

TERMS OF TRADING –  
PURCHASE ONLY

1. DEFINITIONS

a. In these Conditions the following definitions apply:

Conditions: the terms and conditions set out in this document.

Contract: the contract between "Genius Facades Limited" and the "seller" for the sale and/or purchase of Goods in accordance with these Conditions.

Seller: the person or firm and/or company who sells goods and/or services to Genius Facades.

Genius: means Genius Limited, a company incorporated in England and Wales with company number 08431887.

Order: means the purchase order for the goods and/or services as set out in Genius Facades purchase order form or the written acceptance of the seller's quotation.

Goods: means all or any of the goods, or material to be supplied by the seller and where appropriate, the services. To the extent that the goods are to be manufactured in accordance with a specification and/or drawings and/or documents supplied by Genius or representations made by the seller, the seller shall indemnify Genius against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Genius in connection with the goods not being in accordance with the specifications and/or drawings and/or documents supplied and/or representations made by the seller.

Services: means all or any of the services to be supplied to Genius.

Specification: Any specification for the goods, including any related plans, drawings, specifications, documents that is issued to the seller and/or the Seller has represented to Genius.

b. Genius' terms and conditions take precedence over the terms and conditions of the seller, unless it has been agreed to the contrary.

2. APPLICATION OF TERMS and CONDITIONS

a. The contract and/or purchase will be on these terms and conditions to the exclusion of all terms, conditions and warranties including any terms and conditions which the seller purports to apply under any purchase order and/or contract, confirmation of order, or similar document, whether or not such document is referred to in the contract or which are implied by trade, custom, practice or course of dealing. The signing by Genius of the seller documentation shall not imply any modification of these terms and conditions.

b. Any samples, drawings, descriptive matter, or advertising produced by the seller and any descriptions or illustrations contained catalogues or brochures that have been produced by the seller are for the purpose of giving an idea/representation of the goods to be delivered to Genius. They shall form part of the contract and have contractual force.

c. A quotation by the seller for the goods and/or services shall be valid for a period of 60 Business Days from its date of issue.

d. The contract is formed when any quotation is accepted by Genius issuing a written acceptance (including email) of the quotation and for the avoidance of doubt, the seller issuing a sub-sequent order or confirmation shall not be regarded as acceptance of the quotation (notwithstanding it may make reference to separate terms and conditions) in fact the order will be regarded as unequivocal acceptance of these conditions.

e. Employees, agent or representative of the seller have authority to give any representation, guarantee or warranty relating to the goods.

f. Variations of these terms and conditions are not binding unless agreed in writing by authorised officers of each of Genius.

g. The seller can only cancel the contract or an order once it is accepted, with Genius's prior consent.

h. The seller waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the seller that is inconsistent with these terms and conditions.

i. A reference to a party includes its personal representatives, successors or permitted assigns.

j. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

k. A reference to writing or written includes faxes and emails.

3. QUOTATIONS

Quotations given by the seller shall constitute an offer and a quotation is not subject to withdrawal at any time. Quotations are valid for 60 days from the date of issue. The order (which shall be in writing and including email) will be regarded as an acceptance of the same by Genius and will create a binding contract. The terms and conditions of acceptance will be these terms and conditions to the exclusion of any other terms that the seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing unless specifically agreed in writing (including email) by Genius, at the time of acceptance.

4. PRICES

a. The price of the goods and/or services shall be the price[s] set out by Genius for delivery of the goods in respect of the order whether pursuant to a quotation or otherwise. All prices included in the order include for delivery of the goods and warranties. In the event of any increase in costs between order and dispatch, the seller shall bear such costs.

b. Where an order is given for a particular quantity of goods and/or services and a lesser quantity is delivered by the seller, Genius shall be at liberty to revise and/or reduce the prices. If the seller delivers in excess quantity then Genius shall be under no obligation to pay for the additional quantity of materials delivered, nor shall they be responsible for the additional quantity of materials delivered.

c. All prices are exclusive of VAT which shall bear the appropriate ruling rate at the date of the submission of the invoice, unless stated otherwise on the Order.

d. The price of the goods and/or services is inclusive of all costs and charges of packaging, insurance and transport of the goods.

5. TERMS OF PAYMENT

a. The seller shall invoice Genius on the last business day of each month for goods delivered during the month,

b. The "Final Date for Payment" shall be 60 calendar days from date of Invoice.

c. Any payment overdue after the Final Date for Payment shall carry interest at the rate of 0.5% over Bank of England base lending rate for the time being in force with interest accruing on an annual basis.

