

1 Definitions

In these conditions, unless otherwise expressly stated;

- 1.1 'Client' means the person, company or authority that agrees to engage the Goods and Services of the 'Company';
- 1.2 'Company' means Excelsior Panelling Systems Ltd and;
- 1.3 'The Contract' is between the Client and the Company for the provision of the Goods and Services in accordance with the Company's Proposal or Quotation and these Conditions;
- 1.4 'Goods and Services' means the scope of works, duties, activities, goods or other services which the Company provides or carries out for or on behalf of the Client "the Works";
- 1.5 'Conditions' means the terms and conditions for the provision of Goods and Services set out in this document TC02 and in the Company's Proposal and/or Quotation and any other terms and conditions the Company agrees in writing are Conditions to be included under the Contract;
- 1.6 'Price' means the price or rates excluding VAT included in the Company's Quotation or Proposal, or as amended and agreed in writing by the Company;

2 Conditions applicable

- 2.1 These Conditions (as defined above) shall apply to all Contracts for the provision of Goods and Services by the Company to the Client to the exclusion of all other terms and conditions which the Client may purport to apply under any purchase order, confirmation of order or other document.
- 2.2 All Purchase Orders, Orders, instructions or the like for the provision of Goods and Services by the Company to the Client shall be treated to be an offer by the Client to engage the Company pursuant to these Conditions. Commencement or performance by the Company of the requested Goods and Services will be deemed to be the Company's acceptance of the Client's offer to undertake the Works strictly in accordance with these Conditions.
- 2.3 Acceptance of the Proposal or Quotation for the provision of Goods and Services by the Company or commencement in the provision of the Goods and Services whichever shall be sooner shall be deemed conclusive evidence of the Client's agreement to and acceptance of these Conditions.
- 2.4 The Company shall in the performance of the Goods and Services (as defined in its Proposal or Quotation) exercise and will continue to exercise the reasonable skill, care and diligence to be expected in the provision of such Goods and Services.
- 2.5 The Goods and Services shall, subject to the Conditions, be provided by the Company for the sole benefit of the Client unless otherwise agreed in writing by the Company.
- 2.6 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
- 2.7 Commencement, performance or execution by the Company of any variation to the Works shall be deemed acceptance by the Company to undertake such variation under these Conditions which the Client hereby agrees to.

3 Price, payment and suspension

- 3.1 The Price proposed or quoted and payable to the Company for the provision of the Goods and Services shall, in addition to any variations, be the Price payable to the Company by the Client. The Price is exclusive of VAT which shall be due at the rate prevailing at the date of the Company's application for payment or invoice.
- 3.2 Variations, the parties shall endeavour to agree a price for a variation prior to the Company carrying out the variation. In the event a variation quotation, price or rate for the variation has not been agreed, a variation shall be valued as follows and such valuation shall include any direct loss and/or expense incurred by the Company due to the regular progress of the Works being affected by the variation;
 - 3.2.1 Where work is of a similar character under similar conditions, at the rates or prices in the Company's Proposal or Quotation;
 - 3.2.2 Where work is of a similar character but executed under dissimilar circumstances the rates or prices in the Company's Proposal or Quotation shall be used as a basis for determining the rate;
 - 3.2.3 Where the work is additional or substituted work and is not of a similar character the work shall be valued at fair rates and prices;
 - 3.2.4 Where the work cannot be valued in accordance with any of the above, the work shall be valued on a Daywork basis at the rates specified in the General Conditions GC02;
- 3.3 Changes in statute, law, taxes or levy's effected after the date of the Company's Quotation or Proposal are deemed to be a variation any additional cost of which shall be recoverable by the Company.
- 3.4 If the period for the execution of the Works exceeds one month, payments will become due monthly, (the Relevant Period") or otherwise at the date of application/invoice. The due date shall be one month after commencement and thereafter the same date in each month or nearest business day. The final date for payment shall be 28 (twenty eight) days from the due date. The Company may not later than the due date submit an application / invoice ("Payment Application") of

the amount it considers to be due or to have become due on the due date and the basis upon which the sum is calculated. Time for payment shall be of the essence.

