



The following are the conditions upon which JOHN L LORD & SON (RIZISTAL) LIMITED (hereafter called “the Supplier”) sells or offers for sale or supply any goods or services whatsoever. These conditions are the only conditions upon which the Supplier is prepared to deal with its customer (“the Customer”) and they shall govern the contract to the entire exclusion of any other express or implied conditions. Any purported restriction, qualification or variation of these conditions contained in any Customer’s order or otherwise shall be void and of no effect unless specifically confirmed and approved by the Supplier in writing. These conditions embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications. No contract shall be concluded until the Supplier dispatches an acknowledgement of order to the Customer or, in the absence of this, until the Supplier accepts the Customer’s order in writing. Any quotation in whatever form given to the Customer is given subject to these conditions and does not constitute an offer to sell or supply.

1. Tender and Quotations

(a) Unless stated expressly in writing by the Supplier the contents of any tender or quotation issued by the Supplier remains valid for 30 days from the date of issue of the same or as specified in the document.

(b) Any tender or quotation given by the Supplier is conditional upon the Customer having supplied adequate drawings (where the Supplier is not responsible for design) and with such information regarding construction details and site conditions (including the availability of working and storage area with suitable access roads, the existence of any abnormalities such as temperature outside the range of 5 degrees to 25 degrees, fumes, dust etc) as will enable the Supplier to make a reasonable estimate of the cost for supply and the installation and the work to which the tender or quotation relates and the time and number of visits to site for its completion.

(c) The unit rates on which any tender or quotation is based are conditional upon the tender or quotation being accepted in full. The Supplier reserves the right to amend the unit rates in the event of the quantity of the work being changed following commencement.

(d) Any tender or quotation given by the Supplier does not include for the cost of any fuel, water or electricity used on the site.

(e) Any tender or quotation given by the Supplier does not include delivery to or packaging for the Customer unless otherwise stated in writing by the Supplier. Delivery and/or packaging by the

Supplier shall unless so stated be invoiced to the Customer.

(f) All packing, skids, drums and other packing materials must be returned to the Supplier in good condition, carriage paid, within one month. If not returned as so, the Customer will be charged for their use.

(g) Unless specifically stated, the Supplier does not include any sums in any tender or quotation for the supply and erection of scaffolding, ladders, moveable platforms, hoisting and lowering gear necessary for access or carrying out the contract.

(h) The Customer shall provide at its expense appropriate access to the site where the goods are to be installed, suitable foundations to receive the goods, adequate lifting facilities and scaffolding, any necessary mason’s, joiner’s and builder’s work, all lighting, heating and other necessary facilities and services and any assistance reasonably requested by the Supplier.

(i) The Supplier shall be entitled to bring on to the site in advance of actual requirements any goods or materials needed for use in carrying out the contract and the Customer shall at no cost to the Supplier make available adequate storage facilities for such goods and materials and be responsible for off-loading and placing such goods and materials in store.

2. Tests and Performance

(a) Products manufactured by the Supplier are, where practicable, submitted to the Supplier’s standard testing procedures before dispatch. Extra charge will be made for any further test specified by the Customer. Due notice will be given to the Customer of the date or dates of the holding of such tests, and should the Customer fail to attend, then the test or tests will proceed and shall thereafter be deemed to have been made in the presence of the Customer.

(b) Any performance figures given by the Supplier are based upon the experience of the Supplier and are such as the Supplier would expect to obtain on the Supplier’s standard testing procedure. No warranty is given that such figures would be obtained unless such warranty is in writing in which event the liability of the Supplier shall be strictly limited to the terms of such written warranty.

(c) Unless specifically warranted as accurate in writing, all weights or similar information referred to in any document or documents forming part of the tender or quotation are approximate only. Samples are submitted as indicating only the class or type of material quoted for and no guarantee is given as to size, colour or quality of the bulk other than that they will comply with appropriate British Standard where applicable.

