

## 1. Interpretation and Basis of Contract

### 1.1 In these conditions:

'Buyer' means the 'person' or 'firm' named in the Order as the Buyer

'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) include any special terms and conditions agreed in Writing between the Buyer and the Seller and/or set out in the Order.

'Contract' means the contract for the supply of the goods, consisting of the Order (and any documents referred to therein) and these Conditions.

'Delivery Date' means the date that the Seller has agreed in Writing to deliver the Goods to the Buyer.

'Goods' means the goods which the Seller is to supply in accordance with the Contract.

'Order' means the Buyer's order for the Goods as set out in the Seller's quotation and the Buyer's acceptance of the Seller's quotation

"Order Confirmation" means the Seller's confirmation, in Writing, that the Order has been accepted.

'Price' has the meaning given in clause 2.

'Seller' means Soprema UK Limited (registered in England and Wales under number 02939363 of Soprema House, Freebournes Road, Witham, Essex, United Kingdom, CM8 3US.

'Writing' includes e-mails, cable, facsimile transmission and comparable means of communication, provided that where the term is used in the context of an amendment, substitution or variation to the Conditions.

1.2 Any reference in these Conditions to any provision of a statute, regulation, order or other form of legislation is construed as a reference to that provision as amended reenacted or extended from time-to-time.

1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

1.4 All Orders are accepted only subject to these Conditions, which cannot be varied other than with the express written agreement of the Seller.

1.5 These Conditions apply to the sale of the Seller's goods to the Buyer (the Contract) to the exclusion of any other terms that the Buyer seeks to impose or incorporate, which are contained or referred to in the Buyer's order or which are implied by trade, custom, practice or course of dealing.

1.6 The Contract constitutes the entire agreement between the Seller and the Buyer. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller, which is not set out in the Contract.

1.7 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions of or illustrations contained in the Seller's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract or have any contractual force.

1.8 The Seller may amend and replace its terms and conditions at any time. The Seller's Conditions as at the date of its Order Confirmation shall apply to the Contract and are available from the Seller upon request.

## 2. Prices and Quotations

2.1 The price of the Goods shall be the price set out in the Order or, where no prices have been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list (Price List) current at the date of acceptance of the Order ('Price'). A quotation for the goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

2.2 Prices at the time will be set out in the Seller's Order Confirmation but Orders are only accepted on the understanding that the price of the Goods will be the prices ruling at the date of dispatch plus the appropriate amount of VAT. If the price at dispatch is higher than the price on the Seller's Order Confirmation, the Seller shall notify the Buyer in advance and the Buyer shall have 5 working days from the date of notice to cancel the Order or the higher price will be deemed to be accepted.

2.3 Any bespoke or made to order products must be paid for prior to manufacture.

2.4 Prices given are ex-warehouse. Carriage is charged in accordance with clause 12.

2.5 All prices are quoted exclusive of value added tax (VAT) which the Buyer shall pay in addition.

## 3. Payment

3.1 Subject to any alternative payment terms set out in the Order, the Seller may invoice the Buyer for the Goods at any time on or after delivery of the Goods.

3.2 The invoice must be paid within 30 calendar days following the end of the month during which the invoice was received (the "Final Date for Payment").

3.3 In the event of a failure by the Buyer to pay any sum due to the Seller by the Final Date for payment the Seller shall have the right to: (a) appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and Seller); and (b) charge the Buyer interest in accordance with the Late Payment of Commercial Debts Interest Act 1998 for the period of late payment.

3.4 All amounts due under this agreement shall be paid by the Buyer to the Seller in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

3.5 The Seller may at any time, without notice to the Buyer, set off any liability of the Buyer to the Seller against any liability of the Seller to the Buyer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Seller of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

## 4. Orders

4.1 All orders shall be submitted in Writing on the Seller's order form (the Order). The Order should contain the Buyer's full name, full postal address including post code, description, price, code and colour of the goods as given in

the Seller's price list (the Goods), quantity and clear delivery instructions including the method of delivery. If the Buyer places a verbal order all the information included on the Seller order form must be provided. The Seller will not accept responsibility or be held liable for any miscommunication or goods ordered in error. The Seller is not obliged to accept returns of Goods save in accordance with clause 9.

4.2 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 are complete and accurate.

4.3 The Order shall only be deemed accepted if and when the Seller has issued its Order Confirmation at which point the Contract shall be made.

## **5. Liability**

5.1 Nothing in these Conditions shall limit or exclude the Seller's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; (d) defective products under the Consumer Protection Act 1987; or (e) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

5.2 Subject to clause 5.1: (a) the Seller shall under no circumstances whatever 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 (b) 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.

## **6. Delays in Delivery**

6.1 Estimates of dates of delivery or collection given in these Conditions or otherwise given to the Buyer are made in good faith but are approximate only and the Seller cannot guarantee that the Goods will be ready for delivery or collection on any specific date. The time of delivery is not of the essence.

6.2 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality, less the price of the Goods.

6.3 The Seller shall not be liable for any failure to or delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

## **7. Reservation of Ownership**

7.1 Legal and beneficial ownership shall remain with the Seller and title to the Goods shall not pass to the Buyer until the earlier of: (a) all sums owing to the Seller by the Buyer on any account whatsoever in respect of which payment has become due have been received by the Seller in full and cleared funds, in which case title to the Goods shall pass to the Buyer at the time of payment; or (b) the Buyer resells or incorporates the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 7.4.