- 3.5 The Client shall not later than five days after the due date give a notice to the Company ("Payment Notice") setting out what in its view the value of the amount due is or was to have become due on the due date and specifying the basis upon which that sum has been calculated. In reaching his assessment of the amount due, the Client considers any application / invoice for payment submitted by the Company.
- 3.6 If the Client intends to pay less than the sum stated as due from the Client in the Payment Notice or Payment Application, as the case may be, the Client shall not later than seven days before the final date for payment give the Company a notice of that intention, ("Pay-less Notice"), which notice shall specify both the sum the Client considers to be due to the Company at the date the notice is given and the basis on which that sum has been calculated.
- 3.7 In respect of each Relevant Period, if the Client fails to issue a Payment Notice and Pay-less Notice, the Company shall be entitled to, and the Client accepts and agrees to such entitlement, payment of the Company's Payment Application in full by the final date for payment.
- 3.8 For the purposes of clause 3.6 and s.111 of the HGCRA as amended, in the absence of the Client issuing a Payment Notice and Pay-less notice in any Relevant Period, the Company's Payment Application shall be regarded as a compliant Payee's notice in default of a Payer's notice of payment, requiring payment of the Company's Payment Application in full by the final date for payment.
- 3.9 If the Client fails to pay the sum payable in any relevant period by the final date for payment and the failure continues for seven days after the Company has given notice to the Client of his intention to suspend the performance of all of his obligations under the contract and the ground or grounds on which the Company intends to suspend performance, the Company may suspend performance of any or all its obligations until payment is made in full.
- 3.10 Where the Company exercises the right of suspension under 3.9 the Company shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred as a result of the exercise of the right.
- 3.11 Interest on overdue payment of the amount due in any Relevant Period shall accrue from the date when payment becomes due until the date of payment at a rate of 8% above The Bank of England base rate from time to time in force compounded monthly and shall accrue at such a rate after as well as before any judgement until paid. The parties agree and accept that this is regarded as a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act1998 as amended.
- 3.12 The Company may recover from the Client all bank, legal, agents, court or other professional fees and/or damages incurred in obtaining full payment for the Goods and Services.

4 Carrying out the Works

- 4.1 The Company shall carry out and execute the Works in accordance with the requirements set out in the Company's Proposal or Quotation or as amended and agreed in writing by the Company.
- 4.2 The Company may from time to time make changes in the specification of the Works required in order to comply with any amended or applicable safety or statutory regulatory requirements and which do not materially affect the quality of the Goods and Services. Any such changes will be treated as a variation under clause 3.3 above.
- 4.3 Subject to any extension of time, the Works will be completed within the period for completion calculated from the date of commencement.
- 4.4 If and whenever it becomes apparent that the Works will not be completed within the period for completion calculated from the date of commencement for reasons beyond the control of the Company, including compliance with instructions and the carrying out of variations, the Client shall give in writing to the Company an extension of time for completion as may be reasonable.
- 4.5 Where progress or completion of the Works is delayed for reasons not of the Company's making, the Company shall be entitled to an increase in the Price of the Works in respect of any additional costs or damages incurred by the Company as a result of such delay.

5 Design

- 5.1 Where the Works or any part of it are manufactured and/or installed to the design or specification of the Client or Clients representative the Company shall not be liable for nor shall it give or be deemed to have given any warranty guarantee or representation in relation to such design or the practicality in construction.
- 5.2 **Copyright and use:** Subject to all sums due and payable under the Contract to the Company having been paid, the Client shall have an irrevocable royalty-free non-exclusive licence to copy and use the Company's design for any purpose relating to the Works. Such licence shall enable the Client to copy and use the Company's design for the extension of the Works but shall not include a licence to reproduce the design contained in them for any extension of the Works.
- 5.3 The Company shall not be liable for any use by the Client of any of the Company's design for any purpose other than that which they were prepared.

6 Defects

- 6.1 If any defects shrinkages or other faults in the Works appear within the rectification period due to materials, goods or workmanship not in accordance with the Conditions the Client shall so notify the Company who shall make good such defects at his own expense.
- 6.2 The defects rectification period shall be twelve months commencing on practical completion of the Works.

