

# Terms and Conditions of Sale

## 1. Definitions In these terms & conditions:

"The Company", "We" or "Us" shall mean Staircraft Group Limited (Reg no. 03109143) and "The Buyer" or "You" shall mean the other contracting party and "our" and "your" shall be construed accordingly and "contract" means any order which has been accepted by us.

## 2. Making the Contract

**2.1** This estimate/quotation (which comprises an invitation to treat) is open for a period of 28 days only, provided the Company has not previously withdrawn it. Any order issued by the Buyer is subject to acceptance by the Company and a contract will only be formed when the Company has accepted the Buyers offer in writing. Any offer made by the Buyer orally must be confirmed in writing and until then will be treated as if given in writing.

**2.2** All orders are accepted under these terms and conditions alone. These conditions supersede all previous agreements between the parties and exclude any purported terms and conditions in the Buyer's order.

**2.3** No variation to these terms and conditions is permitted unless expressly accepted by a Director of the Company in writing.

**2.4** No servant or agent of the Company has the authority to make any representation or give any warranty in relation to goods and services supplied by the Company. If any statement or representation has been made to the Buyer by the Company, its servants or agents upon which the Buyer relies other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Buyer must set out that statement or representation in a document to be attached to or endorsed on the order and in any such case the Company may confirm reject or clarify the point and submit a new quotation.

## 3. Variation/Cancellation

**3.1** No cancellation by the Buyer is permitted except where expressly agreed by a director or authorised person of the Company in writing.

**3.2** Any variation in an order which is accepted by the Company shall entitle the Company to make an appropriate variation in prices and delivery times which shall bind the Buyer.

**3.3** Minor deviations by the Company shall not constitute a breach of contract. If the material specified is not available, the Company reserves the right to substitute the nearest alternative without notice.

**3.4** The Buyer will, in the event of agreed cancellation by the Buyer, indemnify the Company fully against all expense and loss incurred up to the time of such cancellation.

**3.5** Unless otherwise stated by the Company all goods are supplied in accordance with the Company's standard specifications. If detailed drawings are provided the copyright in them remains with the Company and they must be returned to the Company. (and will be charged for) if the contract does not proceed to completion.

**3.6** Where fine or special tolerances are required in the goods supplied beyond those generally accepted in the building trade, no liability shall attach to us unless such tolerances are notified in writing to us at the time of order and we have acknowledged in writing that we are prepared to accept such order.

**3.7** All samples, drawings, descriptive matter, specifications and advertising are issued or published for the sole purpose of giving an approximate idea of the described goods. They shall not form part of the contract, and this is not a sale by sample. Each order shall be considered a separate order, and we are unable to guarantee that further orders for the same goods will match the previous order.

## 4. Price

**4.1** Unless otherwise stated all prices quoted are for the cost of the goods alone ex works exclusive of VAT.

**4.2** All prices quoted are subject to revision or withdrawal by the Company without prior notice (until the Contract is made).

**4.3** The Company reserves the right at any time prior to delivery of the goods to adjust the price to take account of any increase in the cost of goods and/or services including, without limitation, costs of any goods or materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and variation in exchange rate.

## 5. Terms of Payment

**5.1** Payment for goods and/or services supplied during a month on a credit account shall be due and paid in full in one payment not later than the last day of the month following the month of delivery or deemed delivery of the goods and/or services. If you default in making payment, the entire balance of your account shall be payable immediately and we may charge interest together with costs and expenses in accordance with 5.2. (unless otherwise agreed in writing with the Company).

**5.2** If you fail to pay us any sum due (and whether or not any part of your account is subject to query), you shall be liable to pay us interest on such sum at the annual rate of 4% above the base lending rate from time to time of the Royal Bank of Scotland Plc, accruing on a daily basis, or, at our option, interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002) from the due date for payment until payment is made in full, whether before or after any judgment, together with all costs and expenses incurred by us in recovering sums due or exercising our rights under this provision, including our debt recovery fees at a rate of 6% of the total amount outstanding.

**5.3** If the Buyer suffers distress or execution against its property (being a Company) has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds or makes a voluntary arrangement with its creditors or has a receiver or administrative receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any composition or scheme of arrangement with creditors (or carries out or suffers any analogous act or event under foreign law) or commits a material or serious breach of this Agreement (and in the case of such a breach being remediable fails to remedy it within 7 days of receiving notice to do so) it will be deemed to have repudiated the Contract.

**5.4** The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.

**5.5** Payment will not be affected until clearance of cheque or bill or exchange.

**5.6** Time for payment shall be of the essence. You shall make all payments in pounds sterling and in full without any deduction.

