

Marmorit UK GmbH

Conditions of Sale

1. Definitions and interpretation

In these Conditions, unless the context otherwise requires, the following words have the following meanings:

"Buyer"	the person whose order for the Goods is accepted by the Seller;
"Conditions"	the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with clause 2.3;
"Contract"	the contract for the sale and purchase of the Goods;
"Default"	any act, statement, omission, breach of obligation (whether expressed or implied, condition or warranty) contained in, precedent or collateral to the Contract, breach of duty under statute or at common law or negligence by or on the part of the Seller in connection with or arising out of the subject matter of the Contract in respect of which the Seller is legally liable to the Buyer and a number of defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such default;
"Goods"	the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with the Conditions;
"Seller"	Marmorit UK GmbH of 1 Portview Road, Avonmouth, Bristol BS11 9LS or such other address as may from time to time be notified to the Buyer by the Seller.

2. Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer which is accepted by the Seller subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.
- 2.2 Quotations issued to the Buyer by the Seller may be withdrawn or varied at any time and unless otherwise specified shall be automatically withdrawn after 30 days. No binding contract shall in any event arise until the Buyer's written order has been accepted by the Seller and confirmed in writing by the Seller's authorised representative.
- 2.3 No variation of these Conditions shall be binding unless agreed in writing between the authorised representative of the Seller and the Buyer.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.
- 2.5 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.
- 2.6 The Buyer shall comply with the Seller's instructions and requirements (if any) in connection with the Goods including, without limitation, their use, storage, application and sale and marketing to end users.
- 2.7 Any samples, illustrations or descriptive material including but not limited to particulars of shade and pattern and other information contained in the Seller's brochures, advertising material or elsewhere shall not form part of the Contract and shall be treated as approximate and for guidance only unless specifically stated otherwise. The Seller may at its discretion from time to time vary the Goods from that advertised without notice to the Buyer provided that any such variations do not constitute material

alterations to the Goods.

- 2.8 The Buyer accepts and acknowledges that Goods are ordinarily mixed to order and any colour tones indicated in the documentation referred to in clause 2.7 are approximate only and that the actual colour of the Goods will depend on the type of render, grain size, light reflection, mode of application, drying conditions and general weather conditions which the Goods are subjected to. The Seller does not warrant that Goods supplied will be the same as the colours indicated in any such documentation and recommends the Buyer orders all the Goods it will require to complete a project as one lot.

3. Orders and specifications

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including without limitation any applicable specification and colour code) 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. Where the Buyer orders Goods from the Seller by telephone, such order must be confirmed immediately in writing (whether sent by post, e-mail or fax). The Seller shall be under no obligation whatsoever to accept an order which is not so confirmed in writing.
- 3.2 The quantity, quality and description of, and/or any specification for, the Goods shall be those set out in the Buyer's order (if accepted by the Seller).
- 3.3 No order which has been accepted by the Seller may be cancelled by the Buyer.

4. Price of the Goods

- 4.1 The price of the Goods shall be the Seller's quoted price.
- 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 significant increase in the costs of transport, labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for Goods which is requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give the Seller accurate information or instructions.
- 4.3 Where the Seller sells the Goods on an ex works basis the Buyer shall be liable to pay all transport costs. Where the Seller agrees in advance to supply to the Buyer's premises or an address nominated by the Buyer the price specified by the Buyer shall include transport costs.
- 4.4 Where under the Contract one party agrees to pay to the other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.
- 4.5 Goods will be supplied in the manufacturer's usual packaging unless the Buyer notifies the Seller at the time of placing its order that it requires special packaging. The Buyer shall meet the costs of all such packaging and the Seller shall have no liability whatsoever for damage to or loss (or partial loss) of the Goods, which is due to the use of such packaging.

5. Payment terms

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer with the price of the Goods (together with extra packaging costs incurred at the request of the Buyer and any storage costs) at any time following receipt of the Buyer's order.
- 5.2 The Seller shall notify the Buyer whether the Seller requires payment in advance of delivery or cash on delivery of the Goods. Where the Seller notifies the Buyer that the Buyer may have a period within which it must pay the Seller's invoice the Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice relating to the Goods. The time of payment shall be of the essence of the Contract. All payments shall be made in full without deduction in respect of any set-off or counterclaim.
- 5.3 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:
- (a) cancel the Contract or suspend any further deliveries to the Buyer;
 - (b) 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
 - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the statutory rate (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment

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, where it is agreed the Seller shall deliver the Goods to the Buyer's premises or some other place, by the Seller delivering the Goods to the Buyer's premises or that other place.
- 6.2 The Seller shall endeavour to deliver the Goods by the date quoted for delivery but such date is not guaranteed nor shall the time for delivery be of the essence. The date quoted for delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of the Seller. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 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.
- 6.4 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:
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) 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.
- 6.5 If the Buyer requests that delivery of the Goods be postponed or the Goods be delivered in instalments the Seller may, if it has sufficient storage facilities available to it, store the Goods, or the relevant part of them until actual delivery and shall charge the Buyer for the reasonable costs (including insurance) of storage.

