

## IMPERIAL INTEGRATED SYSTEMS LIMITED - CONDITIONS OF SALE

### 1. GENERAL

These conditions of Sale ("the Conditions") supplied by the above-named Company ("the Company") to a purchaser ("the Buyer") shall be incorporated into each contract ("the Contract") made by the Company for the sale and installation of the Company's products ("the Products"). The Company contracts as aforesaid upon such terms as are agreed between the Company and the Buyer and upon the terms of the conditions alone. No conditions or terms of the Buyer shall apply to this Contract unless explicitly agreed in writing with the Company. No variation of any of the Conditions shall be effective unless in writing and signed by a duly authorised representative of the Company.

### 2. QUOTATIONS AND ACCEPTANCE OF ORDERS

(a) The Contract shall become binding only upon the confirmation of acceptance of any order by the Company in writing and accordingly all estimates or offers made and price or product lists supplied by the Company shall be treated as invitations to treat only.

(b) Subject to Clause 5(c) any estimate by the Company remains open for acceptance for 60 days from the date on which the Company sends the estimate to the Buyer unless the estimate specifically refers to an alternative period during which the estimate shall remain valid.

(c) The placing of an order by the Buyer shall be conclusive evidence that the Buyer, having checked the estimate/quote, is fully satisfied that the estimate/quote is in accordance with its requirements.

(d) The Company may well require payments at certain stage points to allow the momentum of the works to progress. The Buyer will be advised accordingly of the payments required and will be required to settle such sums without delay.

### 3. SPECIFICATIONS

(a) The Products are supplied solely in accordance with the Buyer's requirements, including, but not limited to, shape, size and finish of the Products and the Buyer shall be solely responsible for the accuracy of any requirements/specifications and for ensuring that they are suitable for the Buyer's intended purposes. Upon completion of the installation of the Products by the Company in accordance with Clause 8 the Buyer shall not be entitled to make any complaint nor be entitled to any legal remedy whatsoever against the Company in connection with the Products arising directly or indirectly from defects or inaccuracies in the requirements/specifications supplied by the Buyer.

(b) The stretch panel Products are manufactured and installed from roll materials of various widths. The Buyer is specifically placed on notice that following installation in accordance with Clause 8 the Products may be seam jointed and, unless the Buyer specifically states otherwise in the order for the Products, the Company shall determine the direction/position of the seam joints on installing the Products. Some ceilings will possibly show a deflection and curved ceilings will show a pillow effect due to the nature of the material. Printed panels may well have the welded seam on the lower seen face.

(c) The Buyer shall be responsible for supplying the Specifications within a reasonable time and in sufficient detail to enable the Company to perform the Contract in accordance with its terms.

(d) The specifications and proposals of the Company which without prejudice to the generality of the foregoing shall include illustrations, drawings, weights and dimensions are, unless expressly stated otherwise, subject to modification or improvement and must be regarded as approximate representations only and are not binding in detail unless expressly stated to be so and such title and copyright in the specifications submitted by the Company shall remain vested in the Company.

(e) The Buyer agrees that it shall not disclose to any third party any of the information relating to the Company's specifications without prior written consent of the Company or the party in whom title and copyright in the specification is vested.

(f) The Company has no responsibility for the effect achieved or efficiency of any of the products supplied.

### 4. PACKAGING

Packaging of the Products is undertaken by the Company's supplier's which reserves the right to pack the Products in such manner and with such materials and in such quantities as in its absolute discretion it thinks fit and accordingly the Company does not undertake the packaging of the Products and accepts no responsibility to the Buyer for the packaging of the Products.

### 5. PRICE

(a) All prices shall be as stated by the Company from time to time

(b) All prices shall be exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Company

(c) The Company shall be entitled to increase the price if the cost of production of the Products is increased by the Company's suppliers as a result of increases in the costs of labour or materials, fluctuations in exchange rates or any other cause beyond the Company's reasonable control and the Company shall notify the Buyer immediately of any variation and in any event before delivery of the Products were possible.

