

# **F.A.Firman (Harold Wood) Limited**

## **Terms of Trading**

### **1.0 Business Customers and Consumer Customers**

- 1.1 F.A. Firman (Harold Wood) Limited (hereinafter "Firman") and the Customer (Business or Consumer as defined below) hereby agree to be bound by these terms and conditions to the exclusion of any other terms and conditions, rights, obligations or liabilities howsoever arising.
- 1.2 As stated herein some of the terms and conditions only apply to Consumer Customers and others apply only to Business Customers. Unless stated otherwise all of the terms and conditions herein apply equally to Business Customers and Consumer Customers.
- 1.3 A Customer is a Business Customer if the goods or materials supplied by Firman are to be used in the course of business or a commercial venture.
- 1.4 A party to this agreement that is not a Business Customer is a Consumer Customer. The statutory rights of a Consumer Customer are not affected by these terms and conditions.

### **2.0 Price**

- 2.1 Any price quoted by Firman excludes VAT (unless otherwise stated in writing). VAT will be charged at the rate applying at the time of delivery.
- 2.2 Quotations provided by Firman will lapse after 30 days (unless otherwise stated in writing).
- 2.3 Any price quoted by Firman excludes delivery costs (unless otherwise stated in writing or if materials are to be fixed).
- 2.4 Firman is under no obligation to carry out any additional work (not foreseen at the start of the contract) or variations to the work unless the price and details for such work are agreed in writing prior to any such work being undertaken.
- 2.5 Unless agreed otherwise in writing Firman shall charge a reasonable rate for additional work or variations, where the additional work or variation is:
  - 2.5.1 necessary (in the opinion of Firman); or
  - 2.5.2 carried out at the written request of the Customer.

However, the rate (including the price of goods) may be higher than that used in the quote and must be agreed in writing before commencing those works.

2.6 For Business Customers only:

2.6.1 Unless otherwise stated, the price quoted by Firman is an illustrative estimate only and the price charged will be our price current at the time of delivery.

2.6.2 Rates of tax and duties on the goods will be those applying at the time of delivery.

2.6.3 At any time before delivery Firman may adjust the price to reflect any increase in the cost of supplying the goods or performing the work (or any variation to the work).

2.7 For VAT exempt building

2.7.1 When claiming exempt VAT status the Customer is required to provide a valid copy of the Planning Approval Notice and written confirmation that the building is VAT exempt.

2.7.2 Should this documentary evidence not be acceptable by HMRC at a later inspection date, Firman reserves the right to retrospectively recover VAT, even if a final account certificate has been signed.

### **3.0 Delivery**

3.1 All delivery, start and finish times provided by Firman are estimates only and time will not be of the essence.

3.2 If the Customer accepts delivery of the goods or allows commencement or continuation of work after the estimated delivery time, it may not terminate and will have no claim against Firman for any damages or delay (including any direct or indirect or consequential loss).

3.3 Firman may deliver the goods in separate instalments. Each instalment is treated as a separate Contract under these terms.

3.4 Firman may at its absolute discretion carry out the work in stages. Each stage is treated as a separate Contract under these terms.

3.5 Firman may require the Customer to carry out preparatory work before delivery or fixing works. The Customer must ensure that people and property are adequately protected in order to comply with any relevant safety regulations. Such provisions must be undertaken at the expense of the Customer and prior to delivery of the anticipated work.

3.6 Firman may decline to deliver or carryout the work if it believes that it would be unsafe, unlawful or unreasonably difficult to do so, or if the Customer has failed to comply with clause 3.5 above.

3.7 Where Firman agrees to deliver goods on a supply only basis, such delivery shall only be to the public access point of the delivery address and the Customer is responsible for any off-loading and/or distribution around the site, unless expressly agreed in writing otherwise.

