



## CONDITIONS OF SALE

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions of Sale the following words shall have the following meanings:-

**"Buyer"** the person, firm or company with whom the Seller makes any Contract and which expression shall include (jointly and severally) any principal on whose behalf the Buyer orders Products.

**"Contract"** any contract formed between the Buyer and the Seller for the sale and purchase of Products pursuant to any Order.

**"Delivery"** the delivery of the Products by the Seller whether by way of delivery by or for and on behalf of the Seller, direct delivery by a supplier of the Seller or other third party, or otherwise.

**"Loss or Losses"** in respect of any matter, event or circumstance includes all losses, demands, awards, claims, actions, proceedings, damages, payments, costs, expenses, penalties, fines or other liabilities.

**"Products"** the products which are to be supplied by the Seller pursuant to any Contract.

**"Order"** any purchase order for the purchase of Products placed with the Seller by the Buyer.

**"Seller"** Universal Arches Limited the supplier of the Products.

**"Specification"** the technical or other description of the Products shown or referred to in any Contract and any performance schedules and/or other characteristics and details contained, mentioned or referred to therein or prepared in accordance therewith.

**"Warranty Claim"** any claim made by the Buyer in respect of any breach of any of the Warranties as the same is defined in Condition 11.2.

### 2. BASIS OF SALE

2.1 All Contracts shall be concluded upon the basis of these Conditions of Sale together with any special conditions issued by the Seller to the Buyer at any time prior to or with the Seller's acceptance of the Buyer's Order. Variations and/or qualifications of such Conditions can only be effected by a document signed by a duly authorised officer of the Seller.

2.2 No terms or conditions submitted by the Buyer or any third party to the Seller, irrespective of their date, shall prevail over these Conditions.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the application or use of the Products which is not confirmed in writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 All sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller however supplied, is provided for information purposes only without any liability on the part of the Seller.

### 3. QUOTATIONS AND ACCEPTANCE OF ORDERS

3.1 The Seller's price lists and catalogues and quotations are not offers and may be withdrawn or varied at any time prior to acceptance by the Seller of the Order for Products being the subject of the quotation.

3.2 Each Order shall be deemed to be an offer by the Buyer to purchase Products pursuant to these Conditions of Sale.

3.3 Orders for the Products shall be offered by the Buyer to the Seller by fax or letter. The Seller will accept and confirm the Order on its Proforma acceptance. Any verbal orders offered to the Seller must be confirmed by fax or letter.

3.4 Acceptance of the Buyer's Order by the Seller is subject to the respective Products being available. All Orders shall, upon their acceptance by the Seller, be binding upon the Buyer. An Order may only be cancelled or amended in accordance with these conditions or with prior written consent of the Seller.

#### **4. ORDERS AND SPECIFICATIONS**

4.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including but not exclusively any relevant Specification).

4.2 If the Products are to be processed by the Seller in accordance with a Specification and/or design submitted by the Buyer the Buyer shall indemnify the Seller from and against all Losses made against or incurred by the Seller in connection with the settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any third party arising out of the Seller's use of such Specification and/or design. In all other circumstances where Products are processed by the Seller in accordance with a Specification all intellectual property rights of any kind belong to and shall at all times remain the property of the Seller.

#### **5. PRICE AND PAYMENT**

5.1 The price of the Products shall be the Sellers quoted price.

5.2 Unless otherwise agreed in writing if the delivery is within 50 miles of the Seller's premises the price of the Products is based upon delivery to the Buyers address which must be within 50 miles of the Seller's premises but (without prejudice to the foregoing) does not include VAT or any other taxes or duties (which shall be charged in accordance with current legislation) or other cost of Delivery. All other amounts due under the Contract or under the terms of these Conditions of Sale shall be subject to the addition of any applicable value added or other sales tax.

5.3 If the Seller agrees to deliver the Products elsewhere than at an address within 50 miles of the Seller's premises by special courier Delivery or shall agree to expedite Delivery or if additional charges arise from Delivery whether by way of demurrage or otherwise all additional packaging, transport, insurance, demurrage and other costs, expenses or charges thereby incurred shall be added to the price of the Products and shall be the responsibility of and paid by the Buyer.

5.4 The Seller shall be entitled to invoice the Buyer for the price of the Products and for any costs incurred by the Seller pursuant to these Conditions and the Seller reserves the right to invoice the Buyer on an interim basis to cover any installment of Products delivered and/or any charges arising pursuant to Condition 5.3.