## **6. PAYMENT**

(a) Subject to Clause 2(d) liability for full payment of the Products supplied shall arise on delivery, and payment of the balance due, less the amount of any deposit/pre-payment paid by the Buyer for the Products, is due without abatement, deduction or set-off on completion of installation of the Products, or within 14 days of delivery of the Products to the Buyer whichever is the earlier, or as otherwise specifically agreed in writing by the Company. Payment shall be due and the Company shall be entitled to sue for the price whether or not property in the Products has passed by virtue of Clause 11.

(b) Sums unpaid after the due date shall bear interest until the day payment is received at the rate of 8% per annum above the base rate from time to time of the Bank of England, accruing from day to day from the date of delivery until the date of payment in full.

(c) If the recovery of sums outstanding from the Buyer is passed to a Debt Collection Agency the Buyer shall pay the Company's costs in instructing the said Debt Collection Agency and all ancillary legal costs.

(d) Without prejudice to any other rights or remedies of the Company any default of the Buyer in making payment on the due date shall entitle the Company to suspend deliveries or cease installation of the Products under the Contract or any other contract so long as the default continues and to treat the Contract as repudiated by the Buyer and determined if the Buyer has not within 14 days of receiving written notice from the Company paid all sums due to the Company.

(e) The Company may in its absolute discretion vary any or all of the terms of this Clause 6 concerning payment for the Products. Any such variation shall be made in writing and signed by a director of the Company on its behalf.

(f) The Company will exercise our statutory right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 (at 8% over the Bank of England base rate) if we are not paid according to our agreed credit terms.

## **7. DELIVERY**

(a) Delivery shall take place when the Products are delivered to the Buyer's premises or other delivery location agreed between the Company and the Buyer except that if the Buyer collects or arranges collection of the Products from the Company's premises, or nominates a carrier for the Products, delivery shall take place when the Products are loaded at the Company's premises.

(b) Time for delivery shall not be of the essence unless previously agreed by a director of the Company in writing. The Company will use its best endeavours to complete delivery on or before any delivery dates requested by the Buyer or estimated by the Company but will not be liable for any delay in delivery or for any consequential or indirect loss arising from any such delay.

(c) The Buyer shall accept immediate delivery or arrange to collect the Products or arrange suitable storage, failing which the Company may either:

(i) effect delivery by whatever means it thinks most appropriate; or

(ii) arrange storage at the Buyer's risk and expense pending delivery; or

(iii) re-sell or otherwise dispose of the Products without prejudice to any other rights the Company may have against the Buyer for breach of contract or otherwise.

(d) Where the agreement provides for delivery by instalments each instalment shall constitute a separate contract and any failure or defect in any one or more instalments delivered shall not entitle the Buyer to repudiate the agreement nor to cancel any subsequent instalments.

(e) The Buyer shall not be entitled to reject the Products by reason only of short delivery

(f) The quantity of the Products delivered under the Contract shall be recorded by the Company representative upon despatch/installation from the Company's factory or warehouse and the Company's record shall be accepted by the Buyer as conclusive evidence of the quantity delivered in good condition.

(g) Subject to Clause 9(a) below, it is the Buyer's responsibility to notify the Company if the Products have not been received by the Buyer within 7 days of the date of receipt of the Company's invoice. If no notification is made the Buyer shall be deemed to have received the Products in good condition.

## **8. INSTALLATION OF THE PRODUCTS**

(a) The Company shall arrange for the Products to be installed in the place specified by the Buyer as set out in the Buyer's order. The location at which the Products are to be installed ("the Site") shall be made safe, clean, and easily accessible to the Company's installation personnel for the purposes of enabling the Company to carry out the installation of the Products and shall be provided with all utility services and amenities required by the Company to install the Products safely and efficiently.

(b) The Company's installation personnel shall install the Products only during normal working hours (which for the avoidance of doubt shall mean between the hours of 08:00 to 18:00, Monday to Friday, excluding Bank Holidays) unless otherwise agreed in writing between the Company and the Buyer.

(c) Where the Site does not meet with the Company's requirements as specified in Clause 8(a) and/or 8(d) below or the Company is entitled to cease to carry out the installation works pursuant to Clause 8(f) below, the Company shall be entitled to refuse to commence or continue the installation works until such time as the Buyer undertakes such acts so as to ensure that the Site complies with the Company's requirements. All incidental costs incurred by the Company, as a

result of installation works not being undertaken by reason of any provision referred to in this Clause or elsewhere in the Contract, shall be fully reimbursed by the Buyer upon receipt of a written demand from the Company.