6. CANCELLATION

a. Genius shall not be obliged to accept cancellation, and if the seller refuses to deliver the goods s/he will remain liable to pay the full price of replacement goods and/or services ordered, together with any additional costs involved.

b. In the event that Genius, at its absolute discretion, agrees in writing to accept cancellation the seller shall pay Genius costs in respect of damages incurred as a result of the cancellation. The seller shall not be entitled to any claims for damages; for Loss of Overhead, Profit, Damages and/or any other remedies that may or may not exist under common law and/or equity.

7. SPECIFICATIONS

a. Goods and/or services supplied shall also conform to the tolerances and accuracies published in the relevant codes and for the avoidance of doubt the seller shall be responsible to Genius for any inaccuracies or defects in the goods and/or services.

b. Any samples, drawings, descriptive matter or advertising issued by the seller and any descriptions or illustrations contained in the seller's catalogues or brochures which are issued or published are for the sole purpose of giving an idea/representation of the goods and/or services being supplied to Genius. They shall form part of the contract or any other contract between Genius and the seller for the sale of goods and/or services.

8. SHORTAGES AND DEFECTS

a. The seller shall supply all goods and/or services under cover of an advice note. All faults or shortages in the goods and/or services shall be noted on the advice note or shall be advised under separate cover. In the event of the goods and/or services being signed for "unexamined" [or vernacular to such extent], the seller shall accept responsibility for claims relating to shortage or damaged goods when such shortages or

damage is reported in writing to the seller within a period of ten working days from the date of delivery of the goods and/or services. Following any such notification the goods and/or services referred to will be repaired or replaced or a credit given by the seller immediately, Genius shall decide which remedy for such breach is acceptable.

9. DELIVERY

- a. Except as otherwise agreed in writing at the time of contract delivery of goods and/or services shall be the location set out in the purchase order. If at time of delivery the location is not practicable for delivery and/or unloading, Genius are to be contacted immediately for further instruction.
- b. If there is no representative of Genius on site to receive the delivery, the seller is to contact Genius immediately for further instruction. Delivery of goods and/or services are not to be withdrawn until contact has been made. Genius shall not be liable for any costs associated with standing time.
- c. In the event that Genius cannot accept delivery and the seller is required to store goods, then the seller agrees to store the goods for a two-month storage-cost free period. The seller shall not be entitled to payment for the goods as materials stored off-site. The seller shall insure the goods, at his/her own cost until delivery is made.
- d. Where the contract provides for delivery of the goods by installments, each instalment shall not be deemed to be the subject of a separate contract and non-delivery or delay of delivery of any one instalment shall and/or may affect the balance of the contract or entitle the Genius to cancel the same.
- e. Delivery dates are of the essence. Every effort will be made to ensure due performance and should the seller be unable to deliver then the seller shall be liable for damages or consequential loss arising from delays caused due to non-delivery.
- f. If the seller requires Genius to return any packaging materials, Genius shall not be at any obligation to return the packaging in reusable condition. Any damage arising to any packaging materials shall not entitle the seller to a claim for damages against Genius.
- g. The seller shall be liable to Genius for any costs incurred by Genius for returning packaging.
- h. Genius shall be entitled to reject the goods if the seller delivers less or more than the quantity of goods ordered.

10. TERMINATION

- a. Without limiting its other rights or remedies, Genius may terminate these terms and conditions with immediate effect by giving written notice to the seller if:
  - i. the seller commits a material breach of any term and/or conditions of these terms and conditions and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
  - ii. the seller takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its 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 its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - iii. the seller suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - iv. the seller's financial position deteriorates to such an extent that in Genius opinion the seller's capability to adequately fulfil its obligations under these terms and conditions has been placed in jeopardy.
- b. Without limiting its other rights or remedies, Genius may suspend provision of the order and/or contract under these terms and conditions or any other order and/or contract between the seller and Genius if the seller becomes subject to any of the events listed in Clause 15.a.i to Clause 15.a.iv, or Genius reasonably opine that the seller is about to become subject to any of them, or if the seller fails to deliver any goods under the order and/or contract on the date of delivery.
- c. Without limiting its other rights or remedies, Genius may terminate the order and/or contract and these terms and conditions with immediate effect by giving written notice to the seller if the seller fails to deliver the goods by the delivery date.
- d. Termination of the order and/or contract and these terms and conditions 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 the contract and these terms and conditions that existed at or before the date of termination.
- e. Any provision of the order and/or contract and these terms and conditions 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.

