

## **Lowe & Oliver Limited Conditions of Sale 2012**

### **Definitions**

1. In this document (“these Conditions of Sale”) the following words / phrases have the following meanings:
  1. Buyer: the party to the Contract other than L&O;
  2. Contract: the contract between L&O and the Buyer incorporating these Conditions of Sale;
  3. Goods: the goods of whatever nature to be supplied to the Buyer by L&O pursuant to the Contract;
  4. L&O: Lowe & Oliver Limited (and including their successors and assignees);
  5. Parties: L&O and the Buyer together;

### **Basis of the sale**

2. L&O sell the Goods and the Buyer purchases the Goods in accordance with any offer made by L&O and accepted by the Buyer or any order submitted to L&O by the Buyer and accepted by L&O, in either case subject to these Conditions of Sale.
3. Any other standard terms and conditions (or similar) put forward by the Buyer are excluded from the Contract. Any other terms and conditions put forward by L&O are incorporated into the Contract but these Conditions of Sale take precedence over them.
4. Any amendment to these Conditions of Sale shall be effective only upon agreement in writing by L&O.
5. The Buyer does not rely on any representations made by L&O other than in writing.
6. Any typographical, clerical or other error may be corrected by L&O by written notification and without liability.

### **Specifications etc.**

7. The Buyer represents and warrants to L&O that all technical details, specifications, performance requirements, drawings, measurements, and any other information of whatever nature provided to L&O (whether directly or indirectly) in connection with the Goods is complete and accurate and the Buyer acknowledges that L&O are entitled to rely on the same and are relying on the same.

### **Price of the goods**

8. The price to be paid by the Buyer for the Goods shall be the price set out in L&O's quotation or otherwise notified to the Buyer by L&O, save that:
  1. Any price quoted by L&O may be revised by L&O without notice to the Buyer after 30 days (or such longer period as L&O may in writing agree) have elapsed since the quote and until the Parties enter into the Contract; and
  2. L&O may at any time before delivery of the Goods and on giving notice to the Buyer increase any price to reflect any increase in cost incurred by L&O which is beyond L&O's reasonable control, including (without limitation) in consequence of currency fluctuations, labour and materials costs.
9. All prices quoted by L&O are exclusive of VAT. The Buyer shall pay all VAT lawfully chargeable.

### **Terms of payment**

10. Terms of payment shall be as set out in any offer made by L&O and accepted by the Buyer. If no terms of payment are there set out, L&O may invoice the Buyer for the price of the Goods prior to delivery of the Goods to the Buyer / collection of the Goods by the Buyer and may require full payment prior to or at the time of delivery of the Goods to the Buyer / collection of the Goods by the Buyer.
11. The Buyer shall pay any invoice within 60 days of receipt.
12. If the Buyer fails to make any payment on time then, without prejudice to L&O's other rights and remedies, all monies immediately become due, L&O may terminate or suspend the Contract, appropriate at L&O's discretion payments received to different parts of the Goods,

and/or charge interest at 8% above Bank of England base rate.

13. L&O may recover payment notwithstanding that the Goods have not been taken into the possession or title of the Buyer.

#### **Packing and delivery**

14. Delivery of the Goods shall be as and when agreed between L&O and the Buyer. L&O are entitled to make a reasonable charge for delivery unless the Contract otherwise provides that delivery is included in the price of the Goods.
15. L&O may require the Buyer to accept delivery of the Goods upon 14 days' notice, after which a reasonable storage charge may be levied by L&O.
16. In the event that delivery is not possible at any agreed time for reasons outside the control of L&O, L&O may levy reasonable storage and redelivery charges.
17. L&O are entitled to reasonable additional payment if special packing of the Goods is required.
18. L&O are entitled to reasonable additional payment if a method of delivery is required other than L&O's standard method of delivery, or if specific or unusual timing or conditions of delivery are required.
19. L&O are not obliged to make any delivery if any monies are overdue under the Contract or under any other contract between the Buyer and L&O.
20. If L&O agree at their sole discretion to accept a return of the Goods or any part thereof unopened and as delivered, a credit for 75% of the price of the Goods or relevant parts will be given less L&O's costs incurred in restocking the Goods.

#### **Risk in and title to property**

21. Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery (or attempted delivery if delivery is not actually made owing to reasons outside L&O's control) or collection save in respect of Goods to be delivered outside the United Kingdom in which case risk of damage to or loss of the Goods shall pass to the Buyer when the Goods leave L&O's or the manufacturers' premises.
22. L&O shall not be liable for items said to be damaged or missing from the Goods unless L&O are notified in writing within 48 hours of delivery.
23. The Buyer shall adequately insure the Goods not later than the agreed time of delivery or collection.
24. Notwithstanding delivery (or attempted delivery) or collection, title to the Goods does not pass to the Buyer until the Buyer has made full payment to L&O for the Goods and there are no other monies due from the Buyer to L&O whether under the Contract or under any other contract between the Buyer and L&O . If the Buyer takes possession of the Goods before title to the Goods passes to the Buyer, the Buyer shall hold the Goods as L&O's fiduciary agent and as bailee, shall keep the Goods separate from the Buyer's other property, shall keep the Goods clearly identified as belonging to L&O, and shall comply with all reasonable instructions from L&O in relation to the Goods (including without limitation allowing L&O access to the Goods and to take repossession of the Goods).
25. If the Buyer receives payment from any third party in respect of the Goods before the Buyer has made full payment to L&O for the Goods, the Buyer shall pay that payment into a separate bank account and hold it in trust for L&O until L&O have been paid in full for the Goods.
26. All intellectual property rights remain vested in L&O.