(d) If the Buyer requires that the Products be installed at or above a height of three metres from the floor level of the Site the Buyer shall notify the Company in writing of this no later than 5 days before the installation works are due to commence. In addition to the requirements of the Company specified in Clause 8(a) above, the Buyer shall at its own cost supply or make available to the Company towers, ladders, scaffolding and all other equipment specified by the Company which the Company requires to properly install the Products at or above a height of three metres. If any of the equipment or materials so specified by the Company are not provided to the Company prior to the commencement of the installation works Clause 8(c) above shall apply.

(e) The Buyer shall be responsible for ensuring that all necessary consents, permits, approvals and permissions required to be obtained by the Buyer from any local authority, government body, landlord (if the premises at which the Site is situated are leasehold), clients, architects or end user etc. are obtained and the Buyer shall accordingly indemnify the Company against any loss, costs or expenses incurred by the Company arising as a result of any such consents, permits, approvals and permissions not having been obtained by the Buyer.

(f) In addition to any other requirements set out in Clause 8, the Buyer shall ensure that the Site is suitable for the installation of the Products and that the Site is made safe for the Company's installation personnel and other agents and representatives to carry out installation works. The Buyer shall also be responsible for ensuring that insurance cover for the installation works is in place against all risks commonly insured against for such works and the Company may at any time request suitable proof from the Buyer that such insurance is in place. If the Buyer cannot provide suitable evidence of such insurance cover the Company shall be entitled to cease or refuse to commence installation works whereupon the provisions of Clause 8(c) shall apply.

(g) The Company shall not be liable for any damage caused to the Site during the installation works arising directly or indirectly from the Site being either unsafe and/or unsuitable or otherwise as a result of the acts or omissions of the Buyer, its servants, agents or representatives. The Buyer shall be liable for all expenses incurred in cleaning the Site after the installation works have been completed in accordance with the Contract.

(h) The Buyer shall be responsible for payment of any waiting or out of hours' time against the Company's claim. The client or agent will be required to sign the work acceptance document, if no suitable officer is available the fitters can complete the form and sign accordingly.

## **9. EXAMINATION AND CLAIMS**

(a) Where the Contract obliges the Company to install the Products at the Site the Company shall notify the Buyer upon completion of the installation works. The Buyer shall then inspect the Products and sign an acceptance form in the Company's standard form at that date. Subject to the provisions hereinafter set out signature by the Buyer of this acceptance form shall be deemed to be conclusive confirmation that the Company has properly performed its obligations under the Contract.

(b) The Buyer shall comply with the carrier's rules, regulations and requirements so as, when appropriate, to enable the Company to make a claim against the carrier in respect of any damage or loss in transit.

(c) Notification under either the Guarantee or Warranty (as appropriate) under Clause 10 shall be first made by telephone then by notice in writing within 14 days of invoice delivered by e-mail or post.

## **10. GUARANTEE AND WARRANTY**

(a) The Products may be supplied with the benefit of a guarantee ("the Guarantee") specifically supplied by the manufacturer of the Products and passed on by the Company to the Buyer. If the benefit of the Guarantee is transferred to the Buyer, the sole rights and remedies of the Buyer against the Company under the Contract shall be those expressly granted to the Buyer by the terms of the Guarantee.

(b) The Buyer may only claim under the Guarantee in respect of defects in the Products or installation works carried out by the Company. The Company shall be responsible for all labour costs incurred in carrying out repairs to or replacement of the Products (as appropriate) under the Guarantee. The Buyer shall supply all utility services, towers, ladders, scaffolding and all other access equipment specified by the Company which the Company requires to properly repair or replace the Products under the Guarantee at the Buyer's own cost.

(c) The benefit of the Guarantee shall not pass to the Buyer unless and until all sums due to the Company under the Contract have been paid by the Buyer. If the Buyer wishes to make any complaint or claim in respect of the Products before the benefit of the Guarantee has been issued by the Company the Buyer may only claim under the limited Warranty set out in Clause 10(d) below.