5.5 The Buyer shall pay the price of the Products (and any costs incurred by the Seller pursuant to these Conditions) without any deduction and at such time as to ensure receipt by the Seller of cleared funds in such sum as provided on the front of the Proforma and if no time is stated then payment shall be made during the month following the month in which the invoice is dated notwithstanding that property in the Products has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

5.6 In the event of any payment becoming overdue then, without prejudice to any other right or remedy available to it, the Seller may:-

(a) terminate the Contract;

(b) suspend performance of the Contract until payment is received in full and any times and/or dates stipulated for performance of the Contract shall be extended/postponed accordingly;

(c) cancel or suspend any allowance of credit or special credit or payment terms agreed;

(d) charge interest on the -unpaid amount at the rate of 3% over the current base lending rate of Natwest Bank after as well as before commencement of proceedings for recovery of the same; and/or

(e) notwithstanding the terms of Condition 5.5, treat at its discretion all or any outstanding amounts owed by the Buyer whether such amounts or any of them are due and payable or not as (and such amounts and/or any of them shall be deemed to be) immediately due and payable.

5.7 If the Seller becomes dissatisfied with the Buyer's credit status, it may suspend performance of the Contract, terminate the Contract, cancel or suspend any allowance of credit or special credit or payment terms and/or notwithstanding the terms of Condition 5.5, treat at its discretion all or any outstanding amounts owed by the Buyer whether such amounts or any of them are due and payable or not as (and such amounts and/or any of them shall be deemed to be) immediately due and payable until it is satisfied as to the Buyer's creditworthiness or is given such security for the price as the Seller shall deem appropriate.

5.8 Notwithstanding the provisions of these Conditions, the Seller reserves the right to require the Buyer to discharge the price for the Products in full (in cleared funds) prior to Delivery.

## **6. PRICE VARIATION**

All prices for Products are subject to withdrawal, variation and/or increase at anytime by the Seller without notice and in particular (but without prejudice to the generality of the foregoing) the Seller shall be entitled to increase its prices for the Products if the Seller, in its sole discretion, considers the same to be justified by any increase in cost prices to the Seller and/or in order to cover any extra expense incurred as a result of the Buyer's instructions or lack of instructions including, without limitation, as a consequence of an agreed change in Specification or packaging or in the manner or place of Delivery of the Products. The Seller shall not be required to give to the Buyer advance notice of any such increase which will apply forthwith. Where Delivery of the Products is by installments the Seller shall be entitled to increase the price as aforesaid in respect of any undelivered Products.

## **7. DELIVERY OF PRODUCTS**

7.1 Subject to Conditions 5.1 and 5.2 Delivery of the Products shall be made to the Buyer's address or, if the Products are to be collected by the Buyer, upon such collection from the Seller's address at any time after the Seller has notified the Buyer that the Products are ready for collection.

7.2 Any dates quoted for Delivery of the Products are approximate only and the Seller shall not be liable for any Loss or Losses whatever due to nor shall the Buyer have any right to cancel any Contract as a result of any delay in Delivery of the Products howsoever caused. Time for Delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Products may be delivered by the Seller in advance of the quoted Delivery date upon giving reasonable notice to the Buyer.

7.3 The Seller may effect Delivery by installments in which case these terms and conditions shall apply to each installment as though a separate Contract and any failure or defect in any one Delivery will not entitle the Buyer to repudiate the Contract as a whole.

7.4 If the Seller fails to deliver the Products for any reason, (other than any cause beyond the Seller's reasonable control or the Buyer's fault), and the Seller is accordingly liable to the Buyer, the Seller's liability shall be strictly limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Products. No claims for other and/or consequential loss or damage shall be allowed in connection with any such non-Delivery.

7.5 If the Buyer fails to take Delivery of the Products or fails to give the Seller adequate Delivery instructions prior to the time stated for Delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may at its option:-

(a) treat the risk in the Products as having passed to the Buyer; and/or

(b) store the Products until actual Delivery or sale and charge the Buyer for the reasonable costs (including insurance) of storage; and/or

(c) sell the Products at the best price readily obtainable and (deducting all reasonable storage and selling expenses and expenses incurred) charge the Buyer for any shortfall below the price under the Contract.

And in any such circumstances it is hereby agreed for the avoidance of doubt, but without limitation, that the Buyer that fully indemnify and keep indemnified the Seller from and against all Losses (including loss of profit) incurred

or suffered by the Seller by reason of the failure by the Buyer to take Delivery or to give the Seller adequate Delivery instructions.

