

RUSHMON HOMES – STANDARD TERMS OF PURCHASE

1. INTERPRETATION

- 1.1 In these standard terms of purchase ("Terms"):
- "Contract" means whichever Group Company issues the Order; means the agreement between the Company and the Supplier for the supply of the Goods set out in the Order and any Specification;
- "Delivery" means the passing of the Goods over the tailgate of the Supplier's carrier's vehicle, at the Delivery Address;
- "Delivery Address" means the address for the delivery stated in the Order;
- "Equipment" means all tools, apparatus, parts, components or other equipment or goods supplied by the Company to the Supplier in connection with the Contract or obtained or created by the Supplier at the Company's cost;
- "Group Company" means Ruslmon Limited or any subsidiary of that company;
- "Goods" means the goods listed in the Order and any spare parts for such Goods subsequently supplied and all necessary manuals and operating information relating to them;
- "liability in relation to" means liabilities, losses, damages, expenses (including without limitation legal costs on a full indemnity basis and value added tax ("VAT") and other applicable taxation), claims, proceedings and demands whatsoever arising directly or indirectly out of or in connection with;
- "Materials" means all Specifications, designs, drawings, models, computer programs, know-how and information supplied by the Company or generated by the Supplier at the Company's cost or to the order of the Company in connection with the Contract or obtained or created by the Supplier for or in the course of the Contract;
- "Order" means the purchase order form issued by the Company to the Supplier;
- "Price" means the total price of the Goods as stated in the Order;
- "Specification" means any applicable documents, designs, data or other information relating to the Goods supplied by the Company to the Supplier or agreed to in writing by the Company;
- "Supplier" means the Supplier of the Goods as stated in the Order;
- "Writing" includes electronic, telex, cable and facsimile transmission
- 1.2 Subject to the Contract provisions, phrases defined in the ICC's Incoterms 2000 shall have the meaning and import the obligations contained therein
- 1.3 Any contract provision wholly or partly invalid or unenforceable for any purpose shall be severed for that purpose (subject to any necessary consequential modifications), shall remain valid and enforceable for all other purposes and shall not affect the remainder of the Contract
- 1.4 The Contract shall comprise solely these Terms, the Order and any Specification. Any variation of the terms of the Contract shall be agreed in Writing by the Company and if any conflict exists between the terms of the Contract and any terms as so varied, the latter shall prevail. Despatch of the Goods shall be deemed conclusive evidence of the Supplier's acceptance of these Terms

2. SPECIFICATION AND TESTING

- 2.1 The quantity, quality and description of the Goods shall be as specified in the Order and any Specification. If the Company has supplied the Specification, the Company from time to time may vary the Specification by notice to the Supplier and the Supplier shall comply with such variations provided such notice is given a reasonable time before the agreed Delivery date
- 2.2 The Company may, by notice in writing not less than 3 days before Delivery, vary the number of units of Goods under any Order (and the Price shall be varied accordingly)
- 2.3 The Company may inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch and may use the Supplier's facilities for the purpose
- 2.4 Within 14 days after inspection, testing or review the Company may inform the Supplier with the relevant details that it reasonably considers the Goods will not comply with the Contract and the Supplier shall take such steps as are necessary to ensure compliance
- 2.5 The Supplier shall mark any Goods in accordance with any applicable laws, regulations and requirements of the Company or its carrier, and shall properly pack, label and secure them to ensure they reach their destination undamaged
- 2.6 The Supplier warrants that the Goods, their importation, use, resale shall not infringe any intellectual property rights and it shall indemnify and keep indemnified the Company against all liability in relation to any breach of such warranty and against any alleged infringement of third party intellectual property rights of any kind except to the extent that such breach or claim results from compliance with a Specification
- 2.7 For Customs & Excise purposes and to allow the Company to obtain a refund of any import duty paid, the Supplier shall provide written acknowledgement of any returned Goods and shall state the refund, replacement or relevant repair action

3. PRICES

- 3.1 Unless otherwise stated the Price shall be:
- (a) exclusive of any applicable VAT (which the Company will pay upon and subject to receipt of a relevant VAT Invoice); and
- (b) inclusive of all charges for packaging, shipping, carriage, and delivery to the Delivery Address and any sales, excise or other duties, taxes, levies except VAT