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3. Price and Payment

(a) All prices are exclusive of Value Added Tax that shall be at the appropriate prevailing rate at the date of the submission of the invoice. Payment shall be 30% deposit with order, 30% material on site, balance on completion following submission of invoice unless otherwise previously agreed in writing by the Supplier. Unless expressly agreed in writing by the Supplier all payments are to be made in pounds sterling.

(b) Any price quoted by way of tender or quotation shall be subject to increase without notice if there is a fluctuation in any of the following items between the date of acknowledgement and the date of completion.

(i) cost of materials and/or labour rates and/or overhead rates; to include (without limitation) the introduction of any new tax, statutory contribution or levy payable by the Supplier.

(ii) currency exchange rates, where it is necessary to purchase goods or equipment of foreign nature.

(c) Additional cost caused by working overtime at the request of the Customer shall be charged as an extra.

(d) The Supplier shall be entitled to be paid by instalments at intervals of not greater than four weeks during the execution of works for all work completed and all materials delivered to the Site for incorporation into the works within 30 days of written application for the same ("the Payment Period").

(e) If circumstances beyond the reasonable control of the Supplier necessitate goods or equipment ordered for use on the contract being retained in a completed condition at the manufacturer's works, the value thereof may be charged in any following application for payment as if the same had been delivered on to the site.

(f) The Supplier reserves the right to submit an invoice to the Customer in respect of goods which have been completed and are ready for collection and/or delivery which have been held back by the Supplier at the Customer's request.

4. Non Payment

Where the Customer fails to make payment in accordance with Condition 3(a) above or (if applicable) by the end of a Payment Period, the following provisions apply:-

(a) Any overdue payment shall carry interest both before and after judgment at the rate of 3% above the base rate of Barclays Bank Plc from time to time with interest accruing on a daily basis.

(b) The Supplier may at its option:-

(i) Suspend or abandon the works and remove unfixed materials and tools and other equipment from the site; and/or

(ii) give notice in writing that if such sum shall remain unpaid for 21 days after the same fell due for payment all or any such contracts may be cancelled and if such sums are not paid within the said 21 days the Supplier may by further notice forthwith determine all or such contracts and claim damages for wrongful

repudiation thereof by the Customer; and/or

(iii) exercise a lien for all sums due over all goods of the Customer in the possession of the Supplier whether or not in relation to the Supplier's dealings with the Customer in respect of the contract; and/or

(iv) withdraw the facilities of any credit account which may be allowed by the Supplier to the Customer in which event all monies then owing by the Customer shall thereupon become due and payable forthwith.

5. Retention of Title

(a) The property in all goods and materials irrespective of delivery on site, shall not pass to the Customer until the Customer has paid all sums payable under this contract plus VAT in full and provided that no sums whatsoever shall remain due from the Customer to the Supplier on the contract or any other contract between the Supplier and the Customer.

(b) until such time as the above provision is met:-

(i) the goods and materials shall be held by the Customer on site in a fiduciary capacity in such manner as to be clearly identifiable as belonging to the Supplier.

(ii) the goods and materials shall be handed over to the Supplier on demand and the Supplier shall be entitled to re-take possession of the goods and materials without prejudice to any of its other rights against the Customer and the Supplier is hereby granted a licence to enter on the Customer's property for the purpose of recovering the goods and materials.

6. Delay

If for any reason of force majeure the Supplier is not able to carry out the installation in accordance with the programme referred to in the tender or quotation or such programme as has been accepted in writing by the Supplier, the time for completion shall be extended accordingly and the Supplier shall be entitled to be paid, in addition to the tender or quotation price, any extra costs (including direct costs, overheads and loss of profit) as may be attributable to such delay.

7. Variation

The Customer may authorise the carrying out of extra work and of variations to the contract but the Supplier shall not be obliged to do any additional work or to make any variations until written authorisation has been provided by the Customer and the value of such variations has been agreed, where it is reasonably possible to estimate the cost of such work. If it is not possible to estimate the value before the extra work is carried out or if the extra or varied work is commenced before the valuation has been agreed, a fair valuation shall be made after it has been carried out, wherever possible, basing same on similar billed or specified item.

8. Delivery and Performance

(a) Delivery and performance dates are given in good faith and every reasonable endeavour will be made to carry them out, but no liability for any loss or damage (whether direct, indirect or consequential) is accepted for delay or default in delivery or performance or for any loss arising therefrom.

(b) If when goods are available for delivery to and/or collection by the Customer and the Customer is unable to accept or collect the same any abortive delivery and/or storage and insurance (notwithstanding the risk therein has passed to the Customer) or charges consequential loss or expense whatsoever incurred by the Supplier will be paid by the Customer. If delivery or acceptance is not affected by reason of the default of the Customer within 14 days thereafter the Supplier may resell the goods and rescind the contract without liability.

(c) The Supplier reserves the right to cancel or suspend delivery or performance if manufacture or installation is rendered impossible by force majeure, whether in the Supplier's factory or elsewhere affecting the business of the Supplier without incurring any liability for any loss or damage whatsoever arising therefrom.

(d) Where the contract provides for delivery or performance by instalments or stages, each instalment or stage shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery or performance of any one or more instalments or stages shall not affect the balance of the contract or entitle the Customer to cancel the same.

(e) Any goods sent to the Supplier by the Customer must be delivered free of charge.

(f) The Customer shall pay and indemnify the Supplier against any loss or damage caused to the Supplier (including any liability which the same may incur to any other person) during or as a result of or in connection with the installation and any extra costs incurred during the installation as a result of any matter beyond the reasonable control of the Supplier including, but not limited to, the suspension of works by the Customer's instructions or lack of instructions, interruptions, delays, overtime, unusual hours and mistakes for which the Supplier is not responsible.

9. Risk/Responsibility

Notwithstanding Condition 5 above:-

(i) Executed work and all materials on the site fixed or unfixed together with any plant, tools or equipment brought on the site in connection with the installation shall be the sole risk of the Customer. If any such work, materials, plant, tools or equipment shall be destroyed, damaged or lost from any cause (unless solely caused by the negligence of the Supplier or its sub-contractors) the Supplier shall be entitled to payment by the Customer in accordance with these conditions for all such work and materials and to reimbursement in full by the Customer for

all such plant, tools and equipment and to charge as an extra to the contract for the restoration of any work or replacement of any items so destroyed, damaged or lost.

(ii) The Customer shall be solely responsible for all loss or damage to the work or to any plant, tools, equipment and fixed or unfixed materials properly on the site for the purpose of carrying out the work arising from fire, storm, tempest, lightning, flood, explosion and bursting or overflowing of tanks, apparatus or pipes, earthquake, aircraft or anything dropped therefrom, aerial objects, riot or civil commotion even if such peril was caused or contributed to of negligence by the Supplier or of its sub-contractors.

(iii) For the avoidance of doubt risk will be deemed to have passed from the time of delivery to (or if the Customer wrongfully fails to take delivery, the time when the Supplier has tendered delivery of the goods), or collection by the Customer.

(iv) It is expressly declared that notwithstanding that the Supplier has undertaken to install the goods, the goods shall be treated as delivered to the Customer when the same are presented by the Supplier at such place as the Customer shall have nominated.

(v) Any goods sent to the Supplier by the Customer remain at the risk of the Customer whilst on the Supplier's premises. The Supplier will make every reasonable endeavour to avoid damage to or loss of such goods in the course of work but the Supplier shall not be liable for any such damage or loss howsoever caused or any consequential loss damage or injury arising therefrom (other than personal injury or death arising out of negligence of the Supplier).

10. Export

(a) In these conditions "INCOTERMS" means the international rules for interpretation of trade terms of the International Chamber of Commerce as in force on the date on which the contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the INCOTERMS shall have the same meaning in these conditions, but if there is any conflict between the provisions of INCOTERMS and these conditions, the latter shall prevail.

(b) The Uniform Laws on International Sales Act shall not apply to this contract.

(c) Payment of all amounts due to the Supplier shall (unless otherwise agreed in writing) be made by irrevocable letter of credit opened by the Customer in favour of the Supplier and confirmed by an English Bank acceptable to the Supplier or, if the Supplier has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Supplier of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Supplier at such branch of Barclays Bank in England as may be

specified in the bill of exchange.