7.6 On Delivery the Buyer shall mark the Delivery advice note with details of any shortages and/or damaged Products received and shall forthwith deliver to the Seller a damage report signed by the Buyer in such form as the Seller shall request.

7.7 In the case of Products which have been processed by the Seller in accordance with a Specification, within 24 hours of the arrival of each Delivery the Buyer shall (if appropriate) deliver to the Seller a rejection report signed by the Buyer setting out full and accurate details of any material defect by reason of which the Products delivered are not in accordance with the Specification. For the avoidance of doubt it is hereby acknowledged and agreed that no right of rejection shall arise in the event that the Products delivered are in accordance (in all material respects) with the Specification or where any change to the Specification has been made by the Seller.

7.8 Where Products are supplied in bulk notwithstanding the provisions of the Sale and Supply of Goods Act 1994, the Buyer shall not be entitled (without the prior written consent of the Seller) to reject or refuse to accept part only of such Products and the provisions of the Sale and Supply of Goods Act 1994 shall be construed accordingly.

7.9 If there is any difference of opinion between the parties as to whether any Products supplied are in accordance with the Specification the matter shall, be dealt with in accordance with Condition 13.

7.10 If the Buyer fails to deliver any such reports as are referred to in Conditions 7.7 and 7.8 then the correct quantity and quality of Products shall be conclusively presumed to have been delivered and to be in at respects in accordance with the Specification (where applicable) and, accordingly, the Buyer shall be deemed to have accepted and the Seller shall be deemed to have delivered properly the Products in question and the Seller shall have no liability to the Buyer with respect to those Products or otherwise.

## **8. RISK AND TITLE**

8.1 Risk of damage to or loss of the Products shall pass to the Buyer:-

(a) in the case of Products to be delivered otherwise than at the Seller's premises, at the time of Delivery; or

(b) in the case of Products to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Products are available for collection.

8.2 Property in the Products shall pass to the Buyer on the later of payment in full of the price of the products and payment in full of every other sum whatsoever which is due from the Buyer to the Seller whether under any Contract or otherwise howsoever as at the date of Delivery of the Products being the subject of this Contract.

8.3 Until the happening of the last such event referred to in Condition 8.2:-

(a) the whole right, title and interest, both legal and equitable in and to the Products shall remain with the Seller and the Buyer shall keep the Products as the Seller's fiduciary agent and bailee properly stored, protected and insured in such a way that they are identifiable as the property of the Seller and are separate from all other goods of the Buyer; and

(b) the Buyer shall be entitled to use or re-sell the Products in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Products (whether tangible or intangible and including insurance proceeds) to the extent of sums due to the Seller and shall hold such proceeds on trust for the Seller properly stored, protected and insured in such a way that they are identifiable as the property of the Seller and are separate from all other goods of the Buyer.

8.4 The right to use or resell the Products granted to the Buyer under the terms of Condition 8.3(b):-

(a) may be terminated by the Seller forthwith upon oral or written notice to the Buyer if the Buyer defaults in payment of any sum for more than seven days after such sum fell due: and

(b) shall automatically cease if a Receiver is appointed over any of the assets of the Buyer or a Petition is presented for an Administration Order in respect of the Buyer or a Petition is presented or notice is given of a resolution to

wind up the Buyer or the Buyer is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or (in the event of the Buyer being a sole trader or a partnership) a Petition is presented for the bankruptcy of the Buyer or any partner of the Buyer or if the Buyer shall make any composition with its creditors or if any distress, execution or other process is levied or enforced upon or sued against all or any of the assets of the Buyer.

8.5 Upon the Buyer ceasing to have any such right of use or resale or if the Seller shall reasonably consider that any Products, in respect of which payment has not been made by the Buyer, are in jeopardy the Seller shall be entitled at any time without notice and at the Buyer's cost to enter the Buyer's premises to repossess the Products.

8.6 As all or any of the Products or some part or constituent of them may have been purchased by the Seller under a Contract containing a provision reserving title or other property right therein to the vendor thereof the Seller shall be liable to transfer to the Buyer only such title as the Seller may have in the Products.

## **9. ENFORCEMENT**

Until such time as property in the Products shall pass to the Buyer (and PROVIDED THAT the Products are still in existence and have not been re-sold) the Buyer shall upon request being made by the Seller deliver up the Products to the Seller and if the Buyer fails to do so the Seller may forthwith enter upon the Buyer's premises or those of any third party where the Products are situate and re-possess any Products supplied to the Buyer by the Seller. On the making of such a request as aforesaid the rights of the Buyer to use or re-sell the Products as set out in Condition 8.3(b) shall cease.