- 3.8 Where Firman agrees to install materials or goods the price quoted does not allow for craneage or mechanical handling unless expressly agreed in writing and identified in the quotation and/or estimate from Firman.
- 3.9 Firman may decline to deliver if the premises (or the access to them) are unsuitable for its vehicles and the Customer will be liable for any losses incurred as a result.
- 3.10 Where Firman has already begun work and the Customer is in breach of any of the terms and conditions herein Firman may by way of written notice terminate the Contract and/or suspend its works and claim from the Customer its reasonable costs as a result.
- 3.11 Glass should be stored in dry conditions and out of direct sunlight, stacked upright in properly designed racks and fully supported in a manner which prevents the glass from sagging. In no circumstances should glass products ever be stored in the horizontal position. It should be stood on edge on strips of wood, felt or other relatively soft material. Special care should be taken to protect the glass, especially the edges, from impact damage (knocks, abrasions and excessive local pressure). Upon receipt and before glazing, each glass should be checked for damage. Damaged glass should not be glazed. Water must not be allowed to reach the edges of stacked glass as it can be drawn between the plates by capillary action and cause damage. The glass must be protected from site contamination such as welding, cementitious plaster products or adhesives. When glass is stored or transported there should always be some kind of protector between glass surfaces to prevent transit damage. This should be appropriate to the product and sizes considered. It may be for example, paper, rubber pads (buddies) or Lucite. When moving glass and glass products around a site or factory, whether on pallets, stillages or in cases etc., whether by fork life crane or other mechanical means, always bear in mind that glass remains fragile and will be broken by rough handling. Particular care should be taken to ensure that the glass is properly fastened and secured to prevent it falling and to avoid any damage. Glass should always be handled by staff who have been properly trained in approved practice, taking into account good health and safety procedures.

#### **4.0 Risks**

- 4.1 The Customer is responsible and liable for all materials and goods from the time of delivery.
- 4.2 Delivery takes place either:
- 4.2.1 at Firman's premises (if goods are being collected and transported by or on behalf of the Customer); or
- 4.2.2 at the Customer's address or site (if Firman is arranging carriage or installation).
- 4.3 As Firman's products are very fragile the Customer must inspect the goods upon delivery. If any goods are damaged or not delivered, the Customer must inform the driver and mark any damage or shortage on the delivery note and return any

damaged goods on the delivery vehicle. Firman will not be responsible for any shortage or damage that is not advised by the Customer as set out below:

- 4.3.1. Delivery notes should be both signed and printed clearly at time of receipt.
  - 4.3.2. Signing for materials delivered as “unchecked” will be deemed to be acceptance by the Customer that the goods are not damaged and correct.
  - 4.3.3. Materials stored at a place of delivery or handled or forwarded by post or other courier will be solely the Customer’s responsibility and Firman will not be held responsible for damage of any kind.
- 4.4 If Firman is required to handle any glass (or other goods) when delivering or carrying out work it will do so at the Customer’s risk.
- 4.5 If stillages are required as part of the delivery requirements, Firman requires a covering order in the sum of £1,500.00. This will be deemed as a chargeable item and thus non-refundable if held in the Customer’s possession for a period of more than 10 days.

## **5.0 Payment terms**

5.1 Firman’s debts are insured through Creditshield UK (a division of HCC International Insurance Company). Exclusions to this policy include Local Government, Charities and Private Individuals. Where a Customer falls within one of these exclusions or if Firman is unable to obtain insurance cover for a Customer, the following payment terms will apply:

- 5.1.1 For Local Government, Charity and Private Individual orders under the value of £5,000.00 (excluding VAT) payment in full must be made in advance of any work commencing.
  - 5.1.2 For Local Government, Charity and Private Individual orders over £5,000.00 (excluding VAT) payment is due as follows:
    - i) 50% of the order value to be received before work of any kind commences; and
    - ii) 50% of the order value to be received by way of cleared funds within 5 days after delivery of materials to site.
- 5.2 For Business Customers with an approved UK Credit Account payment is due on the day an application or invoice is submitted by Firman and the Final Date for Payment is 30 days after the Due Date.
- 5.3 If any Customer fails to pay in full any amount due Firman may:
- 5.3.1 suspend all or part of the works and claim damages as a result;