**5.7** Credit accounts are opened at the Company's discretion and are subject to satisfactory references. The Company will set a maximum amount of credit allowable upon each account and withdraw credit facilities at any time without explanation. Payments made to an account may at discretion restore your ability to borrow again (in which case it shall be up to the limit). You agree that we may obtain, retain, and provide to third parties, references as to your final standing. Any change in the constitution of your organisation must be notified to us in writing prior to it occurring in order that credit facilities to the reconstituted organisation may be put in place, subject always to our discretion and our confirmation in writing. Until new credit facilities are agreed, the existing entity and any new entity shall be jointly and severally liable for any debt due to us.

## 6. Delivery

**6.1** Delivery will be deemed to have been affected when the goods leave the premises of the Company.

**6.2** Any dates and times we specify for delivery of the goods are an estimate. The Company shall not be liable to you if we do not deliver on or at any particular date or time. Time for delivery shall not be made of the essence by notice.

**6.3** The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery (or by the failure to make goods ready for collection) on the due date.

**6.4** The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment and such invoice shall be payable as in 5.1.

**6.5** When a delivery is by instalments or if there be delay in the delivery of any one or more instalments for whatever reason this will not entitle the Buyer to treat the contract as repudiated or to damages.

**6.6** Where delivery is refused by the Buyer or is delayed, suspended or made by instalments at the request of the Buyer or where the Company is unable to deliver the goods due to circumstances beyond its reasonable control of any goods when they are ready for delivery, or we are unable to deliver the goods because you have not provided appropriate instructions, documents or consents, we shall be entitled to immediate full payment and risk in the goods shall pass to you. We may store such goods until delivery and you shall be liable for all related costs and expenses arising from such non delivery including transport and storage costs. If you fail to accept delivery of the goods within 6 months of the date of contract, we may sell or dispose of those goods (whether or not you have paid for them). Storage or disposal costs shall be recoverable from you. Any net proceeds of any sale shall be held on trust for you. The Company on giving notification of readiness to deliver shall be entitled to treat the contract as fulfilled and place the goods in store. Delivery will then be deemed to have taken place for invoicing, payment as in 5.1 and the passing of risk. The Company at the Buyers request shall and in any event may arrange insurance covering the major perils endorsing its own interest. The cost of storage and any insurance of the goods shall be for the Buyer's account.

**6.7** When the Company conveys the goods the Buyer shall be responsible for providing proper unloading facilities (including adequate plant and labour) from a hard road. If no such road exists, delivery will be made to the nearest point at which, in the driver's opinion, the vehicle can safely and lawfully unload. Except where we use a vehicle mounted crane/fork truck, you shall be responsible for safely and lawfully unloading the goods and shall provide all necessary labour and equipment. We may charge you an additional fee if you delay in taking delivery of the goods when tendered. If any goods, packaging or container has been delivered and deposited, whether on the public highway or elsewhere, you shall be responsible for all steps that need to be taken for the protection of persons or property in relation to such goods, packaging or containers and shall indemnify us in respect of all or any costs, claims, losses or expenses which we may incur as a result of such delivery.

**6.8** Any query about delivery shall be made as soon as possible and in any event within 28 days of the date when the goods would in the ordinary course of events have been delivered else the goods shall be deemed to have been delivered in accordance with the contract. We are not obliged to provide proof of delivery and / or collection after a period of 28 days.

## 7. Risk and the passing of title

**7.1** Risk in the goods shall pass to the Buyer on delivery or deemed delivery.

**7.2** Notwithstanding risk having passed title in the goods shall not pass to the Buyer until whichever shall be the first to occur of the following:

1. Payment being received by the Company for the goods in full (in cleared funds) all sums due to us in respect of the goods and all other sums which are or become due to us from you on any account or (if later) the time of delivery.
2. The Buyer selling the goods in accordance with the provisions of these terms and conditions in which case title shall be deemed to have passed to the Buyer immediately before delivery of goods to the Buyer's customer and
3. The Company waiving its rights under clause 7.2 in respect of specified goods whereupon title to these goods shall forthwith vest in the Buyer.

**7.3** The Buyer is licensed by the Company to use or to agree to sell the goods delivered to the Buyer subject to the express conditions that the entire proceeds of the sale are held in trust for Company and are not mixed with other monies or paid into an overdrawn bank account and shall at all times be identifiable as the Company's monies and that the restrictions hereof shall be imposed on the third party.

**7.4** Until title to the goods passes:

1. The Buyer will hold the good as fiduciary agent and bailee for the Company.
2. The goods shall, subject to clause 7.3 be kept separate and distinct from all other property of the Buyer and of third parties and in good condition be stored in such a way as to be clearly identifiable as belonging to the Company;
3. The Company may at any time revoke the power of sale and use contained in clause 7.3 by notice to the Buyer if the Buyer is in default for longer than 14 days in the payment of any sum whatsoever due to the Company for any goods supplied at any time or if the Company has bona fide doubts as to the solvency of the Buyer.
4. The Buyer's power of sale and use contained in clause 7.3 shall automatically cease upon the termination or deemed repudiation of the contract whereupon (or on revocation by the Company under clause 7.4.3) the Buyer shall place any of the goods in its possession or under its control and unsold at the disposal of the Company and the Company shall be entitled to enter upon the premises of the Buyer for the purpose of removing any such goods. If so required by the Company the Buyer will remove to its own premises any such goods as are at the premises of a third party.
5. Nothing herein shall confer any right on the Buyer to return the goods or refuse or delay payment, therefore.

