

**1. Definitions and Interpretation**

In these conditions, unless otherwise expressly stated;

- 1.1 'Buyer' means the person, company or authority who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller';
- 1.2 'Seller' means Excelsior Panelling Systems Ltd and;
- 1.3 'Contract' means the contract for the purchase and sale of the Goods;
- 1.4 'Goods' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
- 1.5 'Conditions' means these standard terms and conditions of sale as set out in this document;
- 1.6 'Price' means the price or rates excluding VAT included in the Seller's Quotation or Proposal, or as amended and agreed in writing by the Seller;
- 1.7 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;
- 1.8 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2 Basis of Sale**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer;
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller;
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed;
- 2.4 Commencement, performance or execution by the Seller of any variation to the Goods shall be deemed acceptance by the Buyer to such variation under these Conditions which the Buyer hereby agrees to.

**3 Orders and Specification**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's acknowledgement of order and subject to the Seller's terms and conditions for the Sale of Goods hereto;
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with the Conditions;
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller);
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim of infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification;
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance;
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred, (including re-stocking), by the Seller as a result of any cancellation.
- 3.7 Without prejudice to the generality of the foregoing, should the Buyer purport without the agreement in writing of the Seller to cancel any order which has been accepted by the Seller or refuse to accept delivery of any of the Goods such action shall constitute a breach of the agreement and, at the

option of the Seller, the Seller shall be entitled to require the Buyer to pay to the Seller by way of liquidated damages an amount equivalent to 50% of the invoice value of the order so purported to be cancelled or 50% of the invoice value of the Goods delivery of which is so refused (as the case may be). In the event of the Seller so requiring the Buyer shall pay such amount to the Seller (without any deduction) within 7 days of receiving from the Seller written notification of the amount required to be paid. The Seller and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Seller as a result of such breach of agreement on the part of the Buyer. For the avoidance of doubt, in the event that the Seller opts to require the Buyer to pay liquidated damages as set out above, and the Buyer duly pays such liquidated damages, neither party shall have any further liability to the other in relation to the Goods in respect of which such liquidated damages are paid;

**4 Price and Payment**

- 4.1 The price of the Goods shall be the Seller's quoted price;
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions;
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller are exclusive of carriage charges;
- 4.4 The price is exclusive of any applicable value added tax that the Buyer shall be additionally liable to pay to the Seller.
- 4.5 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time before or after delivery of the Goods in the following proportions;
  - 4.5.1 25% on issue of acknowledgement of order;
  - 4.5.2 25% on receipt of the Seller's advice the Goods, or part thereof, are ready for delivery and;
  - 4.5.3 50% following delivery of the Goods or part thereof.
- 4.6 All Invoices are payable net on a pro-forma basis, unless credit facilities have been approved, in which case Invoices are payable net not later than 28 days from the date of invoice. The Buyer shall pay all invoices without any other deductions notwithstanding that delivery may not have taken place and the property in the Goods has not been passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request;
- 4.7 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to;
  - 4.7.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 4.7.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and
  - 4.7.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Bank of England base lending rate, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
- 4.8 In the event that the Seller shall cancel the contract under the provisions of Clause 4.7.1 above the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation. Without prejudice to the generality of the foregoing, at the option of the Seller, the Seller shall be entitled to require the Buyer to pay to the Seller by way of liquidated damages an amount equivalent to 50% of the invoice value of the contract so cancelled. In the event of the Seller so requiring, the Buyer shall pay such amount to the Seller (without any deduction) within seven days of receiving from the Seller written notification of the amount required to be paid. The Seller and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Seller as a result of such cancellation.

**5 Description**

5.1 Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

**6 Sample**

6.1 Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

**7 Delivery**

7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place;

7.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. The Seller shall be entitled to make part delivery of the Goods at any time;

7.3 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated;

7.4 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;

7.5 Any damage, shortage, or over deliveries and/or duplicated orders must be reported to the Seller within 7 days of delivery.

**8 Risk and Property**

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

8.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection: or

8.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods;

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods;

**9 Warranties and Liability**

9.1 The Seller warrants that the Goods will correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade and will be free from defects in material and workmanship at the time of delivery. The Seller shall not at any time be liable for any all loss

9.2 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law;

9.3 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods or (refund to the Buyer the price of the Goods) (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer;

9.4 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 representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions;

**10 Insolvency of the Buyer**

10.1 If, the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt goes into liquidation or a receiver is appointed, of any of the property or assets of the Buyer or the Buyer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**11 Resolution of Disputes**

11.1 In the event of any difference or dispute arising between the Seller and the Buyer, the matter may at any time be resolved by adjudication using the Scheme for Construction Contracts (England and Wales) Regulations 1998 (amendment) (England) Regulations 2011 or any re-enactment, amendment or modification thereof being in force at the date of the Seller's Proposal or Quotation (referred to hereafter as "the Adjudication Procedure").

11.2 Either party may at any time give notice of its intention to refer a difference or dispute arising under out of or in connection with the Contract to adjudication by giving a written Notice of Adjudication to the other party in accordance with the Adjudication Procedure.

11.3 The decision of the Adjudicator shall be binding on the parties and become final and conclusive after 28 days from the date of the adjudicator's decision unless a Party shall have commenced proceedings to have the dispute finally determined by legal proceedings. The parties may agree to accept the decision of the adjudicator as finally determining the dispute

**12 Notices**

12.1 Any notice request or consent required or permitted to be given or made pursuant to the Conditions shall be in writing and sent by pre-paid post to the last known address of the receiving party.

**13 Intellectual Property**

13.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller.

**14 Severability**

14.1 If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect.

**15 Set off and Counterclaim**

15.1 The Buyer may not under any circumstances withhold payment of any invoice or other amount due to the Seller by reason of any purported right of deduction, set off or counterclaim which the Buyer may have or allege to have or for any reason whatsoever.

**16 Waiver**

16.1 No delay, act or omission by the Seller under the Contract in exercising any right or remedy or under any applicable law on any occasion shall be deemed or construed to be deemed a waiver of or bar to the exercise of such right or remedy or any other right or remedy upon any other occasion.

**17 Assignment/Third Party Rights**

17.1 The benefit of this Contract may not be assigned by the Buyer but it is fully assignable by the Seller. Nothing in this Contract is intended to, nor shall it confer any rights on a third party.

**18 Entire Agreement**

18.1 This Contract is the entire agreement between the Parties.

**19 Applicable Law**

19.1 This Contract is governed by the law of England and the parties shall submit to the exclusive jurisdiction of the English courts.