- 5.3.2 (notwithstanding the other rights to terminate set out herein) terminate or cancel future deliveries or outstanding work;
- 5.3.3 cancel any discount offered;
- 5.3.4 charge interest at a rate equivalent to that under the Late Payment of Commercial Debts (interest) Act 1998 as follows:
  - a. calculated (on a daily basis) from the due date until payment is made in full;
  - b. compounded on the first day of each calendar month; and
  - c. before and after any judgment until payment is made in full (unless the Court orders otherwise).
- 5.4 For Business Customers with an approved UK Credit Account Firman may at its absolute discretion withdraw or reduce any credit and/or bring forward the Due Date and/or Final Date for Payment at any time.
- 5.5 No Customer has any right to set off or counterclaim against any amount due to Firman under this or any other Contract between Firman and the Customer.
- 5.6 When money is owed to Firman by a Customer Firman has the right to keep any of the Customer's property held until payment is made in full (a lien);
- 5.7 The Customer shall indemnify in full and hold harmless Firman from all expenses and losses Firman may incur (directly or indirectly and including finance costs or legal costs on a full indemnity basis) following any breach by the Customer of any obligation under this Contract.

## **6. Title**

- 7.1 Statutory consumer rights are unaffected by this Contract.
- 7.2 For Business Customers only:
  - Until all debts to Firman are paid in full the Customer:
    - 7.2.1 accepts that all goods and materials supplied by Firman remain the property of Firman;
    - 7.2.2 shall store all goods and materials so that they are clearly identifiable as Firman property;
    - 7.2.3 shall take out and/or maintain all risk insurance for all goods and materials provided or supplied by Firman and hold the policy on trust for Firman;
    - 7.2.4 may use goods and sell them in the ordinary course of business but not if:
      - a. Firman revokes that right (by notice in writing); or
      - b. the Customer becomes insolvent.

- 7.3 The Customer must inform Firman in writing immediately if it becomes insolvent or believes it is likely to become insolvent.
- 7.4 The Customer shall allow Firman unfettered access to remove goods where the Customer's right to use and/or sell the goods ends under this Contract or otherwise.
- 7.5 Upon providing reasonable prior notice Firman has permission to enter any premises at any time where its goods are stored:
  - 7.5.1 to inspect the goods; and
  - 7.5.2 if the Customer's right to use and/or sell the goods has ended Firman may remove the goods using reasonable force if necessary.
- 7.6 Notwithstanding its retention of title to any goods Firman has the right to take legal action to recover the price of goods supplied should payment not be made under this Contract.
- 7.7 The Customer is not an agent to Firman and has no authority to make any contract on behalf of Firman or in its name.

## **8.0 Warranty**

- 8.1 Firman warrants to the Customer that:
  - 8.1.1. the goods supplied comply with the description on the acknowledgement of order form;
  - 8.1.2 the goods are free from material defect at the time of delivery; and
  - 8.1.3 If an unbroken sealed unit is, through faulty manufacture, affected by visual obscuration due to condensation or in the case of coated glass, deterioration of the coating within a period of 5 years from date of installation, Firman will at its absolute discretion, either supply a replacement unit or reimburse the reasonable cost of a replacement unit. Firman shall not however be responsible for meeting any costs of installation or re-installation, or any glazing or re-glazing in respect of any replacement unit or any decoration, re-decoration or making good, all of which costs shall be the responsibility of the Customer.
  - 8.1.4 in respect of heat soak testing toughened glass only - the risk of spontaneous breakage of toughened glass through Nickel Sulphide inclusions can be reduced by heat soak testing the glass after toughening. The head soak test is not covered under this warranty. Firman shall not be responsible to meet any costs associated with the supply, installation or re-installation or any associated costs.
- 8.2 Externally Glazed PVB Interlayer Works Only
  - 8.2.1 *Externally glazed PVB laminated glass with exposed edges has no warranty unless drawings are provided to Firman Glass including a glazing methodology with the enquiry AND Firman Glass provides written approval of all drawings and/or glazing methods prior to the manufacture of any glass*

commencing. Specifically relating to, but not limited to, moisture retention by the glazing system; drainage and ventilation arrangements; glazing sealants used; retention systems which have a clamping action upon the glass, which may include bolts, brackets, clamps and fixing plates; torque settings for the glazing system; and the glazing system complies with the specialist system providers recommendations, or the procedures and standards contained within BS 6262, BS 644, BS EN 14351, BS 6375, BS 4873, BS 6510, BS 7412, BS 8529 & BS 8000-7 where applicable.

