

## General Conditions of Sale

In these Conditions, the following definitions apply:

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.8.

**Contract:** the contract between CTW and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**CTW:** CTW (Hardfacing) Limited registered in England and Wales with company number 01082919

**Customer:** the person or firm who purchases the Goods and/or Services from CTW.

**Deliverables:** the deliverables set out in the Order.

**Delivery Location:** has the meaning set out in clause 3.1.

**Force Majeure Event:** has the meaning given to it in clause 14.1.1.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and CTW.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form.

**Services:** the services, including the Deliverables, supplied by CTW to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by CTW to the Customer.

## 1. BASIS OF CONTRACT

- 1.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 1.2 The Order shall only be deemed to be accepted when CTW issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 1.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of CTW which is not set out in the Contract.
- 1.4 Any samples, drawings, descriptive matter or advertising issued by CTW and any [descriptions of the Goods or] illustrations or descriptions of the Services contained in CTW's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 1.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.6 Any quotation given by CTW shall not constitute an offer, and is only valid for a period of 60 days from its date of issue.
- 1.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## 2. GOODS

- 2.1 The Goods are described in the Goods Specification.
- 2.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify CTW against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by CTW in connection with any claim made against CTW for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with CTW's use of the Goods Specification. This clause 2.2 shall survive termination of the Contract.
- 2.3 CTW reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

## 3. DELIVERY OF GOODS

- 3.1 CTW shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after CTW notifies the Customer that the Goods are ready.  
**OR**  
The Customer shall collect the Goods from CTW's premises at Quality Works, Mowbray Street, Sheffield, South Yorkshire, S3 8EN or such other location as may be advised by CTW before delivery (**Delivery Location**).
- 3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or the completion of loading of the Goods at the Delivery Location.
- 3.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. CTW shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide CTW with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4 If the Customer fails to accept or take delivery of the Goods within 1 days of CTW notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by CTW's failure to comply with its obligations under the Contract in respect of the Goods delivery of the Goods shall be deemed to have been completed at 9.00 am on the day following the day on which CTW notified the Customer that the Goods were ready.

- 3.5 CTW may deliver the Goods by instalments, which shall 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 Customer to cancel any other instalment.

## 4. QUALITY OF GOODS

- 4.1 CTW warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall conform in all material respects any applicable Goods or Service Specification.
- 4.2 Subject to clause 4.3, if:
- 4.2.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- 4.2.2 CTW is given a reasonable opportunity of examining such Goods; and
- 4.2.3 the Customer (if asked to do so by CTW) returns such Goods to CTW's place of business,  
CTW shall, at its option, repair the defective Goods, or refund the price of the Goods pro-rated to the service received.
- 4.3 CTW shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:
- 4.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;
- 4.3.2 the defect arises because the Customer failed to follow CTW's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 4.3.3 the defect arises as a result of CTW following any drawing, design or Goods Specification supplied by the Customer;
- 4.3.4 the Customer alters or repairs such Goods without the written consent of CTW;
- 4.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 4.4 CTW shall not be liable for the replacement cost of the Goods where damage is caused during the manufacture or repair service.
- 4.5 Except as provided in this clause 4, CTW shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by CTW under clause 4.2.

## 5. TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until CTW has received payment in full (in cash or cleared funds) for:
- 5.2.1 the Goods; and
- 5.2.2 any other services that CTW has supplied to the Customer in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as CTW's bailee;
- 5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as CTW's property;
- 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on CTW's behalf from the date of delivery;
- 5.3.5 notify CTW immediately if it becomes subject to any of the events listed in clause 12.1.1 to clause 12.1.11; and
- 5.3.6 give CTW such information relating to the Goods as CTW may require from time to time,  
but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.1 to clause 12.1.11, or CTW reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy CTW may have, CTW may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6. SUPPLY OF SERVICES

- 6.1 CTW shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 6.2 CTW shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 CTW shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and CTW shall notify the Customer in any such event.
- 6.4 CTW warrants to the Customer that the Services will be provided using reasonable care and skill.