7.2 Until title to the Goods has passed to the Buyer, the Buyer shall:

(a) store the Goods separately from all other goods held by

the Buyer so that they remain readily identifiable as the Seller's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Seller immediately if it becomes subject to any of the events listed in clause 13.2; and

(e) give the Seller such information relating to the Goods as the Seller may require from time to time.

7.3 At the Seller's absolute discretion and on payment of the Seller's required fee, a vesting certificate may be provided to the Buyer in respect of the Goods. Any vesting certificate shall be strictly on the Seller's terms, a copy of which is available on request.

7.4 Subject to clause 7.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells or uses the Goods before that time:

(a) it does so as principal and not as the Seller's agent; and

(b) title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale or use by the Buyer occurs.

7.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 13.1, then, without limiting any other right or remedy the Seller may have: (a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and (b) the Seller may at any time: require the Buyer to deliver up all Goods in its possession which 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.

## **8. Risk**

8.1 Goods supplied shall be at the Buyer's risk from the time when they are delivered to the Delivery Location or upon collection by or on behalf of the Buyer.

## **9. Quality and Returns**

9.1 The quantity, quality and description of and any specification for the Goods shall be those set out in the Order and unless otherwise expressly set out there in the Seller gives no warranty that the Goods will conform to any particular standard specification or test.

9.2 The Buyer must examine the Goods upon arrival and any damage or shortage must be recorded on the receipt given to the carrier. Both the Seller and the carrier must be advised of any damage or shortage in Writing before the expiry of 24 hours after arrival of the Goods. Failure of arrival of Goods within 24 hours of advised dispatch date must be notified immediately to the Seller in Writing.

9.3 The Buyer must give the Seller a reasonable opportunity to examine any defective Goods and (if asked to do so by the Seller) return such Goods to the Seller's place of business at the Buyer's cost and risk.

9.4 The Seller shall, at its option and subject to the remainder of this clause 9, repair or replace any defective Goods, or refund the price of the defective Goods in full.

9.5 Any return which has been accepted by the Seller shall, for the avoidance of doubt, be returned at the expense/cost and risk of the Buyer. Prior to sending the item for return the Buyer must take and send to the Seller photographic evidence of the condition of the Goods before dispatch. If photographic evidence is not supplied prior to the return of the item, then the Seller may refuse the return of the item.

9.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9.7 The Seller is not obliged to accept the return of any Goods which have been correctly supplied. Where a return is agreed, all Goods and materials must be returned in the same condition as when delivered. A re-stocking fee will be charged dependent upon size of re-stock and condition of returned material.

9.8 Health and safety/product data sheets are available from the Seller on request or via the Seller's website at [www.soprema.co.uk](http://www.soprema.co.uk).

9.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

#### **10. Force Majeure**

10.1 The Seller shall not be liable for any failure or delay in performing its obligations under the Contract, or for any loss or damage suffered by a Buyer, to the extent that such failure or delay or such loss or damage is caused by or arises in circumstances outside the reasonable control of the Seller including (but not limited to) difficulties obtaining raw material from normal sources, Government restrictions and controls, strikes, lockouts or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors (a Force Majeure Event).

#### **11. Delivery of the Goods**

11.1 The Seller shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (the Delivery Location). Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

11.2 With the exception of delivery times for insulation and some specialist items, which may vary, the Seller will endeavour to deliver most Orders within 7 to 10 working days.

11.3 If Goods are not in stock, the Seller will endeavour to have them available within 4-5 weeks of receipt of Order.

11.4 For special vehicles or specific delivery dates and times, the Buyer should contact the sales office for details of the costs which may be incurred.

11.5 The Seller may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel

any other instalment.

11.6 If the Buyer fails to take or accept delivery of the Goods when the Seller attempts delivery, or to collect within 48 hours of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by the Seller's failure to comply with its obligations under the Contract: (a) delivery of the Goods shall be deemed to have been completed at 9:00am on the day of attempted delivery or on the second working day after the day on which the Seller notified the Buyer that the Goods were ready; and (b) subject to clause 11.7, the Seller shall store the Goods until delivery or collection takes place, and may charge the Buyer for all related costs and expenses (including insurance).

11.7 If 3 working days after the day on which the Seller attempted delivery or notified the Buyer that the Goods were ready for delivery or collection the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of all or part of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

#### **12. Delivery Costs**

12.1 Delivery costs will vary at the discretion of the Seller, and are contained within the purchasing schedule.

#### **13. Termination and Suspension**

13.1 Without limiting its other rights or remedies, the Seller may terminate this Contract at any time with immediate effect by giving written notice to the Buyer.

13.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer takes any step or action in connection with its (or the Seller reasonably believes that the Buyer is about to take any step or action in connection with its) entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business, or if the Buyer fails to pay any amount due under this Contract or any other contract between the Buyer and the Seller on the due date for payment:

13.3 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

13.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

13.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### **14. General**

14.1 Assignment: The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

14.2 Notices: Any notice or other communication given to a party under or in connection with the Contract shall be in Writing, addressed to that party at its registered office (if it is

a Seller) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in Writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or other next working day delivery service, at 9:00am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if by e-mail, one working day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance: If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.4 Waiver: A waiver of any right or remedy under the Contract or law is only effective if given in Writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 Third party rights: A person who is not a party to the Contract shall not have any rights to enforce its terms. Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.6 Law and Jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims)