

## AumAxum Ltd Standard Terms & Conditions

### **1. Definitions and interpretations**

- 1.1 In these terms we or us means the member company AumAxum Ltd specified in the contract for sale of goods and/or services to you. "you" means the person, firm or company who purchases the goods and/or services from us, and "our" and "your" shall be construed accordingly and "contract" means any order which has been accepted by us.
- 1.2 References to any statutory provision shall include (1) and subordinate legislation made under it (2) any provision which it has modified or re-enacted and (3) any provision which subsequently supersedes it or re-enacts it.

### **2. Application of terms**

- 2.1 These terms apply to all sales of goods and/or services by us to the exclusion of all other terms (including any which you purport to apply) unless expressly agreed in writing in advance by one of our Directors.
- 2.2 Each order or acceptance of a quotation for goods and/or services by you shall be deemed to be an offer by you to buy goods and/or services subject to these terms. No order or acceptance of a quotation by you shall be deemed to be accepted by us until written confirmation of order is issued by us or (if earlier) we begin to process your order we shall be entitled to withdraw any quotation at any time (whether or not already accepted by you).
- 2.3 You acknowledge that you have not relied on any statement or representation made or given on our behalf. Any estimate of quantities needed, advice as to the suitability of goods for a particular purpose and any plan or measurement given by us is given for guidance only (based on your information) and without liability on our part. No allowance is made by us for additional materials, wastage or installation. You must satisfy yourself that all goods and/or services ordered are correct.
- 2.4 Any typographical error or clerical omission in any sales literature, quotation, price list or other document issued by us may be corrected with liability on our part.

### **3. Description of Goods**

- 3.1 The quantity and description of the goods are set out in our quotation or confirmation of order. We may supply goods in either metric or imperial sizes in the nearest equivalent measure and goods may be charged in metric, allowing for conversion.
- 3.2 All samples, drawing descriptive matter, specifications and advertising are issued or published for 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.
- 3.3 Where fine and 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.

### **4. Delivery of Goods**

- 4.1 Any dates and times we specify for delivery of the goods are an estimate. We 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.
- 4.2 If you fail to accept delivery 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.
- 4.3 We will deliver to site provided that there is a suitable road to the point where delivery is requested. 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 used 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 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
- 4.4 We shall not be liable for any shortages in quantity delivered unless you give written notice to us of such shortages within two working days of delivery. 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.
- 4.5 Any query about delivery shall be made as soon as possible 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.
- 4.6 We shall not be responsible for taking back any non-chargeable packaging/pallets.
- 4.7 The cost of any testing of the goods that we deem is necessary whether or not in your presence, will be charged to you unless prior written agreement has been obtained from us. If you (or our representative) delay in attending such test, after seven days' notice of the place and time of such tests, the test will proceed in your absence and shall be deemed to have been carried out in your presence.

### **5. Risk and Ownership of Goods**

- 5.1 The goods are at your risk from the time of delivery or deemed delivery.
- 5.2 Ownership of the goods shall not pass to you until we have received 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.
- 5.3 Until ownership of the goods has passed to you, you shall hold the goods on a fiduciary basis as our bailee and store the goods (at no cost to us) in satisfactory condition and in such a way that they remain readily identifiable as our property and you shall tell us immediately where the goods are situated.
- 5.4 You grant us and our agents an irrevocable licence at any time to enter any premises (with & without vehicles) where the goods are or may be stored in order to inspect them or where your right to possession has terminated to recover them.

### **6. Provision of Services**

- 6.1 Where the goods supplied include services by us our agents or subcontractors you shall (where necessary) allow us safe and reasonable access to the site within our normal working hours to carry out the services.
- 6.2 The price quoted for such services assumes that (a) the site is ready and suitable for the services to commence at the agreed time. (b) the services are to be carried out within our normal working hours (c) suitable site access is available at all times. (d) adequate mechanical lifting equipment is provided by you in the event that the services are to be carried out above ground level. If any of these assumptions proves incorrect we shall be entitled to vary the price
- 6.3 You shall provide a safe environment and all necessary consents, information, and resources for us, our agents and subcontractors to carry out the services.
- 6.4 In relation to any installation services, you are responsible for insuring the goods (whether before or after installation) and shall notify your insurers that we will be carrying out such services on site. You must protect carpets, furniture and all other items.

- 6.5 Any dates and times we specify for commencement and completion of the services are an estimate. We shall not be liable if we do not carry out the services on or at any particular date or time. Time for performance shall not be made the essence by notice.
- 6.6 If we provide design services, all copyright and other intellectual property rights created, developed or used shall remain the sole property of us or our licensors.