4. PAYMENT

- 4.1 All order documentation and invoices shall quote the Company's Order reference and part numbers where applicable
- 4.2 The Company shall pay the Price within thirty days after the end of the month in which the Company receives a proper invoice
- 4.3 The Company may set off against the Price (including any VAT payable) any sums owed to any Group Company by the Supplier on any account whatsoever or which are the subject of a bona fide dispute and may withhold payment pending compliance in full by the Supplier with its obligations under the Contract or under any contract with a Group Company
5. DELIVERY
- 5.1 Delivery shall be to the Delivery Address during the Company's business hours or on the date or within the period stated on the Order. Upon Delivery the Supplier shall obtain a receipt signed by an authorised member of the Company's staff
- 5.2 The time of Delivery is of the essence of the Contract
- 5.3 If so required by the Company, the Supplier shall provide a Certificate of Conformity with Specification with each Delivery and failure to supply such a Certificate when requested will entitle the Company to reject the Delivery in whole or in part
- 5.4 A packing note displayed prominently and stating the Company's Order reference and part numbers where applicable and the Goods enclosed must accompany each delivery
- 5.5 If Delivery is to take place by instalments, each instalment shall be treated as a single contract and not severable
- 5.6 The Company shall not be deemed to have accepted any Goods until it has had a reasonable opportunity after Delivery to review or inspect such Goods or until any latent defect in them has become apparent (whichever occurs later)
- 5.7 Unless otherwise stated in the Order (in which case the Supplier will pay all costs of return) the Company may return or dispose of any packaging materials
- 5.8 Without prejudice to any other remedies available to the Company, if Delivery does not take place when due, the Price shall be reduced by way of liquidated damages for delay by 0.1% of the Price per day up to a maximum of 5% of the Price (and the Supplier shall repay any amount overpaid)

6. PROPERTY AND RISK

- 6.1 Risk of damage to or loss of the Goods or, if delivered in instalments, that instalment or part delivered shall pass to the Company upon Delivery
- 6.2 Subject to sub-clause 6.3 the Company shall become the owner of the Goods or any instalment or part of the Goods upon the earlier of payment for such Goods or instalment or part of such Goods, or delivery of such Goods, instalment or part of Goods to a customer of the Company, or the conversion of such Goods, instalment or part of their incorporation into work in progress of the Company
- 6.3 When the Company has paid at least half of the Price it shall be the owner of all part-finished work, components, sub-assemblies and materials acquired or produced for or appropriated to the Contract; thereafter all such items shall become property of the Company upon being acquired or produced for or appropriated to the Contract
- 6.4 All Equipment and Materials shall be and remain the sole property of the Company, shall not be used by the Supplier except for performance of the Contract and shall be held by the Supplier at its sole risk
- 6.5 The Supplier shall keep all items which are the property of the Company clearly segregated from other items and identified as such, and shall comply with the Company's reasonable instructions in this respect
- 6.6 Upon termination of the Contract or earlier at the Company's request after they are no longer required to perform the Contract, the Supplier shall deliver the Equipment and Materials to the Company together with all copies, notes and memoranda of the Materials and shall delete any Materials held by it on computer hard disk. The Company may enter the Supplier's premises to take possession of, remove or delete such items if the Supplier fails to comply and the Supplier grants to the Company an irrevocable licence to enter onto any such premises for this purpose

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 7.1 The Supplier acknowledges that all Materials are confidential and agrees to keep them confidential and not to disclose, allow to be disclosed or use any of the same except as necessary for the proper performance of the Contract
- 7.2 If in the course or for the purposes of the Contract the Supplier (by its employees or contractors) generates any writings, drawings, software or other work in which copyright may subsist, or makes any invention, discovery or improvement ("Work"):
- (a) the Supplier shall promptly disclose any Work to the Company and give to it all information which is relevant or reasonably requested by the Company;
- (b) all intellectual property rights in the Work shall be deemed a work for hire and be the sole property of the Company;
- (c) the Supplier hereby assigns any and all intellectual property rights in the Work to the Company, shall sign and deliver such assignments and other instruments as may reasonably be required by the Company to give effect to its rights and at the expense of the Company shall take such other steps as the Company requests to register or otherwise protect its rights;
- (d) the Supplier hereby waives any moral or other similar or analogous rights it may have in respect of the Work