#### **Liability for the Goods**

27. The Buyer exercises its own skill and judgment in selecting the Goods and has satisfied itself without reliance on any representation by L&O that the Goods are suitable for their intended purpose. L&O are not liable for fitness for purpose save as expressly agreed elsewhere.
28. L&O will replace or repair free of charge the Goods or parts thereof which are or become faulty if the fault is directly attributable to L&O's use of defective materials or L&O's defective workmanship provided that the Buyer notifies L&O in writing within 12 months from the agreed date of delivery of the Goods and always as soon as is practicable. The Buyer shall

return the Goods to L&O carriage paid and, if the Buyer requires L&O to attend the Buyer's premises, a reasonable charge for travel and labour may be made by L&O if it is found that L&O are not liable for any faultiness of the Goods.

29. L&O shall not have any liability for the Goods if any third party has attempted to repair the Goods or has interfered with them, or if the Goods have been installed or operated otherwise than in accordance with L&O's recommendations including (without limitation) in any data sheets produced by or for L&O.
30. L&O shall not be liable for any defect in the Goods arising from any design or other information supplied to L&O by the Buyer.
31. L&O shall not be liable for fair wear and tear or for damage caused by the Buyer, by abnormal conditions, by failure to follow L&O's or manufacturers' instructions, by misuse of the Goods, or by alteration of the Goods without L&O's prior written approval.
32. L&O shall not be liable for any delay in delivery of the Goods.
33. Warranties and conditions implied by statute or common law are excluded from the Contract to the maximum extent permitted by law.
34. In any event, save in respect of death or personal injury resulting from negligence by L&O (in respect of which L&O's liability is not excluded or limited), L&O's maximum liability, save as otherwise expressly agreed by L&O, shall be limited to the price of the Goods or £100,000, whichever is the lesser.

#### **Termination**

35. L&O may at their absolute discretion terminate the Contract or alternatively suspend the Contract if:
  1. The Buyer becomes insolvent (or L&O reasonably suspect that the Buyer is insolvent) within the meaning of section 113, the Housing Grants, Construction and Regeneration Act 1996; or
  2. Monies are overdue to be paid under the Contract or under any other contract between the Buyer and L&O.
36. Termination or suspension shall be by written notice from L&O to the Buyer and shall be effective upon receipt by the Buyer. Termination or suspension shall not entitle the Buyer to damages or other compensation from L&O.

#### **Dispute Resolution**

37. Any dispute or difference of any kind whatsoever arising under or in connection with the Contract (save for any dispute or difference in connection with VAT) shall be and is hereby referred to the arbitration of a single arbitrator. If any dispute or difference is referred to arbitration:
  1. If the Parties do not agree upon the appointment of a particular individual as the arbitrator, the President or a Vice-President of the Chartered Institute of Arbitrators shall be requested to appoint an individual to be the arbitrator;
  2. The seat of the arbitration shall be London, England; and
  3. The JCT 2011 edition of the Construction Industry Model Arbitration Rules shall apply.
38. Without prejudice to the foregoing clause 36 of these Conditions of Sale, any dispute or difference of any kind whatsoever arising under or in connection with the Contract (save for any dispute or difference in connection with VAT) may at any time be referred to adjudication. If any dispute or difference is to be referred to adjudication:
  1. The TeCSA Adjudication Rules current at the date of the notice of adjudication shall apply; and
  2. If the Parties do not agree upon the appointment of a particular individual as the adjudicator, the President or a Vice-President of the Chartered Institute of Arbitrators shall be requested to appoint an individual to be the adjudicator (this for the avoidance of doubt taking precedence over the TeCSA Adjudication Rules adjudicator nomination provisions).

#### **Miscellaneous**

39. Section headings in these Conditions of Sale are for convenience only and do not affect the interpretation of the Contract.
40. Should any part of these Conditions of Sale be found to be illegal, unenforceable and/or otherwise invalid, that part of these Conditions of Sale shall be severed and deleted from the remaining part of these Conditions of Sale, and treated as if it had never been incorporated into the Contract, and the remaining parts of these Conditions of Sale shall remain enforceable and of full force and effect.
41. The documents comprising the Contract are to be read together and as a whole. In the case of any inconsistency, contradiction or ambiguity as between the documents comprising the Contract, the inconsistency, contradiction or ambiguity shall be resolved at L&O's discretion.
42. These Conditions of Sale do not confer, or purport to confer, any rights on any parties other than the Parties, and the Parties acknowledge that it is not their intention to confer rights on any other parties.
43. Any delay by L&O in exercising any of their rights under the Contract shall not be and shall not be treated as being any waiver of those rights by L&O, and failure by L&O to exercise any of their rights on any given occasion shall not prevent L&O from exercising those or any other rights on any future occasion.
44. Unless it is made or recorded in writing and in either case signed by a company director of L&O:
  1. No agreement to vary these Conditions of Sale; and
  2. No agreement to disapply or not to rely on any of the provisions of these Conditions of Sale,shall be of any effect whatsoever.
45. The Contract shall be governed by and construed in accordance with the laws of England. The parties agree, to the extent permitted under clauses 37 and 38 of these Conditions of Sale, to submit to the exclusive jurisdiction of the English Courts.