(d) Unless otherwise agreed in writing between the Customer and the Supplier the goods shall be delivered f.o.b. the air or sea port of shipment and the Supplier shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

(e) The Customer shall be responsible for arranging the testing and inspection of the goods at the Suppliers premises before shipment. The Supplier shall have no liability for any claim in respect of any matter which would be apparent on inspection and which claim is made after shipment or in respect of any damage during transit.

11. Shortages

(a) In the event of non-delivery of goods or any part thereof the Supplier must be notified in writing thereof within 7 days of receipt by the Customer of the notification of dispatch to or collection by the Customer and the Supplier shall not be liable for any loss or damage or additional loss or damage occasioned to the Customer by the Customer's failure to so notify.

(b) The copy/copies of the delivery note or carrier's work sheet must be signed on receipt of the goods. Unless any shortages are recorded thereon or brought to the Supplier's notice within 7 days of delivery to the Customer then claims for deficiency cannot be entertained.

12. Warranties and Liabilities

(a) The Supplier warrants that save as hereinafter provided any goods supplied shall at the time of delivery be free from defects in workmanship and materials. If any goods do not conform to this warranty the Supplier will at its option:-

- (i) replace the goods found not to conform to the warranty;
- (ii) take such steps as the Supplier deems necessary to bring the goods into a state where they are free from such defects; or
- (iii) take back the goods found not to conform to the warranty and refund the appropriate part of the purchase price PROVIDED THAT the liability of the Supplier shall in no event exceed the purchase price of the goods and performance of any one of the above options shall constitute an entire discharge of the Supplier's liability under this warranty.

(b) The above warranty is given by the Supplier subject to the following conditions:-

- (i) the Supplier shall be under no liability in respect of any defect in the goods or any other claim relating to the goods whether directly or indirectly arising from any drawing, design or specification supplied by the Customer;
- (ii) the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure arising from defects in the building or structure which may affect the Supplier's works and which are not obviously apparent at the time of installation (e.g.

rising or migrating water or dampness through the concrete floor slab or structure, settlement cracks, lack of damp proof course to floors and walls causing moisture migration, direct or indirect failure due to osmosis caused by contamination with the concrete matrix etc.), failure to follow the Supplier's Instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Supplier's approval, if the installation is operated by the Customer before it is handed over or deemed to be handed over for beneficial use.

(iii) the Supplier shall be under no liability in respect of any defects which may occur in any previously existing installation to which the installation may be connected;

(iv) the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the goods or the installation has not been paid by the due date for payment.

(v) the above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier;

(vi) the Customer giving written notice to the Supplier of the alleged defect in the goods such notice to be received by the Supplier within 7 days of the time when the Customer discovers the defect and in any event within 6 months from the completion of the installation or delivery of the goods whichever is the sooner; and

(vii) the Customer affording the Supplier a reasonable opportunity to inspect the goods or the installation and, if so requested by the Supplier, returning the alleged defective goods to the Supplier's works, carriage pre-paid, for inspection to take place there.

(c) Save as provided by paragraph (a) of this condition and in Section 12 of the Sale of Goods Act 1979:-

(i) all conditions and warranties, express or implied as to the quality or fitness for any purpose of the goods are hereby expressly excluded; and

(ii) the Supplier shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising, which may be suffered by the Customer.

(d) in the event that, notwithstanding the foregoing provisions of this condition, the Supplier is found liable for any loss or damage suffered by the Customer, that liability (when aggregated with any other liability or liabilities of the Supplier to the Customer under the Contract) shall in no event exceed the price payable to the Supplier by the Customer for the goods or the installation excluding carriage, packing, insurance and VAT.

(e) the foregoing provisions of this condition shall not apply to sales, which are made to persons who deal as consumers (as that expression is defined in the Unfair Contract Terms Act 1977), unless the contract is an international supply contract (as defined

in Section 26 of that Act).

