

Thomas Panels and Profiles Ltd (The Seller)
TERMS AND CONDITIONS

1. GENERAL

1.1 These Conditions apply to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order, any order acknowledgement and any applicable specification are complete and accurate.

1.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.

1.4 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an indication of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force. The Seller is unable to guarantee exact colour matching of Goods as batches of products can vary

1.5 The 'Contract' means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

2. PRICE AND PAYMENT

2.1 In the case of sales within the United Kingdom material shall be invoiced at the quoted price of the Seller as set out in the Order. All prices quoted are exclusive of Value Added Tax where applicable. Payment for the Goods shall be made on or before the date fixed in accordance with the terms agreed between the Buyer and the Seller for the operation of the account between them.

2.2 The Seller reserves the right to require pro forma terms or a cleared funds payment on the Seller's acceptance of the Order. In all other cases and unless set out in the terms of a credit account agreed by the Seller or otherwise in the Seller's quotation or order acknowledgement, payment shall be made within 30 days of the end of the month in which the invoice is raised. Time of payment is of the essence of the Contract.

2.3 In the event of late payment the Seller may (without prejudice to its other remedies under these terms) charge interest which will accrue from day to day from the day on which the payment became due at the rate set out in the Late Payment of Commercial Debts (Interest) Act as amended from time to time including all reasonable debt recovery costs.

2.4 If the Buyer shall fail to make due payment of all monies due by the Buyer to the Seller on the due date the Seller shall be entitled to suspend or withhold delivery of the Goods or any part thereof. If the Buyer does or suffers to be done anything in which might prejudice his ability to pay the full price he shall be deemed to have repudiated this Contract and the Seller may without prejudice to its other rights accept such repudiation without notice of termination thereof.

3. DELIVERY

Where the Seller agrees to deliver the Goods the place of delivery shall be at the address given in the Order acknowledgement or, if no address is given, the Buyer's business address. Where the Seller agrees to deliver the Goods, the Seller shall make reasonable efforts to deliver the Goods at the time requested but those times or dates given are intended only as an estimate and the Seller shall not be responsible for any loss or damage direct or indirect caused to the Buyer by reason of late delivery and the Buyer shall not be able to refuse to accept material on account of late delivery. The Buyer shall provide the necessary labour and equipment (including mechanical off-loading facilities) to unload the Seller's vehicle without undue delay. Where delivery is delayed at the Buyer's request the Seller shall be entitled to place the material in store at the Buyer's risk and to make a reasonable storage charge.

4. INSTALMENTS

Each delivery of material under this agreement shall be deemed to constitute a separate Contract to which these terms and conditions shall apply. Any breach of this agreement in respect of any deliveries shall not terminate or give rise to any right to terminate this agreement as to other deliveries of goods.

5. WARRANTY AND CLAIMS

5.1 The Seller warrants that on delivery, the Goods shall be free from material defects in material and workmanship

5.2 The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to clause 6:

- the Buyer informs the Seller in writing within the time period specified in this clause 5 of discovery that some or all Goods do not comply with clause 5.1.
- the Buyer gives the Seller a reasonable opportunity to examine the defective Goods;
- the Buyer returns the defective Goods to the Seller

5.3 The Seller will not be liable for any failure of the Goods to comply with clause 5.1:

- where such failure arises by reason of: fair wear and tear, could be expected to arise in the normal course of use of the Goods, wilful damage, negligence, or abnormal working conditions;
- to the extent caused by the Buyer's failure to comply with the Seller's instructions as to: (i) storage, installation, commissioning, use or maintenance of the Goods or (ii) good practice in relation thereto;
- to the extent caused by the Seller following any design or specification or requirement of the Buyer in relation to the Goods
- where the Buyer repairs or alters any Goods without the Seller's prior written agreement, or
- where the Buyer uses any Product after notifying the Seller that it does not comply with clause 5.1.

5.4 Any claim by the Buyer in respect of non-delivery, for defects apparent on inspection, shortage or damage in transit or for deviation, mis-delivery, delay of the whole or any part of the delivery of the material shall be notified to the Seller in writing by the Buyer within 7 days of delivery or receipt of part of the delivery as the case may be.

5.5 Any claim by the Buyer in respect of defects not apparent on inspection at the time of delivery must be given in writing as soon as reasonably practicable after the defect is discovered and in any event the Seller must be notified in writing within 30 days of delivery of the Goods failing which all such claims shall be considered waived.

6. LIABILITY

6.1 The Buyer confirms that it has had the opportunity of inspecting the Goods and materials which are the subject of this contract. The parties expressly declare that the Buyer has bought the material on its own appraisal and does not rely upon the intimations, recommendations or skill of the Seller, its agents or its employees. In the case of a sale by sample the Seller does not undertake that the bulk shall correspond with the sample in colour, exact dimensions or quality.

6.2 Goods are not tested or sold as fit for any particular purpose. Any term warranty for condition expressed, implied, or statutory to the contrary is excluded.