7 Warranties, liability and Insurance

- 7.1 All warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods and Services, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 7.2 The Company has no liability whatsoever arising out of or in connection with the Contract for any claims for direct, consequential loss, expense or damage and whether arising under any warranty, statement, condition or express or implied term except in respect of negligence on the part of the Company or any of its agents or employees.
- 7.3 The Company will not be liable in any circumstances for any amount in excess of the Price except in respect of negligence on the part of the Company or of any of its agents or employees.
- 7.4 The Client shall have no liability to the Company for any loss of or damage to any of the Company's property or the property of the Company's personnel or sickness injury or death of the Company's personnel or of any cost claims demands actions and damages arising out of the performance of the Goods and Services except to the extent that such loss damage sickness injury death cost claims demands actions and damage is due to the negligence of the Client his servants or agents.
- 7.5 The Client shall take out and maintain a joint names policy for the Contractor's all risks insurance for the full reinstatement of the Works and shall maintain such policy until practical completion of the Works.

8 Cancellation of Orders

- 8.1 Once an order is accepted by the Company, the Goods and Services can only be cancelled by agreement in writing of the Company.
- 8.2 The Client shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges, (including re-stocking) and expenses incurred by the Company as a result of any cancellation.
- 8.3 In addition to 8.2, all orders commenced and subsequently cancelled will be subject to a surcharge of 10% of order/quotation or proposal sum.

9 Provision of the Goods and Services

- 9.1 The Company will provide the Goods and Services as soon as reasonably practicable, any date or time for delivery quoted by the Client does not form part of these conditions and is not of the essence. The Company is not liable to the Client for any damage, consequential loss, costs and/or expense in respect of delay.
- 9.2 Partial provision of the Goods and Services constitutes a separate contract and any delay or failure to provide any Goods and Services in part does not repudiate the whole contract.

10 Acceptance of the Goods and Services

- 10.1 The Client shall be deemed to have accepted the Goods and Services provided as complete 24 hours after the Company ceases provision of the Goods and Services in whole or in part to the Client, ("Acceptance").
- 10.2 After Acceptance the Client shall not be entitled to reject Goods and Services provided which it considers are not in accordance with the Contract.
- 10.3 Where the Client rejects any Goods and Services then the Client shall have no further rights whatsoever in respect of the provision to the Client of such Goods and Services or the failure of the Company to provide Goods and Services which conform to this Contract.

11 Resolution of Disputes

- 11.1 In the event of any difference or dispute arising between the Company and the Client, 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 Company'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 they shall comply with it until the dispute is finally determined either by agreement by litigation or by arbitration. Any such reference to arbitration shall take place in the United Kingdom. If no reference is made by either Party within 28 days of the Adjudicator's decision it shall become final and binding on the Parties.

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 to the last known address of the receiving party.

- 12.2 A party may change address by giving the other Party notice of its change of address.

13 Termination

- 13.1 If the Client does not pay by the final date for payment the amount due to the Company in any Relevant Period, the Company may give a notice to the Client specifying the default and if the specified default continues for seven days from receipt of the notice then the Company may on or within ten days of the expiry of that seven day period by a further notice to the Client terminate the Company's employment under the Contract.

14 Title and risk

- 14.1 Title and property in the Goods and Services shall not pass from the Company until the Client shall have paid the Price plus VAT in full including any variations;
- 14.2 Until title and property in the Goods and Services passes to the Client in accordance with clause 12.1 the Client shall hold the Goods and Services and each of them on a fiduciary basis as bailee for the Company.
- 14.3 The Company shall retain Copyright to all material in the provision of the Goods and Services until title and property passes to the Client.
- 14.4 Until title and property passes the Client shall only be entitled to use the material insofar as the purpose to which the Goods and Services relate. The Client shall not be able to copy, distribute or re-sell the material for any purpose whatsoever without the Company's prior written approval.
- 14.5 The Company shall be entitled to recover the Price, including any variations (plus VAT) notwithstanding that title and property in any of the Goods and Services has not passed from the Company.

15 Set off and Counterclaim

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

16 Waiver

- 16.1 No delay, act or omission by the Company 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 right on a third party.

18 Entire Agreement

- 18.1 This Contract represents the entire understanding and agreement between the Parties and supersedes any and all previous negotiations and understandings between the Parties including any letter/s of intent with respect to its subject matter. Further, this Contract supersedes all previous agreements between the parties with regard to its subject matter and those agreements are now terminated and of no further effect.

19 Applicable Law

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