(f) the Customer warrants that it and any agent of the Customer has complied and will comply with every applicable statute, order-in-council, regulation or direction, bye-law or other lawful requirement of instruction, whether of the Government or any lawful authority, and in particular that it and any such agent has lawfully obtained every licence, permit or authority that may be required in connection with the supply of the goods or the carrying out of the installation.

13. Third Party/Public Liability

Whilst the employees of the Supplier are working on the premises/site of the Customer, the Supplier is insured against any claim for bodily injury whether fatal or not and for loss or damage to the property which arises in connection with the Supplier's work as contractor but only insofar as such injury, loss or damage can be proved as against the Supplier and for which the Supplier could be held legally liable on the part of the Supplier, its servants, agents or sub-contractors. The limit of the Supplier's liability under such circumstances shall be restricted to a maximum of £5,000,000.00 and in the case of third party financial loss shall be restricted to a maximum of £250,000.00.

14. Drawings

Where the Customer is responsible for the design of the installation in whole or part the Customer shall provide the Supplier with adequate drawings sufficiently detailed to enable the Supplier to prepare installation drawings. Unless otherwise agreed in writing the Supplier's responsibility for drawings shall be limited to the provision of two sets of installation drawings and unless expressly stated, drawings submitted by the Supplier shall be regarded as general arrangement drawings only and shall not be binding as to detail.

15. Intellectual Property

(a) The Supplier reserves all proprietary rights and copyright to all estimates and drawings and similar documents supplied submitted and such documents shall not without prior consent of the Supplier be reproduced or copied or made available to other parties.

(b) if goods are to be manufactured or any process is to be applied to the goods by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all loss, damages costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Supplier's use of the Customer's specifications.

16. Termination

The Supplier may, by written notice, forthwith determine the contract if the Customer shall make default in any one or more of the following respects:

(a) If the Customer fails to make any progress payment within the stipulated period.

(b) If the Customer, or any person for whom he is responsible interferes with or obstructs the carrying out of the installation, or fails to make the work areas available, in accordance with the agreed programme.

(c) If the Customer suspends the carrying out of the installation, for a continuous period of at least one month.

(d) If the Customer becomes bankrupt or makes a composition or arrangement with its creditors, or has a winding-up order made or (except for the purposes of reconstruction of a solvent company) a resolution for voluntary winding-up is passed, or a receiver or manager or administrator of its business or undertaking, is duly appointed. In the event of termination the Supplier shall be paid by the Customer:-

(i) The total value of goods supplied and of work (including VAT) completed including any increase in price as referred to in Condition 3 above as at the date of termination.

(ii) The total value of unused materials properly ordered for the installation.

(iii) Loss of profits on goods not supplied installation not carried out and other loss and/or expense resulting from the termination.

17. Applicable Law

Unless otherwise agreed in writing any contract between the Supplier and the Customer shall be governed by the Laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English Courts.

18. Disputes

(a) In the event of any dispute the Customer and the Supplier arising out of the contract or in connection therewith, then either party shall give to the other, notice in writing of such dispute or difference. All such disputes or differences shall be referred to the arbitration of such person as the parties may agree to appoint as arbitrator, or failing such agreement, as may be appointed, on the request of either party, by the President, for the time being, of the Chartered Institute of Arbitrators.

(b) The provision of the Arbitrator Act 1996 shall apply to any arbitration under the contract wherever the same, or any part of it, shall be conducted.

19. General

(a) In these conditions the term force majeure means any act of god, war, strike, lock-out, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of the

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(b) Words denoting one gender include all genders words denoting individuals or persons include corporations or trusts and vice versa words denoting the singular include the plural and vice versa and words denoting the whole include reference to any part thereof.

(c) Headings are inserted for ease of reference only and shall not affect construction of the contract.

(d) If any provision of this contract shall be found at any time to be invalid or unenforceable such invalidity or unenforceability shall in no way prejudice or affect the other provisions of the contract which shall remain in full force and effect.

(e) No waiver by the Supplier of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

(f) References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended extended or re-enacted.

(g) A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from the Act.