

Terms & Conditions

CA Plant & Material Supplies Ltd
2nd Floor Offices
27 West Street
Storrington
West Sussex
RH20 4DZ
Telephone 01903 744440
Email Sales@caplant.co.uk

CA PLANT & MATERIAL SUPPLIES LTD

TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Interpretation

1.1 In these Conditions:

'BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

'GOODS' means the goods (including any instalment of the goods or any part for them) which the Seller is to supply in accordance with these Conditions.

'SELLER' means Parker Building Supplies Limited (registered in England and Wales under number 2045211).

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

'CONTRACT' means each contract for the purchase and sales of Goods.

'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.

1.2 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.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of the 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. Any such Order is subject to these Conditions (which replace any earlier version(s) of these Conditions, or any other terms and Conditions of which the Buyer is aware). Each acceptance (whether by the Buyer or the Seller) shall constitute a separate contract, governed by these Conditions.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller. It is agreed that a purported oral variation shall be of no effect (including a purported oral variation of this term) and that the parties declare that they do not intend that any such oral variation be binding or that they do not intend that such a purported variation is to

affect the legal relations between the Buyer and the Seller. The parties further declare that they shall not rely on any such oral variation.

- 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 any representations other than those confirmed by the Seller in writing.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon 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.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6 Nothing in these Conditions requires the Buyer to place orders with the Seller or the Seller to accept orders from the Buyer.

3 Orders and Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 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 its terms.
- 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 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 for infringement of any patent, copyright, design, trademark, 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 statutory or EC 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 on terms that 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 the cancellation.

4 Price of Goods

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer. The Seller may vary its published price list at any time, however this will not affect any quoted prices during the period that those quoted prices are valid. Where there is more than one quotation for Goods only the latter quotation is valid, however the Seller shall not issue a new quotation during a period for which an earlier quotation is valid unless the Buyer requests it do so (or unless the earlier quotation is manifestly incorrect).
- 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), 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 on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the buyer shall be liable to pay the Seller's charges for transport, packaging and insurance, in addition to the price of the Goods.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5 Terms of Payment

- 5.1 All transactions shall be cash with order unless the Buyer has been granted a Credit Account.
- 5.2 The Seller may in its absolute discretion and subject to any references it may require grant a Buyer on request a Credit Account.
- 5.3 **Where you are supplied goods on a credit account you must pay for all the goods delivered in each calendar month in a single payment. This payment must be made no later than the end of the calendar month following delivery.**

- 5.4 The Seller is entitled to invoice for goods notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract (whether Goods are supplied on credit or not). Receipts for payment will be issued only upon request.
- 5.5 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:
- 5.5.1 cancel the contract or suspend any further deliveries to the Buyer;
 - 5.5.2 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
 - 5.5.3 charge the Buyer Interest (both before and after a Judgment) in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998. Where that Act is not applicable the Seller may charge the Buyer interest (both before and after any Judgment) on the unpaid amount at the rate of 3% per annum above Bank of Scotland base rate from time to time, until payment in full is made.

6. **Delivery**

- 6.1 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 of delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 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 however caused. Time for delivery shall not be of the essence of the Contract 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.
- 6.3 The Seller accepts no liability for shortages on delivered quantities unless notified of the shortage within 7 days of delivery. The Seller is not liable for quantities ordered by the Buyer and the suitability thereof for the Buyer's purpose.
- 6.4 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 5% (five per cent) more or 5% (five per cent) less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.5 Where the Goods are to be 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.

- 6.6 If the Seller fails to deliver the Goods (or any instalment) for any reason it shall have no liability to the Buyer if:
- 6.6.1 the reason for the failed delivery was beyond the Seller's reasonable control;
 - or
 - 6.6.2 the reason for the delivery was the Buyer's fault.
- 6.7 Where delivery of the Goods is to be made by the Seller:
- 6.7.1 the Goods are delivered at the sole risk of the Buyer;
 - 6.7.2 the supply of all necessary labour and equipment required by the Seller for unloading should be the responsibility of the Buyer and the Seller shall have no responsibility for unloading;
 - 6.7.3 if the Buyer fails to supply the necessary labour and equipment required by the Seller, the Seller shall retain the Goods and delivery will be cancelled. The Buyer will be responsible for all costs of the abortive delivery or deliveries;
 - 6.7.4 the Seller will deliver only where a suitable roadway or access is available. If no such roadway or access exists delivery will be made to the nearest point approved by the Seller only;
 - 6.7.5 the Seller is not authorised to enter private premises and will accept no responsibility for claims for any damage arising from such an event howsoever caused.
- 6.8 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.9 The Seller reserves the right in its absolute discretion to accept Goods for return if incorrectly ordered. The Seller will not accept for return Goods on special order or manufacture, which shall be the entire liability of the Buyer.