11. SELLER OBLIGATIONS

- a. The supplier warrants, represents and undertakes that:
  - i. All goods and/or services performed under the order and/or contract shall be performed with all due skill and care, in a good workmanlike manner and shall deliver goods in accordance with the requirements of Genius or as set out in the order,
  - ii. The seller possesses the skills, qualifications, professional competence and experience to provide the goods and/or services set out in the order and/or contract,
  - iii. The seller shall provide Genius with such progress reports, evidence or other information concerning the goods and/or services as may be requested by Genius,
  - iv. The seller shall ensure that suppliers personnel take all reasonable steps to safeguard their own safety and the safety of any other person who may be affected by their actions, and the supplier agrees to indemnify and keep indemnified Genius from all and liabilities, obligations, costs and expenses whatsoever arising from any loss, damage or injury caused to Genius or any third party by the supplier,
  - v. If the order does not state time of deliveries, all deliveries shall be required to be made between the hours of 08.00 to 16.00 on working days,
  - vi. If the seller has any intellectual copyrights on their literature, Genius shall be entitled to use, supply, reproduce publish, modify, adapt, enhance or otherwise deal with any materials in which such intellectual property rights exist without the prior written approval of the seller and the seller shall not demand payment for any such use nor be entitled to any such payment,

12. GENERAL

- a. No failure or delay on the part of Genius to exercise any of its rights under the order and/or contract or these terms and conditions shall operate as a waiver or nor shall any waiver by Genius of any breach by the seller of any of its obligations under the contract and these terms and conditions affect the rights of Genius in the event of any further continuing breach.
- b. Each and every obligation contained in these terms and conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any such obligation.
- c. If any of the provisions of these terms and conditions shall be held to be invalid or unenforceable, such invalidity and unenforceability shall not affect the remaining provisions.
- d. The contract is personal to the seller, who shall not assign or in anyway part with the benefit without Genius prior written consent.
- e. Genius may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the order and/or contract.
- f. Any notice or legal process given under the order and/or contract or these terms and conditions shall be in writing and shall be given to Genius or the seller as the case may be at their respective addresses. Any notice or process sent by post shall be deemed to have been delivered or served 24 hours after the same shall have been posted in a properly addressed pre-paid envelope and proof of posting shall be sufficient proof of service.
- g. These terms and conditions shall be construed and governed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.
- h. Nothing in these terms and conditions shall confer on any third party any benefit of the right to enforce any of these terms and conditions and does not give any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of these terms and conditions.
- i. The seller acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Genius which is not set out in the order and/or contract.
- j. No variation of these terms and conditions shall be effective unless it is in writing and signed by the parties (or their authorized representatives).
- k. A waiver of any right or remedy under the contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- l. The seller shall maintain insurances for the goods for a period of 12 years for each delivery of goods it makes. Insurance for goods ["Products Liability Insurance"] shall be £10m for each and every claim and where services are provided ["Professional Indemnity Insurance"] £10m for each and every claim for a period of 12 years also from commencement of the service.
- m. The seller shall produce immediate evidence of the relevant insurance being maintained at the request Genius.
- n. Should evidence not be provided immediately Genius, may at their discretion, take out insurance on behalf of the seller and the seller shall be liable for any costs incurred. The seller shall at all times be liable for maintain adequate for their goods and/or services.
- o. The seller shall treat all information relating to the order and/or contract with confidence and shall not disclose to third parties without the

prior approval of Genius. The seller shall be liable for any damages incurred should the seller disclose information which is confidential.

13. SELLERS INSOLVENCY OR INCAPACITY

a. If the seller becomes subject to any of the events listed in clause 18b, or Genius reasonably opines that the seller is about to become the subject to any of them and notifies the seller accordingly, then, without limiting any other right or remedy available to Genius, Genius may cancel or suspend all further payments under the contract or under any other contract between the seller and Genius.

b. For the purposes of clause 18a, the relevant events are:

- i. The seller suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being in a partnership) has any partner to whom any of the foregoing apply, or is unable to meet and/or make delivery deadlines,
- ii. The seller commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the seller is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the seller with one or more other companies or the solvent reconstruction of the seller,
- iii. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the seller, other than for the sole purpose of a scheme for a solvent amalgamation of the seller with one or more companies or the solvent reconstruction of the seller,
- iv. (being an individual) the seller is the subject of a bankruptcy petition or order,
- v. A creditor or encumbrancer of the seller attaches or taken possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days,
- vi. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is appointed over the seller,
- vii. (being a company) the holder of a qualifying charge over the seller's assets has become entitled to appoint or has appointed an administrative receiver,
- viii. A person becomes entitled to appoint a receiver over the seller's assets or a receiver is appointed over the seller assets,
- ix. Any event occurs, or proceeding is taken, with respect to the sellers in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.b(i) to clause 18.b(viii) (inclusive),
- x. The seller suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business,
- xi. The sellers financial position deteriorates to such an extent that in Genius opinion the seller's capability to adequately fulfil its obligations under the contract has been placed in jeopardy, and
- xii. (being an individual) the seller dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

c. Termination of the order and/or contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the contract shall continue in full force and effect.