

CONDITIONS OF SALE

- 1.0 DEFINITIONS**
- 1.1 **Order** means the document setting out the Goods, the Price, the Delivery Date and the Delivery Place agreed between the Parties and subject to these Conditions of Sale.
- 1.2 **Acknowledgement** means the person who buys or agrees to buy the Goods from the Seller.
- 1.3 **Buyer** means the person who buys or agrees to buy the Goods from the Seller.
- 1.4 **Conditions** means the Terms and Conditions of Sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.5 **Consumer** means a person defined in the Unfair Contract Terms Act 1977, Section 12 Purchasing the Goods.
- 1.6 **Delivery Date** means the date specified by the Seller when the Goods are to be delivered to the Buyer.
- 1.7 **Goods** means the goods which the Buyer agrees to buy from the Seller set out in the Delivery Note.
- 1.8 **The Guarantor** means the person (if any) required by the Seller to guarantee payment of the Goods by the Buyer in the event of his default.
- 1.9 **The Parties** means the Buyer and the Seller and any Guarantor.
- 1.10 **Price** means the price for the Goods including transport, packing and insurance, but excluding VAT set out in the Delivery Note.
- 1.11 **Seller** means AKV Cladding Products Ltd or AKV Architectural Facades Ltd, both of Hackworth Industrial Park, Byerley Road, ShildonCo, Durham DL4 1HF.
- 2.0 CONDITIONS APPLICABLE**
- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any term or conditions which the Buyer may purport to apply under any purchase order or (confirmation order or similar document).
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. Each Contract shall be concluded on the date that the Seller deposits in the post with pre-paid postage or transmits by facsimile or hands to the Buyer or his representative the Delivery Note signed by the Seller whichever may be the earliest to occur.
- 2.3 In the event that no order has come into existence acceptance of delivery of the Goods by the Buyer shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation of these Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 Any typographical, clerical or other error or omission in the Delivery Note or any other document issued by the Seller shall be subject to correction without any liability on behalf of the Seller.
- 3.0 PAYMENT**
- 3.1 Payment of the Price together with VAT shall be due within 30 days of the date of invoice unless otherwise agreed in writing with the Seller. Time for payment of the said invoice shall be of the essence of the contract.
- 3.2 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the rate of 2% above Lloyds Bank Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any Judgment.
- 3.3 Prices quoted in the Delivery Note are valid for 30 days from the date of the Delivery Note. The Seller reserves the right to vary the quoted price of the Goods at any time in excess of 30 days from the date of the Delivery Note and the Buyer agrees to pay the variation in the Price together with VAT if such variation is due to factors occurring, after the making of a contract of sale which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes, duties, cost of labour, changes in specifications, materials and other manufacturing costs).
- 3.4 The Seller shall not be bound to deliver the Goods until the Buyer has paid for them.
- 3.5 If the Buyer fails to make payments within the agreed terms of the date of the invoice then without prejudice to any of the Seller's other rights the Seller may then.
- 3.5.1 Suspend or cancel deliveries of any Goods due to the Buyer and/or
- 3.5.2 Appropriate any payments made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.
- 3.6 The Buyer may not set off against the Price (including any applicable VAT, transport, packing and insurance payable) any amount due from the Seller whether under the applicable contract of sale or otherwise.
- 3.7 The Seller shall not be entitled to Invoice the Buyer the Price together with VAT and any transport, packing, insurance and additional labour costs at any time after the Delivery Note has been signed (whether or not the Goods or any part of them have actually been delivered).
- 4.0 SALE BY DESCRIPTION**
- 4.1 In the case of the Buyer not being a Consumer, the Seller reserves the right to supply the Goods with changes in the specification of description or sample provided. However, the Seller shall only change the sample, specification or description in a contract not involving a Consumer when such change is required because of a change imposed by the Seller's supplier at any time or other factors outside of its control.
- 5.0 WARRANTIES AND LIABILITY**
- 5.1 Except where the Buyer is dealing as a Consumer all warranties, conditions or terms relating to fitness for purpose or satisfactory quality whether implied by statute or common law or otherwise are excluded.
- 5.2 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer for any loss direct or consequential of whatever nature resulting from any breach of duty of the Seller either at common d law or under statute including any representations inducing the Buyer to enter into this contract.
- 6.0 DELIVERY OF THE GOODS**
- 6.1 Delivery of the Goods shall take place at the place specified in the Delivery Note. All unloading facilities required for delivery including labour and any special equipment shall be provided by the Buyer at its own expense.