## **10. WARRANTIES**

10.1 The Seller shall not be liable for any breach of the warranties contained or implied in these Conditions of Sale or otherwise implied or incorporated into any Contract (the "Warranties"):-

- (a) unless the Buyer has paid to the Seller all monies payable on or by the date(s) for payment;
- (b) unless the Buyer gives written notice of the alleged non-compliance or alleged defect within 24 hours of its discovery;
- (c) unless the Buyer gives the Seller an opportunity to inspect the Products;
- (d) unless the Buyer makes no further use of the relevant Products;
- (e) if the Products have been modified, altered or otherwise tampered with in any way other than by a duly authorised representative of the Seller;
- (f) if the defect arises from the Buyer's misuse, willful damage, neglect, carelessness, lack of proper care, failure to follow any instructions given by the Seller or other happening or disturbance of whatever nature whether affecting the Products directly or indirectly as the result of any such matter affecting the place where the Products are situate; or
- (g) if and to the extent that the Products have been produced from Specifications produced by or on behalf of the Buyer.

10.2 The Buyer is deemed to have inspected the Products on Delivery and unless the Delivery advice note is marked with details of any shortage, loss or damage the correct quantity and quality of Products will be deemed to have been delivered and no claim based on any defect in the quantity or damage to the quality of the Products which is made subsequently will be considered.

10.3 All other conditions and warranties, express or implied by statute, common law or otherwise are hereby excluded except those which by statute may not be excluded PROVIDED THAT nothing in these Conditions shall affect the statutory rights of a buyer dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977).

10.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any misrepresentation, or breach of any implied warranty, condition or other term, or breach of any duty at common law, or under the express terms of the Contract, for any direct loss or expense or any indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer and/or for any consequential, special punitive or exemplary loss or damage, costs, expenses or other claims for consequential compensation whatsoever, which arise out of or in connection with the supply of the Products or their use or resale by the Buyer, except as expressly provided in these Conditions of Sale.

#### **11. TERMINATION BY THE BUYER**

The Buyer is not entitled to terminate the Contract without the written consent of the Seller on such terms as the Seller shall stipulate.

#### **12. SPECIFICATION AND SAMPLE**

12.1 All illustrations, drawings, catalogues and descriptive matter of the Seller are of a generally informative nature only and do not form part of the Specification or description of the Products.

12.2 Notwithstanding that a sample of the Products may be exhibited to and inspected by the Buyer, such sample is so exhibited and inspected solely to enable the Buyer to judge for itself the quality of the Products and not so as to constitute a sale by sample.

#### **13. EXPERT DETERMINATION**

13.1 Where the Buyer and the Seller resolve to refer any disputes or differences which shall at any time hereafter arise between them in respect of the construction or effect of these Conditions or the terms of any Contract or the rights duties and liabilities of the Seller or the Buyer or any matter or event connected with or arising out of these Conditions or the terms of any Contract (a "Dispute") for expert determination they shall refer such Dispute to such independent third party (the "Third Party") as the Buyer and the Seller shall jointly nominate.

13.2 If the Buyer and the Seller agree to refer any Dispute but shall fail to nominate a Third Party within 14 days of the date of occurrence of the Dispute then the Third Party shall be nominated at the request of either of the Seller or the Buyer by the President for the time being of the Liverpool Chamber of Commerce.

13.3 The Third Party (whether appointed under Clause 13.1 or 13.2 above) shall act as an expert and not as an arbitrator whose decision (including as to costs) shall, except in the case of manifest error, be final and binding upon the Buyer and the Seller.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

All copyright, trade mark, registered design or other intellectual property right of the Seller in the Products of the processing thereof is the sole absolute property of the Seller.

#### **15. LAW AND JURISDICTION**

These Conditions of Sale and each and every Contract shall be:-

(a) governed by English Law; and

(b) subject to the jurisdiction of the English Courts.

PROVIDED THAT the Seller shall:-

(a) notwithstanding Condition 13, in its absolute discretion be entitled to refer any dispute to arbitration by a single arbitrator appointed (on the Seller's application) by the President for the time being of the Liverpool Law Society; and/or

(b) be entitled to enforce the terms of any judgment obtained in respect of the terms of any Contract or these Conditions in any Court of competent jurisdiction.