

## **TERMS AND CONDITIONS OF SALE**

If You are a Consumer, You have certain statutory rights regarding the return of defective Goods and claims in respect of losses caused by our negligence or failure to carry out our obligations. These Terms shall not affect your statutory rights.

### **DEFINITIONS**

In these terms and conditions of sale, the following meanings shall apply:

“Company Signatory” means a person authorised by Us.

“Consumer” means any natural person acting for purposes outside their trade, business or profession.

“Contract” means the contract for the supply of Goods incorporating these Terms.

“Defect” means the condition and/or any attribute of the Goods and/or any other circumstances which, but for the effect of these Terms would have entitled You to damages.

“Goods” means the goods or when the context permits services to be supplied by Us.

“Terms” means the terms set out in this document and any special terms agreed in writing between a Company Signatory and You.

“We”, “Us” and “Our” means Saint-Gobain Building Distribution Limited Registered in England & Wales No. 1647362, trading as Scotframe.

“You” means the person seeking to purchase Goods from Us.

### **2. THE CONTRACT**

2.1 All orders are accepted by Us only under these Terms and they may not be altered – other than with the written agreement of a Company Signatory. Any contrary or additional terms, unless so agreed, are excluded.

2.2 Quotations are invitations to treat only.

2.3 Orders may be cancelled only with the agreement of a Company Signatory and You will indemnify Us against all costs, claims, losses or expenses incurred as a result of that cancellation.

2.4 You shall be responsible to Us for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided to Us by You and for giving Us any necessary information relating to the Goods within a sufficient time to enable Us to perform the Contract in accordance with its Terms.

2.5 2.5.1 It is your responsibility to be fully conversant with the nature and performance of the Goods, including any harmful or hazardous effects their use may have.

2.5.2 Without prejudice to Clause 2.5.4 of these Terms while We take every precaution in the preparation of our catalogues, technical circulars, price lists and other literature, these documents are for your general guidance only and statements included in these documents (in the absence of fraud on our part) shall not constitute representations by Us and We shall not be bound by them.

2.5.3 If You require advice (including Health and Safety information) in relation to the Goods, a specific request for advice should be made and any advice given in writing by a Company Signatory in response to such a request shall amount to a representation and We shall be liable accordingly.

2.5.4 We shall not be liable in respect of any misrepresentation made by Us, our employees or agents to You, your employees or agents as to the condition of the Goods, their fitness for any purpose or as to quantity or measurements, unless the representation is:

2.5.4.1 made or confirmed in writing by a Company Signatory; and/or

2.5.4.2 fraudulent.

**2.5.5 For the avoidance of doubt, our liability for damages for misrepresentation (other than fraudulent) is excluded or limited by Clause 8 of these Terms.**

### **3 PRICE**

3.1 The Price of the Goods shall be that prevailing at the date of delivery of the Goods. The price is exclusive of VAT which shall be due at the rate ruling on the date of a VAT invoice.

3.2 Prices listed or quoted are based on costs prevailing at the time when they are given or agreed. We shall be entitled to adjust the price of the Goods as at the time of delivery by such amount as may be necessary to cover any increase sustained by Us after the date of acceptance of your order and any direct or indirect costs of making, obtaining, handling, or supplying the Goods.

3.3 Prices quoted are applicable to the quantity specified and on the information provided by You at the time of order. In the event of orders being placed for lesser quantities, or if there is any change in specifications, delivery dates, or delay is caused by your instructions or lack of instructions, We shall be entitled to adjust the price of the Goods as ordered to take account of the variations.

3.4 We shall have the option of supplying any Goods ordered by You in imperial measurements in the nearest equivalent metric measurements and the Goods may be charged in metric measure allowing for conversions.

### **4 PAYMENT**

4.1 Unless the sale is for cash, or other credit terms have been agreed in writing with a Company Signatory, all accounts are due for payment on the last day of the month, following the month in which the Goods are invoiced.