**7.5** The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any goods in settlement of such invoices or accounts in respect of such goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.

## 8. Lien and stoppage

**8.1** Until the title of the Goods has passed to the Buyer the Company has the right to withhold delivery in any of the circumstances mentioned in clause 5.3.

**8.2** When the title of the Goods has passed to the Buyer before payment for them is received by the Company in any of the circumstances mentioned in clause 5.3 then the Company has

1. A lien on the goods so long as the Company is in possession of them.
2. A right of stoppage in transit; and
3. A right of resale.

**8.3** Nothing in this clause shall affect the rights given to the Company by ss38-48 of the Sale of Goods Act 1979.

## 9. Inspection/Shortages/Defects

**9.1** The Buyer is under a duty wherever possible to inspect the goods on delivery or on collection as the case may be.

**9.2** Where the goods cannot be examined the carrier's note or such other note as appropriate shall be marked "not examined".

**9.3** The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of clauses 9.1 and 9.2 are not complied with, and in any event will be under no liability if a written complaint is not delivered to the Company within 2 working days of delivery detailing the alleged defect or shortage. Damage in transit by a carrier must also be notified to us within the time imposed by its contract. 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.

**9.4** Goods deemed to be replaced or replaced by the Company free of charge will be done so as soon as reasonably practicable provided that no liability arising out of any of the following circumstances shall be accepted by the Company:

1. Work carried out by others to the goods.
2. Buyer's failure to paint or protect from weather, neglect, or misuse.
3. Swelling or shrinkage.
4. Failure to give reasonable opportunity for the Company to inspect or repair or replace goods.

**9.5** Defective goods for the Company to repair or replace must be returned to the Company's works delivery paid.

**9.6** Subject to clauses 9 and 10 the Company shall be under no liability for shortage or defect.

## 10. Liability

**10.1** The Company shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Company's negligence). Non exhaustive illustrations of consequential or indirect loss would be:

1. Loss or Profits.
2. Loss of contracts.
3. Damage to property of the Buyer or anyone else, and
4. Personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Company's negligence).
5. Site labour costs (including removal, replacement or making good or delay or disturbance to other works).

**10.2** The Company's total liability for any one claim or for the total of all claims (other than personal injury claims arising from the Company's negligence) arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed £100,000.00 or the contract price whichever is the greater.

**10.3** The Buyer will keep the Company indemnified against all action costs claims and liability arising from faulty or unsuitable instructions given by the Buyer or from allegations of breach of the intellectual property rights of a third party arising out of the Buyer's instructions.

**10.4** In the case of goods not manufactured by the Company the Company gives no representation warranty or condition whatsoever that the sale or use of the goods will not infringe patent copyright or other industrial property rights of any other person, firm, or company.

## 11. Force Majeure

**11.1** The Company shall not be liable for any failure to deliver the goods arising from circumstances outside the Company's control.

**11.2** Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Local Nation or supra National Government action or regulations (UK or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.

**11.3** If the circumstances preventing delivery are still continuing three months after, then either party may give written notice to the other cancelling the contract.

**11.4** If the contract is cancelled in this way, the Company will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the buyer) but the Company will not be liable to compensate the Buyer from any further loss or damaged caused by the failure to deliver.

## 12. Documentation

Catalogues, technical circulars, price lists and other literature issued by the Company are for the Buyers general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

## 13. Notices

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if posted or delivered to the other party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been serviced 48 hours after posting in a prepaid first class envelope.

## 14. Assignment

The Buyer shall not assign or transfer or purport to assign or transfer the contract or the benefits thereof to any other person without the prior written consent of the Company.

## 15. Proper Law and Jurisdiction

The contract shall be governed by and construed in accordance with English Law (including English Conflict of Laws) and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the English Courts.

## 16. Health and Safety

Certain goods supplied by us could, if incorrectly used, give rise to risks to health and safety. Information in respect of such goods is available from us. You undertake that you will ensure compliance by your employees.

## 17. Compliance with Bribery Legislation

You agree that you will not, in connection with the goods or services to be supplied under this contract, bribe or attempt to bribe us, or any of our employees, agents or affiliates nor cause us to be in violation of any applicable bribery or anti money laundering laws. We may terminate the contract in the event of your breach of this clause. You shall indemnify us against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by us arising out of or in connection with any breach of this clause, whether or not the contract has been terminated.

## 18. 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, including the appropriate disposal by you of any goods marked with a crossed-out wheellie bin symbol, save where you are a consumer and it is our responsibility at law. You will indemnify us against all costs, claims, liabilities, and expenses arising from any breach by you of this provision.