- 7.3 The Supplier shall give and procure that its employees and suppliers give to the Company such confidentiality undertakings as the Company may from time to time reasonably request

8. WARRANTIES AND LIABILITY

- 8.1 The Supplier warrants to the Company that the Goods, their manufacture, packaging and delivery:
- (a) will be of satisfactory quality and fit for any purpose held out by the Supplier or known to it as a requirement of the Company when the Order is placed;
- (b) will be free from defects in design, material and workmanship;
- (c) will correspond with any relevant specification or sample;
- (d) will comply with all applicable requirements and regulations of law or any public authority or trade or professional body relating to the manufacture and sale of the Goods; and
- (e) will comply with all specific written representations, warranties and statements made or given by the Supplier, its servants or agents
- 8.2 The Supplier shall indemnify and keep indemnified the Company against all liability in relation to:
- (a) death, injury or damage to person or property to the extent caused (directly or indirectly) by any defect in the Goods;
- (b) all cost incurred by the Company in recalling or rectifying any product supplied by it if such recall or rectification was reasonably considered expedient by the Company by reason of an actual or suspected defect in the Goods;
- (c) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods
- 8.3 The Supplier shall not be liable under this clause 8 in respect of any defect in the Goods to the extent that it is caused by compliance with a Specification unless the Supplier ought reasonably to have foreseen that the defect would have arisen from the same and did not inform the Company in Writing a reasonable time before Delivery

9. PROVISION OF INFORMATION AND SPARES

- 9.1 The Supplier shall deliver to the Company in good time for its optimum use (not being later than Delivery) all information relating to the Goods, which might reasonably be expected to be required by the Company, including without limitation:
- (a) information necessary to receive, assess and accept the Goods;
- (b) information necessary to ensure effective, safe and efficient use of the Goods;
- (c) effective warnings as to any hazards relating to the Goods;
- (d) marking sufficient to identify the Goods in the Supplier's production sequence
- 9.2 Upon discovering or suspecting any defect in the Goods the Supplier shall immediately inform the Company by facsimile transmission or urgent courier delivery of the defect with all information reasonably necessary to enable the Company to decide upon appropriate action (including without limitation the nature of the defect and its likely consequences, the likely frequency of occurrence of the defect and the identity - by batch identification number and date - of the Goods) and shall co-operate in all action which the Company decides upon
- 9.3 The Supplier shall provide the Company with such information relating to the Contract, Delivery and the Goods as the Company may from time to time reasonably request
- 9.4 The Supplier shall maintain and retain for a period of at least six years from Delivery all records and information necessary to enable it fully to perform its obligations under this clause 9 and shall make them available for inspection by the Company upon request
- 9.5 The Supplier shall supply on reasonable terms spare parts for the Goods when ordered by the Company at any time during the reasonable life span of the Goods not being less than 8 years after the last delivery of such Goods to the Company