(d) Should the Guarantee not be in place then the Company warrants ("the Warranty") only that the Company will exercise reasonable care and skill in the installation of the Products at the Site and that the Products are reasonably free from defects in material or workmanship.

(e) The Company's obligations to the Buyer under the Warranty shall not apply:

(i) to damage caused by the Buyer or any third party's act, default, or misuse of the Products or by failure to follow any instructions supplied with the Products.

(ii) if the Products have been stored, handled, or applied in such a way that damage is likely to occur.

- (iii) if after the Products have been installed at the Site the Products are altered, modified or repaired by persons not expressly nominated or approved in writing by the Company.
- (iv) if the Buyer shall not have paid by the due date for all Products and services supplied under the Contract.
- (v) in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer.
- (vi) if access is allowed by the Buyer to the Product to any person other than persons expressly nominated or approved in writing by the Company.
- (f) Subject as expressly provided in these Conditions and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (g) Subject to (e) above the Company shall at its sole discretion, repair or replace the Products found to be defective in proposal, materials or workmanship.
- (h) Save for liability for death or personal injury arising from the Company's negligence (which if proved is not excluded) the Company's obligation to repair or replace as aforesaid shall constitute the full extent of the Company's liability in respect of any loss or damage sustained by the Buyer whether caused by any breach of the Contract or by misrepresentation or by the negligence of the Company, its employees or agents or arising from any other cause whatsoever and the Company shall not be liable for any consequential, economic, direct or indirect loss suffered by the Buyer arising therefrom.
- (i) The cost to the Company, and incidental to the return by the Buyer to the Company of any of the Products delivered hereunder, shall, except to the extent that the Company has expressly accepted responsibility hereunder, be the responsibility of the Buyer who shall indemnify the Company against any such costs including, but without limitation to the generality of the foregoing, costs of transport and testing or any other cost or loss to the Company arising there from.
- (j) Notwithstanding sub clause (h) above, the Buyer shall, except where he is a person who suffers personal injury or death or loss or damage to property such as to give rise to a claim under the Consumer Protection Act 1987, indemnify the Company against all loss, damage, liability, legal fees and costs arising from any such claim made against the Company under the Consumer Protection Act 1987.

## **11. PROPERTY AND RISK**

- (a) Risk shall pass to the Buyer on delivery and before commencement of the installation works and the Products should be insured accordingly.
- (b) Property (both legal and beneficial) in the Products shall remain in the Company until all sums owing to the Company whether under the Contract or any other contract at any time between the Company and the Buyer made prior to the date of the Contract or which may arise at any time before payment for the Products is made under the "Contract" ("the Indebtedness") shall have been paid in full. Until such time the Buyer shall hold the Products as bailee for the Company. The Company shall be entitled to re-possess the Products from the Buyer at any time after payment becomes overdue upon serving written notice of its intentions to do so or upon the happening of any of the following events (the "Events").
- (c) Should any payment not be forthcoming on demand the Buyers gives specific irrevocable permission for the Company to pursue the end client or end user etc. for payment settlement. The Buyer is deemed to have advised the persons or bodies as listed in 8e that this will form part of the contractual obligation on their behalf.

The Events are:

- (A) the giving of any notice to the Buyer that a receiver, manager, administrative receiver, supervisor, nominee or administrator is to be or has been appointed over any of the property or assets of the Buyer or that a petition to wind up the Buyer is to be or has been presented or that an application for an administration order is to be or has been made or of any notice of a resolution to wind up the Buyer (save for the purposes of a bona fide reconstruction or amalgamation);
- (B) a decision by the Buyer that the Buyer intends to make any arrangement or composition with its creditors generally;
- (C) where the Buyer pursuant to Section 123 or 268 of the Insolvency Act 1986 appears to be unable to pay a debt or appears to have no reasonable prospect of being able to pay a debt;
- (D) any distress or execution levied or threatened to be levied on any property or assets of the Buyer;
- (E) the inability of the Buyer to pay its debts as they fall due.
- (ii) On Receipt of notification from the Company under (i) or on the happening of any of the Events the Buyer shall immediately deliver the Products to such address as the Company shall specify in default of which, or in the alternative, the Company shall have the right to enter on any premises or land in the ownership, control or possession of the Buyer who shall indemnify the Company on a full indemnity basis against all loss, damage, costs or expenses so arising including loss, damage, costs or expenses in respect of third party claims. For the avoidance of doubt the Buyer hereby unconditionally and irrevocably authorises the Company or its nominated agents or representatives to enter into or upon premises or land in the ownership, possession or control of the Buyer or their clients for the purpose of the re-possession of the Products.

