

## **Komfort Partitioning Limited**

### **CONDITIONS OF PURCHASE**

#### **1. DEFINITIONS**

##### 1.1 In these conditions

**"Buyer"**

**Komfort Partitioning Limited**

<b>"Conditions"</b>	mean these Standard Terms and Conditions of Trading;
<b>"Contract"</b>	means the contract for the purchase of the Goods and/or Contract Works by the Buyer governed by these Conditions;
<b>"Contract Works"</b>	means the works or services or any of them described in the Order;
<b>"Delivery"</b>	means the physical delivery of the Goods into the possession of the Buyer or its representatives and/or the performance of the Contract Works as detailed in the Order or as notified from time to time by the Buyer;
<b>"Goods"</b>	means the articles or things or any of them described in the Order;
<b>"Order"</b>	means the order placed by the Buyer for the supply of the Goods and/or Contract Works;
<b>"Supplier"</b>	means the sole trader firm, company or other organisation to whom the Order is addressed; and
<b>"Specification"</b>	means the description whether technical or general both of the Goods and/or Contract Works contained or referred to in the Order or otherwise in writing from the Buyer.

#### **2. THE CONTRACT**

- 2.1 Any Contract shall be cancelable by the Buyer without liability for a period of 28 days from the date of the Order for any reason.
- 2.2 Neither the Buyer nor the Supplier shall be bound by any variation, waiver of, or addition to these Conditions except as agreed by those parties in writing and signed on their behalf or as specified in writing by the Buyer in its Order. Any such specified terms will override any conflicting provisions contained herein.
- 2.3 These Conditions shall override and supersede any terms or conditions of sale of the Supplier purported to be incorporated expressly or impliedly into the Contract and the Supplier accepts these Conditions by whichever is the earlier of supplying the Goods or Contract Works or payment by the Buyer.

#### **3. DELIVERY**

- 3.1 Time of Delivery is of the essence.
- 3.2 Without prejudice to the generality of Clause 3 or any right or remedy which the Buyer may have at law, the Supplier shall notify the Buyer immediately if it becomes aware that it shall not be able to deliver on the date specified in the Order.
- 3.3 If Delivery is not made within two days of the date specified in the Order and in accordance with the terms of the Contract if the Buyer so requests it may cancel the Contract or any Order or part thereof without liability.
- 3.4 If Goods are delivered before the date specified in the Order the Buyer shall be entitled at its sole discretion to refuse to take Delivery or to charge for insurance or storage of the Goods until the specified date for Delivery.

- 3.5 Without prejudice to Clause 3, if the Supplier fails to comply with the terms of the Contract relating to Delivery, then the Supplier shall indemnify the Buyer for all loss and damage to the Buyer whether direct or indirect or occasioned directly or indirectly by the Supplier's failure to comply.
- 3.6 Materials delivered in error or in excess of the quantity called for may at the Buyer's sole discretion be returned at the Supplier's expense.
- 3.7 If a carrier or sub-contractor or agent is used by the Supplier to Deliver, such carrier, sub-contractor or agent shall be deemed to be an agent of the Supplier and not of the Buyer.

#### **4. RISK AND TITLE OF GOODS**

Unless otherwise stated on the Order, risk in the Goods purchased shall pass to the Buyer only on completion of Delivery and title to the Goods or any part thereof shall pass to the Buyer upon the earlier of the Delivery or the date of payment being made for the Goods. The Supplier shall be responsible for transport and unloading costs and insurance of the Goods to their full value against all risk of damage or loss prior to completion of Delivery.

#### **5. INSURANCE OF GOODS AND CONTRACT WORKS**

- 5.1 The Supplier shall ensure that it has at all times in force adequate and suitable insurance with such insurance company as may be approved by the Buyer against the Supplier's respective liabilities at common law, statute and relating to its execution of the Contract Works and/or arising out of and in the course of employment of any workmen employed by them respectively or caused or due thereto and relating to the Supplier's supply and delivery of the Goods. The Supplier when requested shall produce to the Buyer certificates of insurance showing the aforesaid.