8.2.2 Only when all of the above conditions are satisfied will Firman Glass provide to the customer a warranty for the use of PVB laminated glass glazed externally with exposed edges and this will run for a period of 12 MONTHS ONLY commencing from the date of delivery of the glass.

### 8.3

8.3.1 Unless stated above Firman gives no warranty (including any term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.

8.3.2 Firman will not be responsible for any design unless otherwise agreed in writing. Where Firman undertakes design work, it is undertaken on the basis that we will act with reasonable skill and care and be judged against the average competent Contractor operating within the glass industry and with the knowledge and experience that the average Contractor would have at the time of delivery or installation.

8.4 If the Customer believes that goods or services are defective in material or workmanship, it must:

8.4.1 inform Firman in writing immediately with full details; and

8.4.2 Allow Firman a reasonable time to investigate including any necessary access to inspect the goods or work.

8.5 If following investigations by Firman the goods are found to be defective in material or workmanship and the Customer has complied with the above provisions to provide notice and details in full, Firman will at its absolute discretion, replace the goods or repair the defective goods or work or refund the price (or a reasonable proportion of the price).

8.6 Firman is not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if it is negligent.

8.7 Firman's maximum total liability to any Customer (from one single cause) for damage to property caused by its negligence is £1,750,000.

8.8 In respect of any other liabilities not referred to elsewhere in these terms Firman's liability is limited to the price of the goods or work.

8.9 Nothing in these terms restricts or limits Firman's liability for death or personal injury resulting from negligence.

## **9.0 Specification**

- 9.1 If Firman prepares goods or materials in accordance with the Customer's specifications or instructions the Customer:
- 9.1.1 must ensure that the specifications or instructions are accurate;
  - 9.1.2 must ensure that goods prepared in accordance with those specifications or instructions will be fit for the purpose for which they are intended; and
  - 9.1.3 warrants that the specifications or designs will not result in the infringement of any rights belonging to a third party and that it and will indemnify Firman in respect of all loss, damage, costs or expenses (including legal fees) which Firman may incur in connection with any such claim or threatened claim by a third party.
- 9.2 All prices given by Firman are based on definitive design and specification provided by or on behalf of the Customer. Firman has no responsibility to design anything. Drawings may be produced by Firman but these will not be issued for approval. Unless stated otherwise in writing no allowance has been made in any cost stated for developing the design into a working solution. If design development is required this will be carried out by a third party as Firman does not carry PI insurance. This will be a negotiated additional figure based on the estimated time required and chargeable at the rate of £60.00 per hour unless stated otherwise in writing.
- 9.2.1 If Firman produces drawings the Customer must return these within a reasonable time, indicating approval or any amendments;
  - 9.2.2 Firman may charge for making amendments if it is over and above that originally requested or allowed for.
  - 9.2.3 Firman may revise our quote to account for additional costs as a result of your amendments, where they constitute an addition to or variation of the original specifications (clauses 2.7 and 2.8 apply);
  - 9.2.4 Firman is not liable for any errors which are approved; and
  - 9.2.5 Firman will retain copyright in its designs or drawings (unless otherwise agreed).
  - 9.2.6 The current building regulations part N require a visual permanent manifestation on large areas of clear glazing where pedestrians might not be aware of the presence of the glazing. Unless stated otherwise provision for this item has not been included in any offer.
  - 9.2.7 Due to the fact that many of the glass items produced are bespoke the Customer is to acknowledge the visual quality standards listed where applicable in particular large sealed double glazed units and laminated/toughened glass.
  - 9.2.8 Firman reserves the right to make any changes at any time in the specification of goods, which are necessary to ensure that they conform to

any applicable safety or other statutory requirements and additional costs may be incurred in doing so for which the Customer will be entirely liable.

