

Terms and Conditions of Contract – Advanced Roofing Services Ltd

- 1 In these conditions: “Seller” means Advanced Roofing Services Limited (Company Number 02775312) whose office is at Advanced House Forest Row Business Park, Forest Row, East Sussex RH18 5DW together with its successors in title and assigns;
- 1.1 “Purchaser” 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 together with its successors in title or assigns;
- 1.2 “Goods” means the goods (including any instalment of the goods or any parts of them) or services (whenever the materials are supplied by a third party) which the Seller is to supply in accordance with these Conditions;
- 1.3 “Conditions” means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Purchaser and the Seller. Any variations to this document must be agreed in Writing between the authorised representatives of the Purchaser and the Seller.
- 1.4 “Contract” means the contract for the purchase and sale of the Goods;
- 1.5 “Writing” includes cable, facsimile transmission and e-mail.
- 1.6 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.
- 2 Upon acceptance by the Purchaser of any quotation made in Writing by the Seller, or upon acceptance by the Seller of any written order made in Writing by the Purchaser, the Seller shall sell and the Purchaser shall purchase the Goods provided that the Conditions shall govern the Contract to the exclusion of any other terms and conditions.
- 3 The Seller shall not be liable for any advice or recommendation by the Seller (or its employees or agents) to the Purchaser (or its employees or agents) as to the storage, application or use of the Goods unless this advice has been confirmed in Writing by the Seller.
- 4 The Purchaser acknowledges that it does not rely on, and waives any claim for breach of, any representations of the Seller’s employees or agents except where the Seller has, in Writing, confirmed and accepted responsibility for any such representations. For the avoidance of doubt, the Seller’s employees or agents are not authorised to make any representations concerning the Goods.
- 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.
- 6 No order submitted by the Purchaser shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative.
- 7 The Purchaser shall be responsible to the Seller for ensuring the accuracy of the terms of any order including any applicable specification submitted by the Purchaser, 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.
- 8 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 Purchaser) or the Purchaser’s order (if accepted by the Seller).
- 9 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.
- 10 No order which has been accepted by the Seller may be cancelled by the Purchaser except with the agreement in Writing of the Seller and on terms that the Purchaser 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 cancellation.
- 11 The price of the Goods, exclusive of value added tax, which the Purchaser shall pay to the seller, 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 Purchaser, after which time they may be altered by the Seller without giving notice to the Purchaser.
- 12 The Seller reserves the right, by giving notice to the Purchaser 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, any change in delivery dates, quantities or specifications for the Goods which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Seller adequate information or instructions.
- 13 Subject to any agreement in Writing between the Purchaser and Seller, the Seller shall be entitled to invoice the Purchaser for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Purchaser or the Purchaser wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Purchaser for the price at any time after the Seller has notified the Purchaser that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 14 The Purchaser shall pay the price of the Goods within 14 days of the date of the Seller’s invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Purchaser. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request. Payment of the price shall be a condition precedent to the issue by the Seller of its warranty and guarantee, which, for the avoidance of doubt, shall be of no effect until payment in full is received.
- 15 If the Purchaser fails to make any payment by the date specified in clause 14, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 15.1 Cancel the contract or suspend any further deliveries to the Purchaser;
 - 15.2 Appropriate any payment made by the Purchaser to such of the Goods (or the goods supplied under any other contract between the Purchaser and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Purchaser); and
 - 15.3 Charge the Purchaser interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above HSBC Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 16 Delivery of the Goods shall be made by the Purchaser collecting the Goods at the Seller’s premises at any time after the Seller has notified the Purchaser 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.
- 17 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.
- 18 The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Purchaser.
- 19 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller’s reasonable control or the Purchaser’s fault, and the Seller is accordingly liable to the Purchaser, the Seller’s liability shall be limited to the additional cost to the Purchaser (in the cheapest available market) of similar goods to replace those not delivered.
- 20 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 or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.
- 21 If the Purchaser 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 Purchaser’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:
 - 21.1 Store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage; or
 - 21.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.
- 22 Risk of damage to or loss of the Goods shall pass to the Purchaser:
 - 22.1 In the case of Goods to be delivered at the Seller’s premises, at the time when the Seller notifies the Purchaser that the Goods are available for collection; or
 - 22.2 In the case of Goods to be delivered otherwise than at the Seller’s premises, at the time of delivery or, if the Purchaser wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 23 The property in the Goods shall not pass to the Purchaser until the Seller has received in cash or cleared funds payment in full of the price of the Goods.
- 24 Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Seller’s fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Seller’s property. Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall be entitled to re-sell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties and, in the case of tangible proceeds, property stored, protected and insured.
- 25 Until such time as the property in the goods passes to the Purchaser (and provided the Goods are still in existence and have not been re-sold), the Seller shall be entitled at any time to require the Purchaser to deliver up the Goods to the Seller and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.
- 26 The Purchaser 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 Purchaser does so all monies owing by the Purchaser to the Seller shall, without prejudice to any other right or remedy of the Seller, forthwith become due and payable.
- 27 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 Purchaser;
- 28 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller’s instructions, misuse or alteration or repair of the Goods without the Seller’s approval;

29 The Seller shall be under no liability if the total price for the Goods has not been paid by the due date for payment;

30 Except where the Goods are sold under a consumer sale pursuant to the Sale of Goods Act 1979 and subject to the Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

31 Any claim by the Purchaser 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 Purchaser) be notified to the Seller 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 Purchaser does not notify the Seller accordingly, the Purchaser shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure. The Purchaser shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

32 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 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 the part in question free of charge or at the Seller's sole discretion refund to the Purchaser the price of the Goods or a proportionate part of the price but the Seller shall have no further liability to the Purchaser.