4.2 We will accept payment of accounts by debit or credit card, cash, cheques, BACS subject to Money Laundering Regulations from time to time.

4.3 Late payment will incur interest at 8% above the Bank of England base rate, prevailing from time to time, until the date of payment after as well as before judgment.

4.4 Credit facilities may be withdrawn or reduced at any time at our sole discretion.

4.5 Even if We have previously agreed to give You credit, We reserve the right to refuse to execute any order or Contract if the arrangements for payment or your credit rating is not satisfactory to Us. In our discretion We may require security satisfactory to Us or payment for each consignment when it is available and before it is despatched in which case delivery will not be effected until We are in receipt of security or cleared funds as requested by Us.

4.6 In the case of short delivery, You will remain liable to pay the full invoice price of all Goods delivered or available for delivery.

4.7 You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim, which You may have, or allege to have, for any reason whatsoever.

4.8 We shall be entitled at all times to set off any debt or claim of whatever nature which We may have against You against any sums due from Us to You.

## 5 DELIVERY

5.1 Delivery will be effected when the Goods leave our premises whether carried by Us or an independent carrier, or the premises of our suppliers when the Goods are delivered direct from suppliers.

5.2 **Delivery dates are given in good faith, but are estimates only.**

5.3 Time for delivery shall not be of the essence of the Contract.

5.4 **For the avoidance of doubt, and without detracting from any other provisions of these Terms, We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt of any liability to any third party) resulting from any delay in delivery of the Goods, or failure to deliver the Goods in a reasonable time – whether such delay or failure is caused by our negligence or otherwise howsoever.**

5.5 We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Our failure to deliver any one or more instalments, or any claim by You in respect of any one or more instalments, shall not entitle You to treat the Contract as a whole as repudiated.

5.6 The price agreed includes our normal delivery charges but We may make an additional charge if We incur further costs or expense such as (but not limited to): i) those caused by delivery of less than a full load, ii) complying with your request for delivery outside our normal delivery pattern or trading by instalments, iii) orders of small value which are not economical for Us to deliver free.

5.7 You must provide the necessary labour for unloading the Goods – and unloading is to be completed with reasonable speed. If our delivery vehicle is kept waiting for an unreasonable time, or is obliged to return without completing delivery, or if We provide additional staff to unload Goods, an additional charge will be made.

5.8 You may collect Goods from Us during our trading hours. If they are not collected within 14 days from when We notify You that they are available, a storage charge will be payable before Goods are released.

5.9 If You fail to take delivery, accept or collect the Goods within the agreed time, in our discretion, We may make an additional charge, invoice You for the Goods, or treat the Contract as repudiated and, in any case, recover our losses from You.

5.10 If You collect Goods from Us, You are solely responsible for the size, weight and positioning of the load on the vehicle and shall indemnify Us in respect of all costs, claims, losses or expenses We may incur as a result of your collecting the Goods.

5.11 If the Goods are to be deposited other than on your private premises, You shall be responsible for compliance with all regulations, and for all steps which need to be taken for the protection at all times of persons or property.

5.12 We shall make a charge for packaging, including crate cases and pallets, which shall be credited if the crate cases or pallets are returned – carriage paid – in good condition and within seven days of delivery. Polythene sacks are not returnable.

5.13 You will indemnify Us in respect of all costs, claims, losses or expenses We may incur as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such costs, losses, claims or expenses are due to our negligence.

## 6 INSPECTION

6.1 You shall inspect the Goods at the place and time of unloading or collection, but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.

### 6.2

6.2.1 **You must advise Us by telephone immediately and give Us written notice within three working days of unloading of any claim for short delivery.**

6.2.2 If You do not give Us that notice within that time, the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.

6.2.3 You shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the Goods or claim any damages whatsoever, for short delivery howsoever caused.