7. Risk and Property

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

- 7.1.1 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
 - 7.1.2 in the case of the Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risks 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 in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are located, stored, installed and or fixed and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. **Warranties**

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period stated by the manufacturer's terms, conditions and specifications.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage (other than by the Seller), negligence (other than by the Seller), abnormal working conditions (other than by the Seller), failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Seller's approval;

- 8.2.3 the Seller shall be under no liability under the above warranty (or for any other reason, condition or guarantee) if the total price for the Goods has fallen due for payment but has not been paid at the date of the breach of the warranty.
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1997), all warranties, conditions, or other terms implied by statute or common law are excluded to the fullest extent permitted by law. However nothing in these Conditions is to be taken as excluding or restricting the liability of the Seller for death or personal injury caused by negligence.
- 8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller in writing within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods is made under the warranty at 8.1 above and is notified to the Seller in accordance with these Conditions, the Seller shall be entitled as long as it does so in a reasonable period, to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, 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.
- 8.7 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:
- 8.7.1 any representation (unless fraudulent);
 - 8.7.2 any implied warrant, condition or other term;
 - 8.7.3 any duty under common law; or
 - 8.7.4 under the express terms of the Contract,

For

- 8.7.5 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise);
 - 8.7.6 costs, expenses or other claims for compensation whatsoever (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;
- And
- 8.7.7 the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these conditions.
- 8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;
- 8.8.0.1 Act of God, explosion, flood, tempest, fire or accident;
 - 8.8.1 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.8.2 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
 - 8.8.3 import or export regulations or embargos;
 - 8.8.3.1 strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 8.8.4 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.8.5 power failure or breakdown in machinery.
- 9. Insolvency of Buyer**
- 9.1 This clause applies if:
- 9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation otherwise than for the purposes of amalgamation or reconstruction); or
 - 9.1.2 an encumber takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

- 9.1.3 Page 10 of 12 the Buyer ceases, or threatens to cease, to carry on his business; or
- 9.1.4 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.
- 9.2 If this clause applies then, without any 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.
- 10.1 If the Seller has granted the Buyer a credit facility and the Buyer is a partnership or a limited company the Buyer must notify the Seller in writing within 14 days of any addition, removal, substitution, retirement or other material variation of the identity or status of any partner or director of such a partnership or limited company.
- 10.2 If there is any change in the constitution of the Buyer (for example from a sole trader to a limited company) the Buyer must notify the Seller 14 days prior to the change.
- 11. General**
- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.4 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.
- 11.5 We will make a search with a credit reference agency, which will keep a record of that search and will share that information with other businesses. We may also make enquiries about the principals (proprietor, partners, directors) with a credit reference agency. We reserve our right as necessary to seek further credit references. We shall monitor and record information relating to your trade performance and such records will be made available to credit reference agencies who will share that information with other businesses when assessing applications for credit and fraud prevention. Any authority you provide for us to obtain status enquiries and credit references shall be continuing in nature.

- 11.6 The Conditions are the entire agreement between the Buyer and the Seller and supersede any prior terms and conditions. Save in respect of statements made fraudulently the Buyer and the Seller agree that they have no rights in respect of any pre-contractual statements.
- 11.7 I, the Guarantor, request that you Parker Building Supplies Limited supply goods to the company identified in this application form. In return I agree with you that I shall guarantee (by way of continuing security) all liabilities of the company to you, past and future, however incurred. This includes any sums due for goods supplied on credit, costs, interest and damages. This guarantee is without limit.
- 11.8 I agree that this guarantee shall continue despite any variation or relaxation of the terms on which you supply goods to the company (including variation in a credit limit). My consent for any such variation or relaxation is unnecessary.
- 11.9 If I am a director, officer or employee of the company I agree that this guarantee shall continue if I cease to be such a director, officer or employee.
- 11.10 If I wish to end this guarantee I must give you 28 days written notice by post to your head office. I acknowledge that this notice is not valid unless received by you, and the risk of any failure in the post lies with me. I hereby acknowledge that it would be wise to verify that any notice is received by you.
- 11.11 I understand that this guarantee may make me personally liable for sums due to you by the company, and I understand the importance of obtaining legal advice about it.

Nothing in the Conditions give any rights to any third parties under the terms of the Contracts (Rights of Third Parties) Act 1999.