9.2.9 Templates – All templates supplied to Firman are deemed to be actual size. Firman will accept no liability for any alterations to any sizes.

9.3 Please be aware when designing, specifying and ordering from the 'FirmaTREAD' decorative glass range, that this is standard stock product and whilst the pattern of the chosen product will remain true and constant throughout each individual panel we cannot consider and specific spacing and alignment with adjacent panels.

9.4 All glass is manufactured in accordance with our current Z25 glass specification, as amended from time to time, a copy of which is available on our web site or by contacting the office.

## **10.0 Storage Charges**

10.1 Unless expressly agreed otherwise in writing, where goods are ordered by or on behalf of a Customer but not collected within 28 days of such order (whether due to delivery or any other reason) the Customer will become liable for reasonable storage charges payable immediately to Firman as a debt.

10.2 In addition to the storage charges above, where any goods are stored by Firman for longer than 28 days, it reserves the right to dispose of and/or destroy any such goods at a cost to be borne by the Customer and payable immediately to Firman as a debt.

## **11.0 Wasted Site Visits/Daywork**

11.1 Firman reserves the right to charge the Customer a reasonable fee in respect of any site visits which are cancelled by the Customer with less than 3 working days' notice or where Firman is unable to commence or continue with its works due to works and/or failures by any third parties on site.

11.2 Firman reserves the right to charge the Customer an additional fee based upon a reasonable daywork rate for time spent in attending any site specific induction procedures, including but not limited to, site specific health and safety inductions, lectures and the process of obtaining a site passes and permits.

11.3 All quotations from Firman include for the production of statutory health and safety documents, such as risk assessments and method statements.

## **12.0 Return of goods**

12.1 Firman will only accept the return of goods in the following circumstances:

12.1.1 by prior agreement confirmed in writing; and

12.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and

12.1.3 where the goods are returned in the same conditions as they were on delivery and fit for sale.

12.2 **Consumers only:** Clause 12.1 does not affect your rights under the Consumer Rights (Distance Selling) Regulations 2000.

### **13.0 Export terms**

13.1 This clause shall apply to all exports except where stated otherwise in a written agreement between Firman and the Customer.

13.2 Where the goods are supplied by Firman by way of export from the United Kingdom the Incoterms of the International Chamber of Commerce which are in force at the time when the contract is made shall apply and the goods shall be supplied ex-works unless otherwise agreed.

13.3 The Incoterms are treated as amended by these terms (read as a whole) to the extent that they are inconsistent with them.

13.4 The Customer is responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties due as a result.

13.5 The goods shall be delivered as agreed but Firman is under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

13.6 The Customer has the right at its own expense and by prior arrangement with Firman to inspect the goods at Firman's premises or at the point of shipment before exportation except where otherwise agreed. If the Customer does not exercise its right to inspect the goods and they pass Firman's internal quality inspection this will be conclusive proof that they were of the warranted quality. Firman is not liable for any defect in the goods that would be apparent upon inspection unless a claim is made before shipment. Firman is not liable for any damage during transit.

13.7 Payment of all amounts due to Firman shall be made as stipulated by Firman or as set out in these terms and conditions unless otherwise agreed in writing.

- 13.8 Firman shall have no liability for death or personal injury arising from the use of the goods where the goods are to be delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

#### **14.0 Construction Work**

- 14.1 If the contract between Firman and the Customer constitutes a construction contract under the Housing Grants, Construction and Regeneration Act 1996 and/or the Local Democracy, Economic Development and Construction Act 2009 then the attached schedule will apply.

14.1.1 The terms and conditions herein will continue to apply to any construction contract between Firman and the Customer to the extent that they are consistent with the schedule.