6.2.4 **Our liability for short delivery is limited to making good the shortage.**

### 6.3

6.3.1 Where it is, or would have been, apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample, You must advise Us by telephone immediately, and give Us written notice within three working days of inspection.

6.3.2 If You fail to give Us that notice within that time, the Goods will be deemed to have been accepted and You shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the Goods.

6.3.3 If You fail to give Us that notice within that time, Clause 8 shall have effect.

## 7 TITLE AND RISK

7.1 Risk in the Goods shall pass to You when the Goods are delivered.

7.2 The property in the Goods shall remain with Us until You pay all sums due to Us, whether in respect of this Contract or otherwise.

7.3 Until title passes:

7.3.1 You shall hold the Goods as our fiduciary agent and bailee.

7.3.2 The Goods shall be stored separately from any other goods and You shall not interfere with any identification marks, labels, batch numbers or serial numbers on the Goods.

7.3.3 We agree that You may use, or agree to sell the Goods as principal and not as agents in the ordinary course of your business subject to the express condition that at our direction, the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for Us and not mixed with any other monies, or paid into an overdrawn bank account and, it shall, at all times, be identifiable as our money.

7.4 We shall be entitled, at any time, to recover any or all of the Goods in your possession to which We have title and for that purpose, We, our employees or agents may, with such transport as is necessary, enter upon any premises occupied by You, or to which You have access and where the Goods may be, or are believed to be, situated

## 8 LIABILITIES

- 8.1 Nothing in these Terms shall exclude or restrict our liability for death or personal injury resulting from our personal negligence or our liability for fraudulent misrepresentation.
- 8.2 Subject to Clause 8.1 of these Terms, We shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever. Instead of liability in damages, We undertake liability under Clause 8.3 below.
- 8.3 Where but for the effect of Clause 8.2 of these Terms You would have been entitled to damages against Us, We shall not be liable to pay damages but subject to the conditions set out in Clause 8.4 below shall at our sole discretion, either repair the Goods at our own expense, or supply replacement Goods free of charge or refund all (or where appropriate part) of the price of the relevant Goods.
- 8.4 We shall not be liable under Clause 8.3:
  - 8.4.1 if the Defect arises from wear and tear.
  - 8.4.2 if the Defect arises from wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods, failure to follow British Standard or industry instructions relevant to the Goods, or storage of the Goods in unsuitable conditions (but this sub-clause shall not apply to any act or omission on our part).
  - 8.4.3 unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are used, or in any way interfered with. For the avoidance of doubt, We acknowledge that the costs of suspending works are relevant to the determination of what is reasonable opportunity and this sub-clause shall not apply to any works affecting the Goods, which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.
  - 8.4.4 **if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading, unless You advise Us by telephone immediately and written notice of any claim is given to Us within three working days of the time of unloading.**
  - 8.4.5 if the Defect is discovered within four months from the date of delivery, unless You give Us written notice of the Defect within three working days of it being discovered.
  - 8.4.6 if in any case the Defect is discovered more than 4 months from the date of delivery.
- 8.5 If the Goods are not manufactured by Us, or have been processed or milled by a third party – whether or not at your request – our liability, in respect of any Defect in workmanship or materials of the Goods, will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.
- 8.6 If the Goods are manufactured, processed or milled by Us to the design, quantity, measurement or specification of You or your agents then:
  - 8.6.1 Subject to Clause 8.1 of these Terms, We shall not be under any liability for damages whatsoever or under Clause 8.3 of these Terms as the case may be except in the event of:
    - 8.6.1.1 fraudulent misrepresentation;
    - 8.6.1.2 misrepresentation where the representation was made or confirmed in writing by a Company Signatory;