#### **6. QUALITY AND DEFECTIVE GOODS**

- 6.1 All stipulations contained in the Order and in the Contract as to the Specification and as to the quality of the Goods and Contract Works are Conditions of the Contract, the breach of which shall give the Buyer the right to reject the Goods and/or Contract Works and treat the Contract as repudiated.
- 6.2 The Supplier hereby warrants that the Goods and Contract Works shall:-
- 6.2.1 conform as to quantity, quality and description with the particulars stated by the Buyer in the Order;
  - 6.2.2 be of sound materials and workmanship;
  - 6.2.3 conform in all respects with the samples, patterns, drawings or Specifications provided or given by either party and approved by the Buyer;
  - 6.2.4 be fit for the purpose for which they are required whether indicated, expressly or by implication by the Buyer; and
  - 6.2.5 Comply in all respects with all relevant statutes, regulations, statutory orders or other instruments in force at the time of supply of the Goods and/or Contract Works to the Buyer in particular concerning safety.
- 6.3 Without prejudice to the generality of Clause 6 if in the reasonable opinion of the Buyer there is any fault or defect in the Good(s) (or any part of them) the Buyer shall be entitled to return the faulty or defective Good(s) as applicable to the Supplier at the Supplier's expense and the Supplier shall at its own cost replace or repair at the Buyer's sole discretion the faulty or defective Good(s) and deliver the substitute or repaired Good(s) to the Buyer within 10 days notification to the Supplier. All transport and ancillary costs and expenses in connection with such replacement or making good shall be borne by the Supplier.
- 6.4 The Supplier agrees to assign to the Buyer upon request the benefit of any warranty, guarantee or similar right which is held against any third party manufacturer or Supplier of the Goods or any part thereof and industry practice.
- 6.5 Before dispatching the Goods to the Buyer the Supplier shall carefully inspect and test the Goods for compliance with the Specification, and with all relevant legislation detailed in Clause 6.2.5 and to check that they conform to a standard equivalent to industry practice. The Supplier shall, if requested by the

Buyer, give the Buyer reasonable notice of such tests and the Buyer shall be entitled to be represented thereat. The Supplier shall also, at the request of the Buyer, supply to the Buyer a copy of the Supplier's test certificates and inspection reports certified by the Supplier to be a true copy.

## **7. INDEMNITY**

The Supplier agrees to indemnify the Buyer from and against all claims damages costs liabilities and expenses whatsoever arising from the Goods and/or Contract Works which are the subject of any Order and which shall include without limitation:

7.1 any claim concerning any infringement of the rights of third parties howsoever arising unless such claim is caused directly by any negligent act of the Buyer or any of its employees who are not at the time under the Supplier's control; and

7.2 Any claim for breach of these Conditions.

## **8. PRICE AND PAYMENT**

8.1 Unless otherwise agreed by the Buyer in writing:

8.1.1 Prices are those given by the Supplier on the date of the Order and not subject to increase;

8.1.2 All prices are fixed inclusive of packaging, carriage, expenses and insurance up to completion of Delivery; and

8.1.3 Invoices will be paid 60 days following the end of month of the invoice or otherwise as agreed in writing by the Buyer.

8.2 The Buyer specifically reserves the right to deduct from any monies due or to become due to the Supplier whether in respect of this Contract or a future contract any monies due to the Buyer from the Supplier and/or the amount required to repair, replace or make good any faults or defects in the Goods and/or reperform and/or make good the Contract Works.

8.3 Extra charges under the Contract will not be permitted except on the specific written authority of the Buyer.

## **9. TERMINATION**

9.1 Without prejudice to any other rights or remedies to which it may be entitled, the Buyer may terminate the Contract forthwith and without liability in the event that:

9.1.1 The Supplier breaches any of its obligations hereunder; or

9.1.2 the Supplier ceases or threatens to cease during the period of the Contract to carry on business, becomes insolvent, has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for amalgamation or reconstruction) or otherwise undergoes any similar process in any jurisdiction; or

9.1.3 In the reasonable opinion of the Buyer it appears that the Supplier will be unable to deliver the Goods or Contract Works or any part thereof by the due date for Delivery;

9.2 Termination shall not affect the rights or remedies of the Buyer in respect of any antecedent breach of the Contract or any provisions in the Contract which are expressed to remain in full force and effect notwithstanding such termination.

9.3 If the Contract is so terminated the Buyer shall:

9.3.1 not be obliged to reimburse the Supplier for any costs incurred by the Supplier after the date of termination or pay the Supplier any further sums due under the Contract; and

9.3.2 Be entitled to recover forthwith from the Supplier any costs including sums paid to the Supplier incurred by the Buyer relating to the Goods or the Contract Works wasted as a result of the termination of the Contract.