## **12. BREACH BY OR INSOLVENCY OF THE BUYER**

If the Buyer shall not comply with any of its obligations to the Company or upon the occurrence of any of the Events referred to in Clause 11(b), the Company shall have the right forthwith to terminate the Contract but without affecting any other claim, right or remedy of the Company against the Buyer.

### **13. CANCELLATION, SUSPENSION OR TERMINATION**

(a) If the Buyer shall purport to cancel the whole or any part of the Contract the Company may, by notice in writing to the Buyer elect to treat the Contract as repudiated and the Buyer shall thereupon be liable to pay to the Company by way of liquidated damages a sum equal to all the expenses incurred by the Company in connection with the Contract including an appropriate amount in respect of administrative overheads, costs, materials, labour and losses of profit. The Company's reasonable estimate of the expenses incurred shall be final and binding on the parties. In the case of a simple cancellation, a fee of 20% of the order value will be payable.

(b) If for any cause whatsoever beyond its control the Company is unable to make any delivery on the applicable delivery date or perform any of its obligations under the Contract the Company may by notice in writing to the Buyer terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer.

### **14. FORCE MAJEURE**

(a) In so far as the performance of the Contract by the Company may be affected by any strike, any lack of available shipping or transport or materials, any restriction, regulation or decree by any local or municipal authority or government department or by any cause beyond the Company's reasonable control (which shall be construed without reference to the preceding causes) the Company may elect at its absolute discretion either:

(i) to terminate the Contract; or

(ii) to proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances

(b) In the event that the Company makes an election under Clause 14(a) the Buyer shall accept the Products or such part of them as are delivered to it notwithstanding any delay.

### **15. PATENTS, REGISTERED DESIGNS, TRADEMARKS, TRADE NAMES AND COPYRIGHT**

The Buyer shall indemnify the Company against all damage, loss, costs, claims and expenses arising out of any infringement of any letters patent, registered design, trademark, trade name or copyright or any claim for such infringement or any claim for passing off arising out of work carried out in accordance with the Buyer's specification.

### **16. RIGHT TO SUB-CONTRACT**

The Company shall be entitled to sub-contract the whole or any part of the Contract without the Buyer's written consent.

### **17. SEVERANCE**

Should any one or more of these Conditions or any such provision thereof be found to be or become invalid, illegal or unenforceable in any respect under any law the enforceability and validity of the remaining Conditions and sub-provisions of all individual conditions shall not in any way be affected or impaired thereby.

### **18. WAIVER**

No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any past or subsequent breaches of the same or any other provision.

### **19. NO AGENCY**

It is expressly agreed that the contractual and legal relationship between the Company and the Buyer is that of Seller and Buyer and no relationship of Principal and Agent is expressed, implied or to be inferred. The Company may either directly or indirectly solicit and make sales of any of the Company's Products or services to anyone without being obligated or liable to the Buyer in any manner for or on account of any such solicitation or sale.

### **20. ADJUDICATION**

If at any time a dispute or difference arises between the parties to this contract concerning any matter in connection with and arising from this contract, such dispute or difference may be referred to adjudication for resolution provided that written notice of such intention shall first have been given by the referring party in accordance with the requirements of the Housing Grants, Construction & Regeneration Act 1996. The nominating body will be the Association of Independent Construction Adjudicators (AICA). The rules governing any adjudication arising out of this contract shall be those set down in the Scheme for Construction Contracts (England and Wales Regulations 1998). For Residential, occupier projects (not covered by the Act), the same method of dispute resolution by adjudication will be adopted for an independent decision which will be binding on both parties and any sum awarded will be payable within 14 days.

### **21. PROPER LAW**

The Contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law and shall be subject to the jurisdiction of the English Courts.