**7. Price and additional charges**

- 7.1 Unless we otherwise agree in writing, the price payable for the goods and /or services shall be the price applicable on the date of delivery or deemed delivery for goods and the date the services are carried out for services.
- 7.2 The price for the goods and or services shall be exclusive of any value added tax which shall be payable by you at the rate applicable at the tax point.
- 7.3 We may at any time after acceptance of an order, but prior to delivery revise the price payable for the goods and/ or services to take account of increases in costs including without limitation cost of any goods or material, carriage, labour or overheads the increase or imposition of any tax duty or other levy and variation in exchange rate.
- 7.4 If for any reason you or your project is exempt from value adding tax – an exemption certificate must be provided or the tax will be due

**8. Payment**

- 8.1 Supply only contracts we require up to 60% deposit with order, 40% Prior to delivery or collection
- 8.2 Supply and installation 50% Deposit with order, 30% Prior to installation, 20% immediately upon completion of installation
- 8.3 Payment for goods and or services on a credit account shall be due no 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.
- 8.4 For non-credit accounts payment shall be in accordance with our terms and conditions.
- 8.5 Credit accounts may only be opened at our discretion and are subject to satisfactory references. We may set a maximum amount of credit allowable upon each account and withdraw credit facilities without explanation. You agree that we may obtain and provide to third parties references as to your financial 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.
- 8.6 We reserve the right to cease all services and supplies without penalty regardless of any contractually agreed commitments until such time all payments outstanding are cleared in full.
- 8.7 Any certification of work required will only be supplied when the work is complete and full payment has been made.

**9. Liability**

- 9.1 If any goods or services are defective due to defective workmanship or material we shall (at our opinion) repair or replace such goods (or the defective part ) or rectify the defective service or refund the price of the defective goods and services at the pro-rata contract rate provided that (a) you give us written notice of the defect within seven days of the date of delivery or completion of the services or in the case of a defect which is not discoverable upon reasonable examination within seven days of the time when you discover or ought to have discovered the defect (and in any event within twelve months from the date of delivery or completion of service. (b) we are given reasonable opportunity after receiving notice to examine such goods and or services and (if asked to do so by us) you return such goods to our place of business for the examination to take place there (c) the defect is not due to willful damage, negligence (other than ours) fair wear, and tear, alteration or repair of such goods with our prior written consent or incorrect storage, application, movement, installation, commissioning, use or maintenance of the goods as set out by manufacturers or us.
- 9.2 We will not be liable for any damage to internal or external finishing work when removing and installing items as making good internally would be completed by you post installation of the items.
- 9.3 Our entire liability for defective goods /services is set out in 9.1 and in particular we shall not be responsible for either the cost of removing the goods from any place where they are installed or fixed (or making good in place after their removal) or for the cost of installing or fixing any repaired or replaced goods unless due to our defective service.
- 9.4 Our total liability in contract tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the contract shall be limited to the contract price.
- 9.5 We shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential, or any other indirect losses whatsoever and howsoever caused.
- 9.6 Where goods are manufactured in compliance with any designs, specification or drawings supplied by you or your customer you shall indemnify us against all proceedings, costs, claims, losses or demands in respect of any infringement or alleged infringement of any intellectual property rights whatsoever of third parties in any part of the world.

**10. Cancellation**

We may at our discretion accept or reject the cancellation of any contract or goods. Any such cancellation shall be on such terms as we specify and in particular we may charge you for any fees and costs incurred on cancelled orders.

**11. 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 licenses relating to such waste, including the appropriate disposal by you of any goods marked with a crossed-out wheelee bin symbol.

**12. Force Majeure**

We may defer the date of delivery, cancel the contract if we are unable to deliver or supply due to any cause beyond our reasonable control (including acts or commissions of our suppliers and sub-contractors).

**13. Export/Oversea Contracts**

In relation to good sold outside the UK; risk in the goods shall pass to you when they leave our premises. Shipping and insurance shall be payable by you.

You are responsible at your own expense for obtaining any license and complying with any export or import regulations in force within the UK and any country the goods are destined.

**14. General**

Any dispute or claim arising in connection with the contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts, save that if you are domiciled in Scotland (within the meaning of the civil jurisdiction and judgments act 1982) then the contract shall be construed in accordance with Scottish laws and shall be subject to the exclusive jurisdiction of Scottish courts.