



F.J. Booth Construction Limited

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FJ Booth Construction Ltd – Standard Terms and Conditions of Sale

Interpretation

'Seller' and 'Company' mean F J Booth Construction Limited.

'Goods' includes all goods and services covered in the Contract or Order.

'Buyer' and 'Customer' mean any customer for sales of goods.

'Contract' means any agreement of which these conditions form part.

Reference to the neuter include the masculine and feminine and to the singular include the plural and vice versa.

Terms

These conditions together with any particular conditions also expressed by the Seller in writing to apply shall govern any Contract for Goods between the Buyer and the Seller. No conditions of the Buyer shall have any effect unless accepted by the Seller in writing. No assignment of the Contract by the Buyer is permissible without the prior written consent of the Seller.

Formation

The company's quotation does not form an offer. An order from the Customer based on the Company's quotation shall constitute an offer. An acknowledgement of that order sent by the Company by normal post shall constitute the acceptance of that offer, or alternatively, the signing of a formal subcontract by both parties shall form a contract. All samples, leaflets, brochures, price lists, performance details or other details submitted by the Company do not form part of the contract unless expressly stated.

Delivery Unloading and Storage

Any times stated by the company for delivery, despatch or completion, either within quotation or by any other means are not of the essence to the contract, as to supply or installation. All times and dates are given for general information only and the company shall not be liable for any loss or damage whatsoever sustained by the customer.

The above shall not entitle the Buyer to repudiate the Contract with regard to any time delay.

The Seller shall not be liable for any shortage of delivery, damage, or defects unless the Buyer has notified the Seller in writing within three days of the receipt of the goods and the Seller has been afforded a reasonable opportunity of inspecting them.

Terms of Payment

Unless expressly stated within the company's quotation, all prices are strictly nett of all discounts, VAT and such like.

Payment shall be made in full and received by the Seller by the 30th day from the date of the Seller's invoice without any discounts or other reduction and without deferment on account of disputes or cross claims. Should the customer default on full payment for whatever reason on the due date for any sum without prejudice to any other right the company may have, the company shall be entitled to be paid interest, accruing from the due date at 5% per month until actual date of payment.

Price

Unless otherwise agreed all prices quoted are based upon the prices and costs of raw materials, labour, transport and overhead expenses at the date of quotation and may be varied by the Seller to correspond with any increase in such prices and costs which may occur at any time before the order, or any part of its completion. Any alteration or variation in the design, quantity, weight, complexity or specifications and any suspension of work on the Buyer's instructions or the Buyer's failure to provide instructions will involve adjustment to the price if the cost of manufacture and delivery are thereby increased.

Set-Off

The Buyer shall not be entitled to withhold payment of any amount payable under the contract to the Seller because of any disputed claim for any reason whatsoever.

Cancellation

The buyer may not cancel or vary the contract in whole or part unless written instructions are received by the company prior to the date of acceptance of the offer. In the instance that cancellation or variation is received after the date of acceptance, the full contract price is payable.

The Seller may cancel or suspend the Contract in whole or in part if the Buyer fails in any obligation to the Seller but any cancellation or suspension by the Seller shall be without prejudice to the Seller's rights.

Liability

Only where the Seller is responsible for the design of the works shall he be liable for damage or personal injury resulting from the defect in the design. Where the Buyer or third party is responsible for the design nothing in this Contract shall impose any liability upon the Seller for damage, personal injury or consequential loss.

Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other terms, or any duty at common law, or under the express terms of the contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Customer, and the entire liability of the Company under or in connection with the contract shall not exceed the price of the goods, except as expressly provided in these Conditions.

The Buyer agrees to indemnify the Seller against all losses, damage, injury, costs and expenses of whatever nature suffered by the Seller to the extent that the same are caused by or related to designs, drawings or specifications given to the Seller by the Buyer in respect of the Goods produced by the Seller for the Buyer or defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller into the Goods produced by the Seller for the Buyer or the improper incorporation, assembly, use, processing, storage or handling of the Goods by the Buyer.