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- 7. CUSTOMER'S OBLIGATIONS**
- 7.1 The Customer shall:
- 7.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification and Service Specification are complete and accurate;
- 7.1.2 co-operate with CTW in all matters relating to the Services;
- 7.1.3 provide CTW with such information and materials as CTW may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
- 7.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 7.2 If CTW's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 7.2.1 CTW shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays CTW's performance of any of its obligations;
- 7.2.2 CTW shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from CTW's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- 7.2.3 the Customer shall reimburse CTW on written demand for any costs or losses sustained or incurred by CTW arising directly or indirectly from the Customer Default.
- 8. CHARGES AND PAYMENT**
- 8.1 The price for Goods and/or Services shall be the price set out in the Order or, if no price is quoted. The price of the Goods is inclusive of all costs and charges of packaging, insurance. Transport costs are as specified in the Order.
- 8.2 CTW reserves the right to increase the price of the Goods and/or Services by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to CTW that is due to:
- 8.2.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification or Service Specification.
- 8.3 In respect of Goods and/or Services CTW shall invoice the Customer on or at any time after completion of delivery, or in accordance with a prearranged agreement between the parties.
- 8.4 The Customer shall pay each invoice submitted by CTW:
- 8.4.1 within 30 days of the date of the invoice; and
- 8.4.2 in full and in cleared funds to a bank account nominated in writing by CTW, and
- time for payment shall be of the essence of the Contract.
- 8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by CTW to the Customer, the Customer shall, on receipt of a valid VAT invoice from CTW, pay to CTW such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.6 Without limiting any other right or remedy of CTW, if the Customer fails to make any payment due to CTW under the Contract by the due date for payment (**Due Date**), CTW shall have the right to charge interest on the overdue amount at the rate of 4% per cent per annum above the then current NatWest's base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 8.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against CTW in order to justify withholding payment of any such amount in whole or in part. CTW may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by CTW to the Customer.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by CTW.
- 10. CONFIDENTIALITY**
- A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.
- 11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 11.1 Nothing in these Conditions shall limit or exclude CTW's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 11.1.2 fraud or fraudulent misrepresentation;
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 11.1.5 defective products under the Consumer Protection Act 1987.
- 11.2 Subject to clause 11.1:
- 11.2.1 CTW shall not be liable to the Customer, 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 (including any losses that may result from a deliberate breach of the Contract by CTW, its employees, agents or subcontractors); and
- 11.2.2 CTW's total liability to the Customer 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, [including losses caused by a deliberate breach of the Contract by CTW, its employees, agents or subcontractors shall not exceed the amount paid for the Services.
- 11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.
- 12. TERMINATION**
- 12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.1.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- 12.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 12.1.4 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 12.1.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 12.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 12.1.7 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 12.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 12.1.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.1 to clause 12.1.8 (inclusive);
- 12.1.10 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 12.1.11 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting its other rights or remedies, CTW shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and CTW if:
- 12.2.1 the Customer fails to make payment of any amount due under this Contract on the due date for payment; or
- 12.2.2 the Customer becomes subject to any of the events listed in clause 12.1.1 to clause 12.1.11, or CTW reasonably believes that the Customer is about to become subject to any of them.

**13. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- 13.1.1 the Customer shall immediately pay to CTW all of CTW's outstanding unpaid invoices and interest and, in respect of Services or Goods supplied but for which no invoice has yet been submitted, CTW shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 13.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**14. GENERAL****14.1 Force majeure:**

- 14.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of CTW including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.1.2 CTW shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.1.3 If the Force Majeure Event prevents CTW from providing any of the Services and/or Goods for more than 12 weeks, CTW shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

**14.2 Assignment and subcontracting:**

- 14.2.1 CTW may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 14.2.2 The Customer shall not, without the prior written consent of CTW, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

**14.3 Notices:**

- 14.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

**14.4 Waiver and cumulative remedies:**

- 14.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

**14.5 Severance:**

- 14.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by CTW.

14.9 Governing law and jurisdiction: This 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.