33 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Purchaser 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 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 Purchaser except as expressly provided in these Conditions).

34 The Seller shall not be liable to the Purchaser 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;

34.1 Act of God, explosion, flood, tempest, fire or accident;

34.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;

34.3 Acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority;

34.4 Import or export regulations or embargoes;

34.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

34.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

34.7 Power failure or breakdown in machinery.

35 If the Purchaser; makes a composition or arrangement with his creditors, or becomes bankrupt, or being a company makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be, or has a provisional liquidator appointed, or has a winding up order made, or passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction), or under the Insolvency Act 1986 has an administrator or an administrative receiver appointed 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 Purchaser. 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.

36 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.

37 Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Appointment except that it shall be deemed to be amended as follows:

37.1 In this clause Working Day means any day from Monday to Friday (inclusive) other than bank or public holidays.

37.2 The final words of section 196(4) "and that service.....be delivered" shall be deleted and replaced with "and that service shall be deemed to be made on the second Working Day after the registered letter has been posted".

37.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00pm on a Working Day but otherwise on the next following Working Day.

38 No waiver by the Seller of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

39 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 the Conditions and the remainder of the provision in question shall not be affected thereby.

40 The Contract shall be governed and interpreted in accordance with English Law and the parties irrevocably submit to the jurisdiction of the English Courts.

41 A person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from pursuant to that Act.

41.1 Either party may at any time refer any dispute under the Contract to adjudication pursuant to Part 2 of the Scheme For Construction Contracts (England and Wales) Regulations 1998, SI 1998 No 649.

FIXING

42 Where the Contract provides for fixing or other site works the following additional conditions apply:

42.1 The Purchaser shall make payment to the Seller as follows:

42.1.1 subject to clauses 42.1.2 to 42.1.4 below, in accordance with Part 2 of the Housing Grants Construction and Regeneration Act 1996 and Part 2 of the Scheme For Construction Contracts (England and Wales) Regulations 1998, SI 1998 No 649.

42.1.2 within 14 days of invoice of the value of the work executed and goods delivered to site (whether fixed or unfixed) during the immediately preceding month.

42.1.3 payment is to be made in full without deduction in respect of any form of discount or retention levy.

42.1.4 When goods have been obtained/manufactured to suit client's delivery requirements which are subsequently delayed, invoices will be rendered and payable for works carried out/materials purchased. (NB General guideline -factory costs account for 80% of total price).

42.2 Call out charge:

42.2.1 A call out charge of £300.00 nett will apply to all emergency visits.

42.3 It is a condition of the Contract that, unless otherwise expressly stated, the Purchaser will accept full responsibility free of charge to the Seller, for the following matters:

42.3.1 Areas for units must be clearly marked by the Purchaser.

42.3.2 Safe and covered storage of materials on the site.

42.3.3 Carrying and/or hoisting of goods to the correct floor or work site and distribution to within 5 metres of installation points.

42.3.4 Provision of, movement of, or alterations to the scaffolding which must be suitable for the work to be done and comply with relevant safety regulations.

42.3.5 Provision of sufficient and accessible electric power to enable the Seller to carry out its works.

42.3.6 All equipment and facilities to enable the Seller to comply with relevant and applicable health and safety obligations pursuant to statute and regulations.

42.3.7 That the Seller will have adequate working space and working conditions and facilities will allow any agreed phase of work to be completed in one operation in normal working hours

42.4 The Seller requires 14 days clear notice before commencing fixing. The Purchaser must give 48 hours notice of a postponement of agreed fixing arrangements.

42.5 The Seller has not made allowance for delays caused by other trades and lost time will be charged at its day work rate. If the work of preceding trades does not comply with agreed tolerances, the Seller will charge at its day work rate for any time spent by the Seller's fixers marking out for alterations and/or any delay caused to fixing. The Seller shall be entitled to an extension of time in respect of such delay.

42.6 The Seller does not accept responsibility for works carried out otherwise than under its direct supervision.

42.7 The Seller will not carry out additional work without an order in Writing. The Seller's site variation order signed by a site agent or foreman shall constitute a written binding order.

42.8 Day work charges shall be as follows: Labour: £ 48.00 per hour per man, nett. Plant & Materials: Cost + 25%. Out of hours working are as follows: Weekdays: in excess of 8 hours to 12 hours: at the daywork rate plus a non-productive overtime rate of £24 per hour per man in excess of 12 hours: at the daywork rate plus a non-productive overtime rate of £48.00 per hour per man Weekends: Saturdays: first 4 hours: at the daywork rate plus a non-productive overtime rate of £24 per man per hour Saturdays: in excess of 4 hours: at the daywork rate plus a non-productive overtime rate of £48.00 per hour per man Sundays: at the daywork rate plus a non-productive overtime rate of £48.00 per hour per man Public/bank holidays: on application by prior agreement Abortive/return visits: £350 per man Daywork working: Travel time in excess of 1 hour to/from site chargeable at £48.00 per hour per man mileage at £0.50 per mile Radius allowance over 35 miles: £35 per man per day Lodging allowance: £45 per man per day Daywork working is subject to 8 hours minimum charge per man for each day's attendance on site.