- 8.6.1.3 non-compliance with such design, quantity, measurement or specification;
  - 8.6.1.4 breach of a written warranty signed by a Company Signatory that the Goods are fit for that purpose; or
  - 8.6.1.5 a claim maintainable against Us pursuant to Clause 8.1 of these Terms.
- 8.6.2 You will unconditionally, fully and effectively indemnify Us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred, by Us in connection with, or paid, or agreed to be paid, by Us in settlement of any claim for infringement of any patents, copyright design, trademark, or any other industrial or intellectual property rights of any other person.
- 8.6.3 You will further unconditionally, fully and effectively indemnify Us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred by Us in connection with, or paid, or agreed to be paid, by Us in settlement of any other claim arising from any such manufacturing processing or milling, including – but not limited to – any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such loss damage, costs and expenses are due to our negligence.
- 8.7 You will unconditionally, fully and effectively, indemnify Us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred by Us in connection with, or paid, or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such loss, damage, costs and expenses are due to our negligence.
- 8.8 You (not being a Consumer) agree that where the Goods (being electrical equipment) become a waste in accordance with Directive 2002/96/EC (including any amendments and re-enactments thereof) and all applicable Member State implementing regulations and laws (together known as the “WEEE Directive”), You agree to bear the responsibility for ensuring, and financing all costs of collection, treatment, recovery and environmentally sound disposal of the Goods in accordance with the WEEE Directive. In addition You (not being a Consumer) also agree to bear responsibility for compliance with such requirements and financing all such costs in respect of any Goods (being electrical equipment) which are being replaced by Goods as a new equivalent product or as a new product fulfilling the same function. Additionally You agree to indemnify and hold harmless Us and any other person who is the producer of the Goods within the meaning of the WEEE Directive from all such costs referred to in this clause.
- 8.9 **Without prejudice to any other provisions in these Terms, in any event, our total liability for any one claim, or for the total of all claims arising from any one act of default on our part howsoever arising (whether arising from our negligence or otherwise), shall not exceed the purchase price of the Goods – the subject matter of any claim.**

## 9 DATA PROTECTION

- 9.1 For the purposes of this clause, (a) "Data Protection Laws" means any laws and regulations relating to the use or processing of personal data including: (i) the Data Protection Act 1998 ("DPA"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other applicable legislation implementing or made pursuant to EU Directives 95/46/EC and 2002/58/EC (as amended by

2009/136/EC), and (ii) from 25 May 2018, EU Regulation 2016/679 ("GDPR"), and (iii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR; in each case, as updated, amended or replaced from time to time; and (b) the terms "Data Subject", "Personal Data", "processing", "processor" and "controller" shall have the meanings set out in the GDPR.

- 9.2 Each party shall comply with the provisions and obligations imposed on it by the Data Protection Laws when processing Personal Data in connection with these Terms. Such processing shall continue for so long as these Terms is in force and shall be in respect of the following:
  - 9.2.1 Categories of data: Contacts within each of the parties and the ultimate customer details;
  - 9.2.2 Types of personal data: names, addresses, email addresses, telephone numbers and other contact details;
  - 9.2.3 Purpose and nature of processing: (i) manage the Contracts between the parties including ordering, fulfilment and billing and (ii) fulfilment of such Contracts by delivering goods to the ultimate customer on behalf of the Customer
- 9.3 To the extent that a party processes any Personal Data on behalf of the other party, the processing party shall: (a) comply with the provisions and obligations imposed on a processor by the GDPR, including the stipulations set out in Article 28(3)(a)-(h) which form a part of, and are incorporated into, these Terms as if they were set out in full, and the reference to "documented instructions" in Article 28(3)(a) shall include the provisions of these Terms; and (b) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other party or as expressly provided for in these Terms.
- 9.4 You agree that we may engage third party providers including any advisers, contractors, or auditors to Process Personal Data ("Sub-Processors"). We shall ensure that our contract with each Sub-Processor shall impose obligations in relation to the Processing of Personal Data on the Sub-Processor that are materially equivalent to the obligations to which we are subject to under these Terms in relation to the Processing of Personal Data.
- 9.5 If either party receives any complaint, notice or communication which relates to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, or if any Personal Data processed in connection with these Terms is subject to a personal data breach (as defined in the GDPR), it shall immediately notify the other party and provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice, communication or personal data breach.