Infringement of Patents

The Buyer shall indemnify and keep the Seller indemnified against all damages, penalties, costs, claims and liabilities in respect of the infringement of any patent, right or registered design, copyright or trademark resulting directly or indirectly from the carrying out of work in accordance with the Buyer's specifications or instructions.

Galvanising

Where the Buyer specifies galvanising by hot dipping the Seller will not accept any responsibility for any distortion or other damage caused by the process. Where this treatment is specified the Seller will require the Buyer to accept the products prior to despatch for galvanising.

Fabrication Standards

Fabrication will unless otherwise agreed in writing be to BS 5950 Part 2 or to N554.

Retention of Title

Notwithstanding delivery and the passing of risk, title in the goods shall not pass to the Customer and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the purchase price (together with accrued interest) and all other amounts owed by the Customer in respect of any other contracts for the sale of goods. Until title of the goods has passed, the Customer shall hold the goods in a fiduciary capacity and shall

i) Not part with possession of the goods

ii) Take proper care of the goods, keep them properly insured and take all reasonable steps to prevent any damage to or deteriorate of them

iii) Keep the goods free from any charge, lien or encumbrance and store the goods in such a way as to show clearly that they belong to the Company:

iv) Give the Company such information relating to the goods as the Company may require.

The Customer hereby grants an irrevocable right and license to the Company and its agents to enter upon any of the Customer's premises, with or without vehicles and equipment, for the purpose of inspecting and/or repossessing goods to which it has retained title. This license shall continue to subsist notwithstanding the termination, for any reason, of any contract which is subject to these conditions and is without prejudice to any accrued rights of the Company under the contract, or otherwise.

The Customer is licensed to process the goods to which the Company has retained title and/or to incorporate them in or with any other products, subject to the express condition that the new product/s or any other chattel whatsoever containing any other part of the goods shall become the property of the Company and shall be separately stored and marked by the Customer to show clearly that they belong to the Company.

The Company shall hold the new product/s as trustee for itself and the Customer and the Company's interest as beneficiary of the trust shall be equal to the total of all amounts owing by the Customer to the Company under any contract.

Notwithstanding the provisions of this clause, the Company shall be entitled to bring action for the price of the goods in the event of non-payment by the due date, even though property in the goods has not passed to the Customer and/or shall have the right by notice to the Customer at any time after delivery to pass property in the goods to the Customer as from the date of such notice.

Documentation and Specification

The Seller reserves the right to alter any and amend the specifications shown in any of the Seller's literature without notice at any time with the aim of improving the Goods. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirement or where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

The Seller's sales literature shall have no contractual meaning or effect and no representations shall be made thereby save as otherwise agreed by the Seller in writing.

Insolvency of Buyer

This clause applies if:

The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or

An encumbrancer takes possession or a receiver is appointed or any of the property or assets of the Buyer or

The Buyer ceases, threatens to cease, to carry out business or

The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

If this clause applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

Subcontract

The Company reserves the right to subcontract all or any part of the contract, at its sole discretion.

Installation Work

The price for the work involving installation is based, unless otherwise stated, on the assumption that the work can be carried out in the course of one continuous visit to site and during normal weekday hours without interruption. The Company is entitled to full payment of costs incurred as the result of it being prevented for whatever reason from proceeding uninterrupted with the installation including (but not limited to) travelling costs and costs incurred for evening and weekday working.

Compliance

The Customer shall make all arrangements to comply with and satisfy himself that the use and performance of the installation and equipment will comply with every applicable Statute, Bye Law or other lawful requirement of the Government, Local Authority or other Competent Authority or Body, including the obtaining of all necessary licences, permits or other consents (including those required from any third party) which are or may be required in connection with the performance of the contract and the installation and use of the equipment, including ensuring that the building/structure is able to accept the weight of the equipment to be installed, unless otherwise stated.

Law and Forum

The governing law of this Contract shall be English and the Buyer and the Seller agree to submit to the jurisdiction of the English Courts.