- 6.2 Where the delivery of the Goods takes place at a place other than the Seller's premises, the Buyer undertakes that the site will have:-
- 6.2.1 Adequate access for all vehicles and equipment necessary for off loading.
- 6.2.2 A suitable hard standing surface for the purpose of off loading.
- 6.3 Whilst the Seller shall endeavour to maintain delivery on the Delivery Date, this is only approximate and the time for delivery shall not be of the essence unless previously agreed with the Buyer and confirmed on the Delivery Note. The Goods may be delivered in advance of the Delivery Date upon giving the Buyer reasonable prior notice.
- 6.4 The Seller shall endeavour to comply with any dates quoted for delivery of the Goods but shall not be liable for any delay caused by reasons beyond the Seller's control.
- 6.5 The Buyer shall be deemed to have accepted the consignment of Goods 24 hours after delivery and except as provided herein the Seller shall have no further liability to the Buyer.
- 6.6 Any complaints about whether the correct Goods or their quantity have been delivered must be made in writing to the Seller within 24 hours of delivery and specifying the nature of the complaint. If the Buyer rejects the Goods within the period of 24 hours after delivery then it shall as soon as reasonably practicable return the Goods to the Seller or permit the Seller the opportunity of collecting the Goods.
- 7.0 TITLE AND RISK**
- 7.1 The Goods shall be at the Buyer's risk as from delivery.
- 7.2 In spite of delivery having been made properly in the Goods shall not pass from the Seller until the Seller has either retained cash or cleared funds from the Buyer for:-
- 7.2.1 The Price plus VAT, transport, packing and insurance as applicable in full; and
- 7.2.2 Any other sums whatever that shall be due from the Buyer to the Seller.
- 7.3 Until property in the goods passes to the Buyer in accordance with Clause 7.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 7.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 7.5 The Seller shall be entitled to recover the Price plus VAT notwithstanding that property in any of the Goods has not passed from the Seller.
- 7.6 Until such time as property in the Good passes from the Seller the Buyer shall upon request delivery up request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. n the making of such request the rights of the Buyer under Clause 7.4 shall cease.
- 7.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.8 The Buyer shall insure and keep insured the Goods to the full Price against all risks to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurances. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.9 The Buyer if a company registered in England and Wales shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part 11 as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.0 REMEDIES OF THE BUYER**
- 8.1 Where the Buyer rejects the Goods in accordance with Clause 6.6 then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.
- 8.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall except as provided herein have no liability whatever to the Buyer in respect of those Goods.
- 9.0 FORCE MAJEURE**
- 9.1 The Seller shall not be liable for any failure to perform any contract for the sale of Goods whether in whole or in part if this failure is caused by any inability to secure labour, materials or supplies or by any act of God, not or strike commotion , strike, lock out, fire, flood, drought, act of Government or any cause whatever outside of the Seller's control and either part shall have the right by giving notice in writing to the other to repudiate the contract.
- 10.0 INSOLVENCY OR DEFAULT OF THE BUYER**
- 10.1 If the Buyer shall make default in or commit any breach of contract with the Seller or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall (in the case of an individual or partnership) make an arrangement for composition with his creditors, or be made bankrupt or make an application to Court for protection; or (in the case of a limited company) shall pass any resolution to wind up the company (other than for the purpose of solvent amalgamation or reconstruction) or shall be wound up by a creditor or make any application to the Court for relief against creditors or have a Receiver or Administrative Receiver appointed over the company's undertaking, property or assets then the Seller shall have the right forthwith by notice in writing to determine any contract then subsisting without prejudice to any claim or other right the Seller may have against the Buyer.
- 11.0 COVENANT AND INDEMNITY**
- 11.1 The Buyer covenants to the Seller that where the Goods are supplied to the Buyer's specifications or design the Buyer shall be responsible for ensuring that the same are safe without risk to health and comply with all relevant statutes, delegated legislation and European Community Directives.
- 11.2 The Buyer further agrees to indemnify the Seller for any loss, fine, claim, expense, award, damages, costs or penalties incurred by the Seller in complying with the Buyer's specifications or design.
- 12.0 GUARANTEE**
- 12.1 The Guarantor agrees as primary obliger to pay-
- 12.1.1 The Price, VAT, transport, packing and insurance costs
- 12.1.2 Any other sums which the Buyer shall by notice of this Contract be obliged to pay the Seller.
- 13.0 PROPER LAW OF CONTRACT**
- 13.1 This contract is subject to the laws of England and Wales.