## 10 NON-PAYMENT/INSOLVENCY

- 10.1 "Insolvent" means You becoming unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the threat of execution or distress on any of your property; the appointment of a receiver or administrative receiver over all, or any part, of your property; a proposal for a voluntary arrangement or compromise between You and your creditors, whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up, or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction, the presentation of a

petition for your winding-up, or for an administration order in relation to You. If You suffer any analogous step or proceedings under foreign law or You are ceasing, or threatening to cease to carry on your business.

10.2 If You fail to pay the price for any Goods on the due date or fail to pay any sum due to Us under any Contract on the due date or You become insolvent or if You are a limited company or partnership and there is a material change in your constitution or You commit a material breach of this Contract and fail to remedy that breach, all sums outstanding between You and Us shall become immediately payable, and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):

10.2.1 require payment in cleared funds in advance of further deliveries

10.2.2 cancel or suspend any further deliveries to You under any Contract without liability on our part

10.2.3 without prejudice to the generality of Clause 7 of these Terms exercise any of our rights pursuant to that clause.

10.3 If We reasonably incur third party costs, such as tracing or debt collection agency costs, or seek to take legal proceedings to enforce our rights as a result of your breach of this Contract – including but not limited to – recovery of any sums due, You will reimburse Us such reasonable agency costs or legal costs incurred on an indemnity basis.

10.4 Without prejudice to clause 10.3 if You are acting in the course of a business then in the event of late payment We reserve the right to claim compensation pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 at the prevailing rate, currently £40 for a debt less than £1000, £70 for a debt of more than £1000 but less than £10,000 and £100 for a debt in excess of £10,000.

## 11 GENERAL

11.1 Without affecting any other right or remedy available to us, we may terminate any Contract with you with immediate effect by giving written notice to you if you commit a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified in writing to do so.

11.2 This Contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.

11.3 We shall not be liable for any delay or failure to perform any of our obligations in relation to the Goods due to any cause beyond our reasonable control, including industrial action.

11.4 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach, nor as a waiver of any subsequent breach of the same, or any other provision.

11.5 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable, the validity of the other clauses and sub clauses of these Terms shall not be affected and they shall remain in full force and effect.

11.6 We may assign novate, or subcontract all or part of this Contract and You shall be deemed to consent to any novation. This Contract is personal to You and it may not be assigned by You.



11.7 Nothing in this Contract is intended to, or will grant any right, to any third party to enforce any Terms of this Contract, be it express or implied.

11.8 Incorporation of your business: Until You are informed in writing by Us that either the status of the account has been amended to a limited company or a fresh account opened all orders will continue to be debited to the current account and You will remain responsible to Us.

## 12 **COMPLIANCE - BRIBERY ACT AND EXPORT SANCTIONS**

12.1 You shall ensure that in any dealings with the Us, neither You nor your employees or agents shall commit any offence under the Bribery Act 2010 ("the Act") including not engaging in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Act. You shall inform Us immediately You become aware of any actions between the parties that could constitute an offence under the Act.

12.2 It is our and our group's policy to comply with all applicable sanctions and legal requirements for the import and export of goods, technology and services. We are committed to ensuring compliance with all regulatory and licensing requirements relating to international trade. We do not permit the supply of any of our goods to any individuals, companies or organisations that are subject to any trade, economic or financial sanctions, embargoes or similar restrictive measures administered, enacted or enforced by the UK, EU, UN or USA ("**Sanctioned Entities**"). By entering into this Contract you agree not to re-sell or otherwise transfer the Goods, either directly or indirectly, to any Sanctioned Entities.

## 13 **EXPORT**

13.1 You shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

13.2 You shall be liable for and shall indemnify and hold us harmless from any and all liability, loss, claims, damages