



ACORN ITM BUILDING CENTRE TERMS AND CONDITIONS OF TRADE

Title of Parties

1. The contract for sale of goods and/or services is between Acorn Building Supplies Limited (hereafter referred to as the Seller) and the Buyer as defined in the attached Credit Application Form.

Payment

2. Invoices are supplied for goods and services and are due for payment on the 20th of the month following the date of delivery or completion. This is a strict and express term.
3. Interest shall be payable for late payments at the rate of 18% per annum. In addition, the Buyer shall be liable for any collection costs incurred by the Seller in collecting overdue payments, including the Seller's legal costs on a solicitor/client, and indemnity basis. The collection costs shall also bear interest at 18% per annum. Credit facilities may be withdrawn for any reason at the discretion of the Seller without notification.
4. All prices are subject to adjustment by any increase in the costs to the Seller of manufacturing or providing the goods or services that may occur between the dates of quotation and delivery or deliveries of the goods.
5. If the Seller at any time deems the credit of the Buyer to be unsatisfactory, it may immediately cease to supply goods and credit and require the Buyer to pay for all goods before delivery.
6. All payments by the Buyer must be made in full and without any deduction or right of set off or counterclaim. The Buyer agrees, however, that all moneys which the Seller may owe the Buyer on any account whatsoever may, at the Seller's option, be set off against payments due by the Buyer to the Seller.
7. Unless otherwise stated all prices exclude GST, which, if payable, is payable by the Buyer.

Personal Guarantee

8. If the Buyer is a company, the directors of the Buyer (in consideration of the Seller providing credit to the Buyer) hereby personally guarantee all obligations due to the Seller. The Personal Guarantee is an all obligations continuous guarantee. Where there is more than one Guarantor all Guarantors shall be liable on a joint and several basis.

Delivery

9. In the event that the Seller agrees in its quotation or acceptance, to sell "free into Buyer's store", delivery shall be deemed complete when the goods are transported to the Buyer's premise or to the place agreed by the Seller in its quotation or acceptance.
10. In the event that the Seller agrees in its quotation or acceptance to sell "ex yard the company" delivery shall be deemed complete when the Seller has placed the goods at the disposal of the Buyer, or delivered the goods into the possession of the freight company transporting the goods on behalf of the Buyer.
11. The Seller may agree to arrange freight and/or insurance as agents for and on behalf of the Buyer. All such costs or freight and/or insurance shall be the exclusive responsibility of the Buyer and all sums paid by the Seller shall be repaid by the Buyer to the Seller immediately upon being invoiced for them. No agreement to arrange freight on behalf of the Buyer shall be deemed to change in any matter the ex-works nature of the sale.
12. Any delivery date agreed by the Seller is approximate only, and no delay in delivery will entitle the Buyer to cancel its order for the goods.

Retention of Title

13. Risk in any goods supplied by the Seller shall pass to the Buyer when such goods are delivered to the Buyer or into the custody on the Buyer's behalf, but ownership in such goods is retained by the Seller until payment is made for the goods and for all other goods supplied by the Seller to the Buyer.
14. Pending payment in full the Buyer will hold the goods properly stored and secured on consignment from the Seller as bailee and as the Seller's fiduciary agent. If the Buyer has resold the goods prior to payment in full then the proceeds of such re-sale shall be the property of the Seller and shall be held by the Buyer on trust for the Seller in a separate account but for an amount no more than the Buyer's indebtedness to the Seller.
15. Prior to the Buyer acquiring full property in the goods the Seller or the Seller's agents may at any time enter upon any land, premises or property where it believes such goods may be to view and inspect them, and if the Buyer has not paid for them in full retake

possession of the goods. The Buyer will indemnify the Seller on demand in respect of any costs or liabilities incurred by the Seller in exercising its rights under this clause.

Claims

16. If an order is correctly executed, a return may be accepted at the Seller's option. Consent by the Seller must be in writing. A return charge calculated at 10% of the value of the goods may be made to cover clerical and other expenses, and the Buyer shall pay any delivery or insurance charges applicable.
17. All claims and requests for credit must be made within 7 days of invoicing. In each case the relevant invoice numbers must be quoted.
18. When supplying products outside the Seller's general range and manufactured specifically to the buyer's specifications or other requirements, the Seller reserves the right to deliver 10% over or under the quantity ordered.

Limitation of Liability

19. Although all care is taken by the Seller and its employees, liability in tort or otherwise is limited to replacement of faulty materials only. In particular and without limiting the generality of this clause, the Seller and its employees shall in no circumstances be liable for economic or consequential losses.
20. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Seller which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Seller, the Seller's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

Security

21. If requested in writing by the Seller the Buyer and/or the Guarantor(s) shall within 5 working days execute a mortgage over land owned by them ("the Mortgage"). The Mortgage will secure payment of any goods or services supplied to the Buyer from the Seller and any costs and/or interest incurred resulting from that supply. The Mortgage shall be prepared by the Seller's solicitors. The Buyer and the Guarantor(s) hereby irrevocably appoints the Seller to be its true and lawful attorney to sign in the Buyer's and the Guarantor(s) name and on its behalf any security which the Seller shall request the Buyer and/or the Guarantor(s) to execute pursuant to this clause.

Personal Property Securities Act 1999

22. If the goods are for the Buyer's business use, the Buyer agrees, to the extent permitted under the PPSA and unless the Seller agrees by notifying the Buyer in writing, that the Buyer will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation, the Buyer will have no rights under sections 114(1)(a) and 116 (to receive notice of sale and statement of account), sections 121(2) and 122 (to receive any proposal or object to any proposal to retain the goods), sections 125 and 129 (relating to removal of accessions), and sections 132 and 133 (to redeem the goods or reinstate the contract).
23. The Buyer waives its right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).

Terms

24. These terms and any terms set out by the Company shall be included as terms in any contract resulting between the parties and in the case of any conflict arising between these terms or the terms of the Sellers order, then these terms and conditions shall prevail.
25. To be effective, any waiver of any or all of these terms and conditions by the Company must be in writing.

Orders

26. The placement of an order shall for all purposes be deemed to be an acceptance of these conditions.

General

27. These standard terms and conditions and the provisions in the Application For Credit Account (together the "contract") are the full agreement between the Company and the Buyer.