14.1.2 Unless otherwise expressly stated, no access equipment or plant will have been allowed for within Firman's costs to facilitate construction on site including but not limited to mobile towers, scaffolding, cranes etc. Firman can arrange cranes on behalf of the Customer including local permissions, road closures etc where necessary but such arrangements will be provided on the express understanding that if such facility is suspended or postponed due to adverse weather conditions the Customer will be liable for all costs associated with this including labour in attendance and subsequent bookings and labour. Such costs will also apply in any event when the Customer is providing its own crane or plant.

14.1.3 Upon completion of its works Firman will offer to undertake a general builders' clean of its installation. Any further cleaning required after this will be chargeable. Where third parties carry out cleaning, stringent procedures are to be used, particularly in the case of coated glass. Please contact Firman for further information regarding such cleaning procedures. Claims for damaged glass must be made prior to cleaning or they will not be accepted.

#### **15.0 Cancellation and Termination**

- 15.1 Firman may terminate this Contract for any reason and at any time by giving written notice to the Customer and will not be liable for any loss or damage that may flow from such termination howsoever arising.
- 15.2 If Firman fails to deliver goods or start the works within a reasonable time, the Customer may by giving notice in writing, terminate this Contract, subject to the following:

- 3.2.1 the Customer may not terminate if Firman receives the above notice after the goods have been dispatched or after work has begun; and
  - 3.2.2. if the Customer terminates the Contract under this clause it will have no claim against Firman for any loss or damage suffered howsoever arising.
- 15.3 If an order is cancelled for any reason by the Customer then it must immediately make payment to Firman for all stock (finished or unfinished) held or committed to by Firman. Further if the contract includes other work then the Customer must immediately pay Firman for all work completed and for all additional costs incurred (direct and indirect) or to which Firman is committed for the performance of the work.
- 15.4 In addition to payment under clause 15.3 above, where an order is cancelled by a Customer for any reason Firman is entitled to claim from the Customer a reasonable loss of profit as a result of that cancellation.
- 15.5 Firman may suspend or cancel an order by written notice if a Customer:
- 15.5.1 fails to make payment by the final date for payment of any money due under the order or otherwise;
  - 15.5.2 becomes or is likely to become insolvent;
  - 15.5.3 You fail to honour your obligations under these terms.
- 15.6 The Customer may not cancel an order unless it has a right pursuant to these terms and conditions and Firman agrees in writing to such cancellation (and then clauses 15.3 and 15.4 above apply).

## **16.0 Waiver and variations**

- 16.1 No waiver or variation of these terms and conditions is binding unless it:
- 16.1.1 is made and recorded in writing; and
  - 16.1.2 is signed by or on behalf of each party; and
  - 16.1.3 expressly states that it is a variation or waiver of the terms and conditions.
- 16.2 All orders placed with Firman will be subject to the terms and conditions set out herein (or any revision thereof that Firman may issue from time to time). By placing an order with Firman the Customer expressly waives any other terms whether verbal, written express or implied to the extent that they are inconsistent with the Firman terms and conditions.

## **17.0 Force Majeure**

- 17.1 If Firman is unable to perform any of its obligations to the Customer (or is unable to perform them at a reasonable cost) due to circumstances beyond its control, Firman may cancel or suspend any of its obligations to the Customer without any liability howsoever arising.
- 17.2 Examples of such circumstances include an act of God, accident, explosion, fire, flood, transport delays, strikes or other industrial disputes and difficulty in obtaining supplies.

## **18.0 Miscellaneous**

- 18.1 English law is applicable to any contract between Firman and a Customer under these terms. The English and Welsh courts have non-exclusive jurisdiction.
- 18.2 If the Customer is represented by more than one person, each representative has joint and several obligations under these terms and conditions.
- 18.3 If any of these terms and conditions are rendered unenforceable then:
- 18.3.1 it will not affect the enforceability of the remaining provisions; and
  - 18.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 18.4 Firman may treat a Customer as insolvent if it is:
- 18.4.1 unable to pay its debts as and when they fall due; or
  - 18.4.2 the subject of (or any of its property is the subject of):
    - a) any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy); or
    - b) any application or proposal for any formal insolvency procedure has been instigated; or
    - c) any application, procedure or proposal overseas with similar effect or purpose has been instigated.
- 18.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between Firman and the Customer and should not be relied upon.
- 18.6 Any notice by either party required under these terms and conditions shall be served by leaving it at or by delivering it to (by first class post or by fax) the other parties

residential address, registered office or principal place of business. All such notices must be signed.

