Delivery Location, you shall comply with such time constraint or we shall be entitled to charge you any additional costs we incur should this time constraint be exceeded as a result of the acts or omissions of you and/or your employees, agents, representatives or sub-contractors;

**4.9.4.** you shall procure that we, our agents, subcontractors or other representatives will be given free and uninterrupted access to the Delivery Location in connection with the delivery of the Goods;

**4.9.5.** you shall promptly inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at the Delivery Location prior to the delivery of the Goods; and

**4.9.6.** you shall be responsible for offloading the Goods from our delivery vehicle at the Delivery Location including all labour and equipment required in connection with such offloading and all associated costs.

**4.10.** It is your responsibility to store, stack and protect all Goods in accordance with relevant recommended practice after delivery or collection of those Goods (as applicable).

## **5. QUALITY OF GOODS**

**5.1.** We warrant that on delivery or the date the Goods are made available for collection (as applicable) the Goods shall conform in all material respects with their description.

**5.2.** If the Goods come with a third party supplier's or third party manufacturer's warranty, we will use commercially reasonable endeavours to transfer the benefit of the supplier's or manufacturer's warranty to you where we are able to do so.

**5.3.** Subject to clause 5.4, if:

**5.3.1.** you give notice to us as soon as possible and by no later than 10 Business Days of the date you discover that some or all of the Goods have a material defect in design, material or workmanship;

**5.3.2.** we are given a reasonable opportunity of examining such Goods;

**5.3.3.** you return the Goods to our Premises (if you are asked to do so) at your cost; and

**5.3.4.** after conducting an examination, we determine that some or all of the Goods have a material defect in design, material or workmanship, we shall, at our option, replace the defective Goods or refund the price of the defective Goods in full.

**5.4.** We shall not be obliged to replace or refund the price for defective Goods pursuant to clause 5.3 if:

**5.4.1.** you make any further use of such Goods after giving a notice in accordance with clause **5.3.1**;

**5.4.2.** the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

**5.4.3.** you alter or repair such Goods without our written consent; or

**5.4.4.** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

**5.5.** Except as provided in this clause 5, we shall have no liability to you in respect of defective Goods.

**5.6.** These Terms shall apply to any replacement Goods supplied by us under clause 5.3.

## **6. TITLE AND RISK**

**6.1.** The risk in the Goods shall pass to you on the arrival of our delivery vehicle at the Delivery Location or at the time we notify you that the Goods are available for collection (as applicable).

**6.2.** Title to the Goods shall not pass to you until the earlier of:

**6.2.1.** payment being received by us in full (in cash or cleared funds) for the Goods and any other goods that we have supplied to you in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums;

**6.2.2.** you reselling the Goods, in which case title to the Goods shall pass to you at the time specified in clause 6.4; or

**6.2.3.** you irrevocably incorporating the Goods into another product or the Goods becoming a permanent fixture in your premises or your customer's premises.

**6.3.** Until title to the Goods has passed to you, you shall:

**6.3.1.** store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;

**6.3.2.** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

**6.3.3.** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery or collection (as applicable);

**6.3.4.** notify us immediately if you become subject to any of the events listed in clause 9.1.2 to 9.1.5; and

**6.3.5.** give us such information relating to the Goods as we may require from time to time.

**6.4.** Subject to clause 6.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:

**6.4.1.** you do so as principal and not as our agent; and

**6.4.2.** title to the Goods shall pass from us to you immediately before the time at which the resale by you occurs.

**6.5.** If before title to the Goods passes to you, you become subject to any of the events listed in clause 9.1.2 to clause 9.1.5 then without limiting any other right or remedy we may have:

**6.5.1.** your right to resell Goods or use them in the ordinary course of your business ceases immediately; and

**6.5.2.** we may at any time:

**6.5.2.1.** require you to deliver up all Goods in your possession which have not been resold, irrevocably incorporated into another product or have become a permanent fixture in your premises or your customer's premises; and

**6.5.2.2.** if you fail to do so promptly, enter any of your premises where the Goods are stored in order to recover them. Where the Goods are stored at the premises of any third parties, you agree to procure for us the rights to enter their premises to recover the Goods on the terms of this clause 6.5.