6.3 Subject to clause 6.4:

- the Seller shall under no circumstances whatsoever be liable to the Buyer, 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; and
- the Seller's total liability to the Buyer 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 the price of the Goods supplied.

6.4 Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors (as applicable)

6.5 The Buyer shall save harmless and keep the Seller indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the Seller under this agreement in respect of any injury, loss or damage howsoever caused and howsoever arising.

7. SPECIFICATIONS

7.1 All data or containing specifications of weight dimensions, compositions, life spans, stresses, qualities, colours, or degrees or purity or relating to performance or otherwise are approximate only as are also weights and dimensions of materials.

7.2 The Goods are supplied and delivered with a tolerance of plus or minus 3% in quantity and weight.

7.3 The Buyer is required to check the accuracy of the terms of the Seller's quotation and/or order acknowledgement. Where there is discrepancy between sizes and quantities set out in the quotation or order acknowledgement and any drawings submitted by the Buyer, the Seller shall be entitled to rely solely upon the data in the order acknowledgement and shall not be obliged to resolve discrepancies between those and the drawings.

8. FORCE MAJEURE

8.1 If the Seller is delayed or prevented from supplying the full or any amount of material by events beyond its reasonable control including but not limited to act of God, War, riot, strikes or other industrial action (whether official or unofficial) boycotts, lockouts, government (including local legislation or regulation) delay in transport, shortage of raw materials, breakdown or plant breakdown or stoppage at plants other than the Sellers where the material is manufactured and inclement weather then the Seller may by notice in writing to the Buyer cancel or suspend delivery as necessitated by the event within this clause.

8.2 The notice pursuant to this clause shall specify the event and in the case of a suspension of delivery estimate the period of suspension. The Seller shall be under no obligation to make pro rata suspension or cancellations though it shall use all reasonable endeavours to ensure that its Buyers are treated fairly in the light of all the circumstance. On receipt of the Seller's notice the Buyer may purchase from other suppliers the quantity of material necessary to make that any anticipated or actual deficiency arising from the Seller's inability to deliver under this clause. The Seller shall not be liable to the Buyer for any cost expense or loss whatsoever and howsoever caused arising from those purchases or otherwise arising out of the Force Majeure whatever the period of the said Force Majeure.

8.3 Should delivery be suspended for a period exceeding twelve months then the Buyer may by three months' notice in writing cancel this agreement and unless the Seller shall commence deliveries before the expiry of the notice the agreement shall terminate on its expiry.

9. BREACH BY BUYER

In the event that the Buyer commits any breach of its obligations under this Agreement notified to it by the Seller which is not remedied after fourteen days or commits any act of bankruptcy or commences liquidation other than for the purpose of a bona fide reconstruction or amalgamation the terms of which are approved in writing by the Seller, the Seller may at its option by written notice to the Buyer suspend further performance of this Agreement for a period not exceeding six months or terminate this Agreement.

10. TITLE

10.1 The property in the Goods shall not pass to the Buyer until the Buyer has paid to the Seller the price of the Goods in full including the cost of any other products sold or supplied by the Seller to the Buyer for which payment is outstanding.

10.2 Until title to the Goods has passed to the Buyer, the Buyer shall: store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- notify the Seller immediately if it becomes subject to any of the events listed in clause 9; and
- give the Seller such information relating to the Goods as the Seller may require from time to time.

10.3 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 9, then, without limiting any other right or remedy the Seller may have the Seller may at any time:

- require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

11. RISK

The risk in the Goods shall pass to the Buyer on delivery.

12. TAXES AND DUTIES

Unless specifically stated to the contrary the price specified for the Goods is exclusive of Value Added Tax and the Buyer shall pay the Seller a sum equivalent to that tax in addition to and at the same time as the price specified.

13. DISPUTES

All disputes arising out of or in connection with this Agreement shall be adjudicated through the English Courts and this Agreement shall be governed by English Law.

14. NOTICES

Any notice under this Agreement given by the Buyer to the Seller shall be sent to the Seller's normal business address set out in the order acknowledgement and any notice under this Agreement given by the Seller to the Buyer may be sent to the address at which the Seller reasonably believes that the Buyer is carrying on business. Notice must be in writing and for the avoidance of doubt this will include, without prejudice to the generality of the foregoing email, facsimile and first class mail (whether registered or otherwise). Notice sent by post shall be deemed to have been delivered two business days after it has been posted in a correctly addressed prepaid envelope.

15. PARTIES

This Agreement is personal to the Buyer and shall not be assigned or capable of being assigned by the Buyer without the written consent of the Seller.

16. PRIVACY POLICY

Please refer to the Privacy Policy located at www.panelsandprofiles.co.uk (or you can request a paper copy) for details of the Seller's policy in relation to the handling of data and privacy rights.

TPP Ltd General conditions of sale effective 1 July 2018.