- 18.7 No contract between the parties will create any right enforceable (by virtue of the Contracts (Rights of Third Parties Act 1999) by any person other than Firman and the Customer.
  
- 18.8 The only statements upon which the Customer can rely upon in entering into or varying a contract with Firman is those made in writing by someone who is (or whom is reasonably believed to be) an authorized representative and either:
  - 16.8.1. identified in a Firman estimate (or any covering letter) and not withdrawn before the contract is made; or
  - 16.8.2. expressly identified by Firman in writing as someone upon which you may rely.
  
- 18.9 Nothing in these terms and conditions affect or limits any liability for fraudulent misrepresentation.

## **Schedule**

In this schedule, “the Act” means the Housing Grants, Construction and Regeneration Act 1996 and/or the Local Democracy, Economic Development and Construction Act 2009.

### **1.0 Payment**

- 1.1 Unless agreed otherwise in writing Firman is entitled to payment under the construction contract by way of instalments.
- 1.2 Firman may make applications for payment and/or submit invoices for payment as and when it deems them appropriate.
- 1.3 The due date for payment to Firman will fall on the last day of each month following commencement of the works (“the Due Date”).
- 1.4 For the purposes of section 110(1) of the Act the final date for payment of a sum due under the contract is seven days after the sum became due (“the Final Date for Payment”).
- 1.5 Within five days after the Due Date the Customer and/or third party certifier must notify Firman how much it has paid or proposes to pay Firman (even if it is zero) in respect of any instalment stating the basis on which that amount is calculated (“the Payment Notice”).
- 1.6 If the Customer and/or third party certifier fails to give a Payment Notice then Firman may issue a default notice at any time prior to the Final Date for Payment stating the amount it considers is due (“the Default Notice”). Where a Default Notice is issued the Final Date for Payment is delayed by the number of days between the date on which the Payment Notice should have been issued and the date the Default Notice is served.
- 1.7 If the Customer intends to pay Firman less than the sum in the Payment Notice or Default Notice then it (or the third party certifier) must serve a notice on Firman no later than 5 days before the Final Date for Payment stating the amount it considers to be due on that day explaining in sufficient detail the basis upon which that sum is calculated (“the Pay Less Notice”).

- 1.8 The Customer is required to pay to Firman by the Final Date for Payment the sum in the latest valid Payment Notice, Default Notice or Pay Less Notice served before the Final Date for Payment.
- 1.9 A Customer may only set off for delay costs against a sum due to Firman if:
- 1.9.1 the Customer has incurred delay damages claimed by a third party; and
  - 1.9.2 the delay damages incurred are exclusively caused by delays attributable to a failure or breach by Firman; and
  - 1.9.2 the delay damages incurred are reasonable; and
  - 1.9.3 the delay damages incurred are:
    - a) no greater than the sum incurred by the Customer;
    - b) no greater than 1% of the Firman contract price for each 1 week of delay; and
    - c) no greater than 10% of the Firman contract price.
- 1.10 Where Firman has agreed in writing to a particular percentage of retention being held by the Customer, 50% of this will be released upon Firman reaching practical completion of its works in accordance with the contract. Firman will determine when it achieves practical completion and notify the Customer. The remaining 50% of retention will be released to Firman 12 months after practical completion.

## **2.0 Adjudication**

- 2.1 Either party may refer a dispute under the construction contract to adjudication at any time.
- 2.2 Any adjudication under the construction contract shall be in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended in 2011.

## **3.0 Reckoning of time**

- 3.1. Time will be reckoned in accordance with section 116(1) of the Act.

## **4.0 Application**

- 4.1. These payment terms shall also apply mutually to any construction subcontractor of Firman.