- 13.2 All disputes arising out of this contract shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 14.0 MISCELLANEOUS**
- 14.1 All headings are for ease of reference only and shall not affect the construction of this contract.
- 14.2 All references to the masculine shall include the feminine and neuter and vice versa and all references to the singular shall include the plural and vice versa.
- 14.3 Any notice required to be given under these Conditions shall be in writing addressed to the party and its registered office or principal place of business or such other address as may have been notified to the other party and shall be deemed to have been served in the case of by post, two days after it has been delivered in the post with pre-paid first class postage or in the case of facsimile the date upon which it is sent provided it is transmitted before 4.00 pm on a working day Monday to Friday, or in the case of personal delivery, the date, it is actually handed to the Buyer or his representative.
- 14.4 No waiver by the Seller of any breach of a term of this contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.0 OFFLOADING, HANDLING AND STORAGE**
- AKV ensure all products are carefully packed and protected to ensure the product arrives on site in first class condition. AKV produce a vast range of products varying from simple flashings and insulated gutters to complex fabrications. The packing, off-loading and site handling will vary depending on the products being delivered to site at the time. There is however a number of common principles which must be adopted to ensure the products remain in first class condition up until the moment of installation. Some products require additional care and specific instructions for these products are outlined below.
- 15.1 Common Principles**
- it is the customer's responsibility to arrange lifting equipment and labour to unload materials.
 - Offloading of materials will usually require the use of a forklift to unload materials.
 - Whilst off-loading, care should be taken to avoid damage to any element of the materials with particular attention to the edges of a pack.
 - Whilst offloading using a forklift, ensure the ground is relatively even to ensure the tines are level and do not damage the bottom or side of the pack.
 - Where possible store materials undercover.
 - Where materials are not palletised, use timber bearers to ensure the pack is stored off the ground.
 - Do not store packs in the path of foot or vehicle traffic.
 - Ensure materials are clean and dry prior to installation, (this is imperative where sealants are to be applied).
 - It is the customer's responsibility to advise AKV if a flat-bank transport is required to assist with offloading. Unless advised, materials may be transported to site via curtain-sided vehicle.
- NOTE:** Please ensure all packs are intact prior to unloading and before signing the delivery note. AKV can not accept responsibility for packs damaged after off-loading.
- 15.2 Standing Time**
- Please be aware that AKV reserve the right to levy a charge for standing time if a transport is kept on site for over an hour.
- 15.3 Powder Coated Materials**
- Powder coated materials will often be shrink-wrapped to protect the materials during transport and during on site handling. Once delivered to site however, remove the shrink wrap within seven days and store in a clean, dry environment. While wrapped, powder coated materials may react badly to a combination of heating, cooling, condensation and other moisture when exposed over long periods. If the shrink-wrap is punctured and allows water into the pack, the effect may be exacerbated.
- 15.4 Removal of Strippable Film**
- Similar to shrink wrapped products, some products such as PVF2, Celestia and some polyesters are applied with strippable film to protect the surface of the materials during transport and on-site handling. Once delivered to site, the strippable film should be removed within seven days and the product stored in a clean, dry environment. (If the product is shaded from direct sunlight, the reduced Ultraviolet radiation may enable the film to survive longer without the film's tack increasing to a damaging level. Please be aware that under these circumstances AKV even then recommend removal of the film within seven days). Alternatively, if the products have been fitted to the building within this seven day period, remove all strippable film as the product is installed.
- 15.5 Overnight/Independent Carriers**
- AKV do their best to provide a premium service to their customers often turning around product in a very short space of time. In some instances we understand timing is paramount; a single item may be needed to complete a project. In such cases, we always try to accommodate the customer where possible, producing the item immediately and shipping it that night. There are rare occasions where despite our efforts to produce the product, the overnight carrier fails to deliver by the expected time. AKV have no recourse in this instance; the carriers will not accept claims for late delivery citing the myriad difficulties and problems that can cause a late arrival. Regrettably, in turn, we must make it clear; AKV can not accept claims for late delivery for any product delivered by non-AKV transport.
- 15.6 Goods delivered by independent carrier that turn up damaged may be claimed for if the person taking receipt of the goods makes sure notification of damage is clearly stated on the delivery paperwork when the goods are signed for. Please be aware that claims may be made for the value of the product only; claims can not be made for loss of time, inconvenience, labour charges or any other consequential loss.
- If you have any queries regarding the handling, off-loading or storage of products, please contact the AKV sales department. Tel: (01388) 775489 Fax: (01388) 776517.