## **10. INTELLECTUAL PROPERTY**

- 10.1 All designs, inventions, patents, know how, new technology, improvements and all similar matters made, designed or developed by the Supplier in connection with the Contract shall be the sole property of the Buyer and the Supplier shall procure at no charge to the Buyer the execution of any and all papers necessary to perfect ownership by the Buyer.
- 10.2 All material, drawings, trade marks, logos, patterns, gauges, samples, Specifications and other technical data prepared by the Buyer in connection with the Contract shall be and shall at all times remain the property of the Buyer which it shall be entitled to reproduce and use all such data at any time for any purpose whatsoever. For the avoidance of doubt the Supplier shall not use any such data except in connection with the Contract.
- 10.3 The Supplier warrants that none of the Goods nor any devices or processing bodies therein infringes any existing patent, registered design, trademark, copyright or any other intellectual or industrial property right of whatsoever nature and the Supplier agrees to indemnify the Buyer against all claims, costs, charges, expenses and damages whatsoever relating to any claim that the promotion, use or sales of any of the Goods constitutes or involves any such infringement.

## **11. CONFIDENTIALITY**

The Supplier shall during and after the termination of the Contract keep confidential all- information acquired from the Buyer or which becomes known to the Supplier in connection with the Contract other than information already in the public domain or information which comes into the public domain other Than as a result of a breach of the Contract or which the Supplier is required to disclose pursuant to any statute, regulation or order of any court or regulatory authority.

## **12. NOTICES**

- 12.1 Any notice or other communication under or in connection with this Contract shall be in writing and shall be delivered personally, sent by first class post, air-mail, pre-paid recorded delivery or by facsimile to the party due to receive the notice at its registered office or such other address as any party may specify in writing to the other from time to time.
- 12.2 In the absence of evidence of earlier receipt, any notice or other communications shall be deemed to have been duly given:
- 12.2.1 If delivered personally, when left at the address referred to in Clause 12.1 above;
- 12.2.2 if sent by mail other than air mail two days after posting it; 12.2.3 if sent by air mail, six days after posting it; or
- 12.2.3 If sent by facsimile, on completion of its transmission.
- 12.3 The Supplier may invoice the Buyer by e-mail where the Buyer has consented to invoices being submitted in this manner. Where invoices are sent out using electronic mail they will be deemed to have been received by the Buyer on the date when they are sent provided that the electronic mail is transmitted between the hours of 9.00 am and 5.00 pm on the day between Monday and Friday not being a Bank Holiday (a Business Day). If the mail is sent to the Buyer outside of these times then the customer will be deemed to have received the invoice on the next Business Day following.

## **13. FORCE MAJEURE**

If either the Buyer or Supplier is delayed or hindered in the performance of its obligations under the Contract by circumstances beyond its reasonable control they shall promptly upon the occurrence of any such circumstances so inform the other in writing and shall take all such steps as are reasonably necessary to bring the Force Majeure event to a close and find a solution by which the Contract may be performed despite the continuance of the Force Majeure event. Notwithstanding the foregoing if Delivery cannot be affected within a reasonable time after the due date the Delivery may be cancelled by the party not affected by the Force Majeure in writing to the other without liability on either side.

## **14. GENERAL**

- 14.1 If any provision of these Conditions is held invalid by any competent authority or unenforceable in whole or in part the validity of the other provisions hereof and the remainder of the provision in question shall not be affected.

- 14.2 Failure by the Buyer to enforce any of the provisions of these Conditions shall not be construed as a waiver by the Buyer of those or any other provisions.
- 14.3 The Contract and these Conditions shall be governed by and construed in accordance with English Law and shall be subject to the jurisdiction of the English Courts.
- 14.4 The Contract is entered into between the Supplier and the Buyer as principals and the Supplier shall not be entitled to assign the benefit or burden of it or if any interest in it or Sub-Contract the whole or any part of the Contract without the prior written consent of the Buyer.
- 14.5 A person who is not a party to the Contract shall have no rights pursuant to the Contract (Rights of Third Parties) Act 1999 ("the Act") to enforce any terms of these Conditions or the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.