10. TERMINATION

- 10.1 At any time prior to Delivery, the Company may cancel the Order in respect of all or part of the Goods by notice to the Supplier. The Company shall incur no liability in respect of such cancellation save where it relates to Goods unique to the Order and made specifically pursuant to it and for which the Supplier is unable to find an alternative purchaser within a reasonable time. In this event such liability shall be limited to payment of the lesser of:
- (a) the Price minus an amount in respect of all taxes, duties and charges for packaging, shipping, carriage and Delivery; and
- (b) the costs incurred by the Supplier in respect of the Order to the date of cancellation
- 10.2 Subject to applicable insolvency rules and notwithstanding agreement between the parties, either party may at any time terminate the Contract forthwith by notice in writing to the other ("the Defaulting Party") and without liability if:
- (a) the Defaulting Party is in breach of any obligation in these Terms or in any contract with a Group Company and has failed to remedy such breach within 30 days of notice in writing to do so;
- (b) the Defaulting Party makes voluntary arrangements with its creditors (within the meaning of the Insolvency Act 1986 or any equivalent or analogous legislation) or becomes subject to an administration order or goes into liquidation (otherwise than for amalgamation or reconstruction); or
- (c) an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Defaulting Party; or
- (d) there is filed in respect of the Defaulting Party a petition in bankruptcy or for reorganisation or other relief from creditors; or
- (e) the Defaulting Party ceases or threatens to cease to carry on business; or
- (f) the other party reasonably apprehends that any of the events mentioned above is about to occur in relation to the Defaulting Party; or
- (g) anything similar or analogous happens to the Defaulting Party under the laws or statutes of any applicable country or state
- 10.3 The Company may terminate the Contract by notice at any time without liability if direct or indirect control of the Supplier passes from the present shareholders, owners or controllers to other persons whom the Company in its absolute discretion regards as unsuitable
- 10.4 Upon termination of the Contract whatsoever arising (unless by reason of the sole default of the Company or at the Company's instance without cause or by reason of one of events in 10.2(a) to (g) above occurring in relation to the Company) the following provisions shall have effect:
- (a) property in and Goods already produced but undelivered or in the process of manufacture and any raw materials or components appropriated to the Contract shall pass to the Company (subject to payment therefor on a quantum meruit basis and less any direct loss or expense incurred by the Company by reason of the early termination of the Contract) and the Supplier grants an irrevocable licence to the Company's representatives to enter the Supplier's premises to remove the same;
- (b) the Supplier hereby grants to the Company an irrevocable, worldwide, royalty-free, non-exclusive licence to use all information and intellectual property rights used by the Supplier in relation to the Goods or their production and which are not already the property of the Company in order to make or have made the Goods;
- (c) the Supplier shall grant access to the Company to all records relating to the Goods and permit the Company to take such copies, notes or memoranda of the same as the Company may in its discretion require to make or have made the goods;
- (d) the Supplier shall provide such other information and assistance as the Company may reasonably require to assist it in it completing the production of the Goods
- 10.5 Clauses 6, 7, 8, 9, 2, 9.4, 9.5, 10, and 12 hereof shall continue to have effect notwithstanding termination of the Contract. Termination of the Contract shall not affect the accrued rights of the parties at the date of such termination; the remedies of the parties shall be cumulative and not exclusive

11. INSURANCE

- 11.1 The Supplier shall effect and maintain all insurances which a prudent and competent person entering into the Contract would maintain in respect of its obligations thereunder including without limitation:
- (a) insurance in the full replacement value of any items for the time being at risk;
- (b) insurance in a prudent amount in respect of any liability under clause 8 and clause 2.5
- 11.2 The Supplier shall provide the Company upon request with full details of all such insurance cover held by it

12. GENERAL

- 12.1 The Contract is personal to the Supplier, which shall not without the Company's written consent assign or transfer, purport to assign or transfer or sub-contract to any other person any of its rights, obligations or performance under the Contract
- 12.2 All notices or other communications under the Contract shall be written in the English language addressed to the other party's principal place of business (being in the case of the Company, the address shown in the Order) or such other address as may have been notified for the purpose of the party giving notice or to the address of the other party to which normal communications relating to the Contract have been or are being sent in the ordinary course
- 12.3 No time or other indulgence shall constitute a waiver of any right or remedy and no waiver of any breach shall be considered as a waiver of any subsequent breach of the same or any other provision. Rights and remedies are cumulative and no choice of remedy shall exclude any other remedy
- 12.4 The Supplier shall not without the Company's prior written consent use the Supplier's name, trade marks or connection with the Company in any announcement, publicity or literature nor make any announcement relating to the Contract
- 12.5 The Supplier shall treat in confidence and shall not disclose information concerning the business, products, markets, sales, customers, plans or other affairs of the Company which it obtains by reason of the Contract and shall not use such information for its own benefit or in any manner which might be detrimental to the Company
- 12.6 All Contracts shall in all respects be governed and construed in accordance with English law and the Supplier irrevocably submits to the exclusive jurisdiction of the courts of England
- 12.7 The Company shall be entitled to apply for any provisional or conservatory measures or interim relief in court having jurisdiction in the Supplier's country or in the country where the Goods are then located without prejudice to its right to pursue any substantive claim in the courts of England
- 12.8 A person who is not a party to the Contract has no right to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from under the Contracts (Rights of Third Parties) Act 1999