## **7. CHARGES AND PAYMENT**

**7.1.** The price for the Goods shall be the price we quoted to you, or, if no price is quoted, the price set out in our published price list as at the date your Order is accepted by us. The price of the Goods may or may not include delivery costs and/or the costs and charges of packaging and insurance. Whether some or all of these costs are included in the price of the Goods will be determined by us, and notified to you, prior to you paying us the price for such Goods (or prior to any other time that you and we agree). Where these costs are payable, they shall be paid by you when you pay for the Goods.

**7.2.** Where we are delivering the Goods, we may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

**7.2.1.** any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

**7.2.2.** any request by you to change the delivery date(s), Delivery Location, quantities or types of Goods Ordered; or

**7.2.3.** any delay caused by any of your instructions in respect of the Goods or your failure to give us adequate or accurate information or instructions in respect of the Goods.

**7.3.** Subject to clause 7.4, you shall pay for the Goods immediately upon our acceptance of your Order for the Goods in accordance with clause 2.2. We accept payment by a number of approved credit and debit cards. Details of the approved credit and debit cards we accept will be provided to you upon request.

**7.4.** We may at our sole discretion set up credit accounts with you subject to prior satisfactory credit references being obtained. If a credit account is opened, unless otherwise agreed by us in writing, the price of the Goods will be due and payable by you on the last Business Day of the month following the month in which the Goods are delivered or collected by you (as applicable).

**7.5.** Time of payment is of the essence.

**7.6.** All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

**7.7.** If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

**7.8.** You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

## **8. LIMITATION OF LIABILITY**

### **YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**8.1.** Nothing in these Terms shall limit or exclude our liability for:

**8.1.1.** death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;

**8.1.2.** fraud or fraudulent misrepresentation; or

**8.1.3.** any other liability which cannot be excluded by law.

**8.2.** Subject to clause 8.1:

**8.2.1.** we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;

**8.2.2.** our liability in respect of damage to your property, whether arising as a result of our negligence, breach of statutory duty, or otherwise, shall not exceed £5 million for any one occurrence; and

**8.2.3.** our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the price of the Goods.

**8.3.** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are to the fullest extent permitted by law excluded from the Contract.

## **9. TERMINATION**

**9.1.** Without limiting our other rights or remedies, we may terminate this Contract with immediate effect by giving written notice to you if:

**9.1.1.** you commit a material breach of any term of the Contract and (if such a breach is remediable) you fail to remedy that breach within 10 Business Days of you being notified in writing to do so;

**9.1.2.** you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

**9.1.3.** you are declared bankrupt or make any arrangement with or for the benefit of your creditors or you have a county court administration order made against you under the County Court Act 1984 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

**9.1.4.** you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;

**9.1.5.** your financial position deteriorates to such an extent that in our opinion, your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy; or

**9.1.6.** you fail to accept or take delivery of the Goods or collect the Goods (as applicable) within what we determine to be a reasonable period of time from the date we notify you that the Goods are available for delivery or collection (as applicable).

**9.2.** Without limiting our other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between us and you if you become subject to any of the events listed in clause 9.1.1 to clause 9.1.5, or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.

**9.3.** Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract on the due date for payment and remain in default not less than 14 days after being notified in writing to make such payment.

**9.4.** On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest.

**9.5.** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

**9.6.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **10. FORCE MAJEURE**

**10.1.** For the purposes of this Contract, "**Force Majeure Event**" means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving our workforce), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default or non-performance of our manufacturers, suppliers or subcontractors.

**10.2.** We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of a Force Majeure Event. For the avoidance of doubt, a Force Majeure Event shall not release you from your obligation to pay the price for the Goods Ordered.

**10.3.** If the Force Majeure Event prevents us from providing any of the Goods for more than 4 weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

## **11. GENERAL**

### **11.1. Assignment and other dealings.**

**11.1.1.** We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party.

**11.1.2.** You shall not, without our prior written consent, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of your rights or obligations under the Contract.

### **11.2. Notices.**

**11.2.1.** Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.

**11.2.2.** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by or e-mail, one Business Day after transmission.

**11.2.3.** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **11.3. Severance.**

**11.3.1.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or partprovision shall be deemed deleted. Any modification to or deletion of a provision or partprovision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**11.3.2.** If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**11.4. Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**11.5. No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute a party the agent of the other party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**11.6. Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

**11.7. Variation.** Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by us.

**11.8. Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**11.9. Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).