7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- (a) 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
 - (b) in the case of 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 risk in the Goods, or any other provision of the Contract, 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
- (a) hold the Goods as the Seller's fiduciary agent and bailee;
 - (b) keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property; and
 - (c) be entitled to use the Goods in the provision of providing services to a third party in the ordinary course of its business (unless the Seller revokes such entitlement) and provided that
 - (i) on any such use of the Goods the Buyer shall use first those Goods as have been longest in its possession and shall recover the full market value of the Goods from its customer; and
 - (ii) the Buyer shall hold in a fiduciary capacity the proceeds received from the third party which represent the price of the Goods under the Contract ("**the Seller's Proceeds**") and shall keep the Seller's Proceeds separate from any monies of the Buyer and any third parties in a separate bank account denoted as an account containing monies deposited for the benefit of the Seller.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been used) the Seller shall be entitled:

- (a) to enter upon any premises where the Goods are stored at any time to inspect them; and
- (b) 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 stored 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 shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.6 The provisions set out in this clause shall be without prejudice to the obligation of the Buyer to purchase the Goods.

8. **Notification of Claims**

8.1 The Buyer shall inspect the Goods immediately on delivery of them (delivery being as defined in clause 6.1). Any claim for non-delivery of any Goods or partial delivery or delay shall be notified in writing by the Buyer to the Seller and the carrier of the Goods within 3 days of delivery or the agreed date of delivery.

8.2 Any claim 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 within 14 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.

8.3 If delivery is not refused, and the Buyer does not notify the Seller of any claim in accordance with the provisions of this clause, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.4 The Buyer shall have no right to reject any deliveries of Goods on the grounds of variation of quantity from the Buyer's order where such variation is not more than 5% or not less than 5% of the total quantity of Goods ordered.

9. **Warranties, liability and remedies**

9.1 The Seller warrants that the Goods will correspond with their specification and will be free from defects in material and workmanship at the time of delivery (as described in clause 6.1).

9.2 The above warranty is given by the Seller subject to the following conditions:

- (a) the Seller shall be under no liability in respect of any defect in the Goods arising from any design or specification supplied by the Buyer;
- (b) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Goods or the use of packaging specified by the Buyer; and
- (c) the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

9.3 Subject as is expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.4 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 or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall, at its sole discretion, replace the Goods (or the part in question) free of charge or 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.

Liability and remedies

9.5 The Buyer acknowledges that it has entered into the Contract in reliance only on the representations, warranties, promises and terms contained in the Contract and, save as expressly set out in the Contract, the Seller shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently.

9.6 The Buyer shall inform the Seller of any Default and afford it reasonable opportunity to correct the Default.

9.7 In relation to any Default the Seller will accept unlimited liability for:

- (a) death or personal injury caused by the negligence of the Seller; and

- (b) any breach of its obligations implied by Section 12, Sale of Goods Act 1979 or Section 2, Supply of Goods and Services Act 1982.

9.8 Except as provided in sub-clauses 9.7, the Seller will not be liable for the following loss or damage arising directly or indirectly out of any Default and even if foreseeable by the Seller:

- (a) economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated saving;
- (b) loss arising from any claim made against the Buyer by any other person except where the claim is due to the negligence of the Seller or a breach of the Contract by the Seller); and
- (c) loss or damage arising from the Buyer's failure to fulfil its responsibilities or any matter under the control of the Buyer.

9.9 Except for the liabilities accepted by the Seller under sub-clause 9.7 the Seller's entire liability in respect of all Defaults shall be limited to an amount equal to the price payable by the Buyer under the Contract

10. **Force Majeure**

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:

- (a) Act of God, explosion, flood, tempest, fire or accident;
- (b) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties);
- (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (d) import or export regulations or embargos;
- (e) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (f) power failure or breakdown in machinery.

11. **Indemnity**

The Buyer shall indemnify and keep the Seller indemnified against all costs, expenses, damages and demands incurred by the Seller in respect of:

- (a) any alleged infringement of the patents, trade marks, copyright, design or other industrial property rights used by the Seller at the request of the Buyer;
- (b) any alleged breach or infringement of any statute or regulation concerning the preparation, marketing and distribution of the Goods by the Buyer;
- (c) any claims arising and made under the Consumer Protection Act 1987 and which arise by reason of or in connection with a defect in the Goods or in the end product supplied by the Buyer in which the Goods are comprised, which defect is attributable either to the compliance by the Seller with the instructions given by the Buyer or to the Buyer's use or adaptation of the Goods.

12. **Insolvency of Buyer**

12.1 This Clause applies if:

- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction);
- (b) an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Buyer;
- (c) the Buyer ceases, or threatens to cease, to carry on business; or

- (d) 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.

12.2 If this Clause applies 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 liability to the Seller, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding clause 5 or any previous agreement or arrangement to the contrary.

13. **Lien**

Without prejudice to any other right or remedy the Seller may have the Seller shall have a lien over all Goods (if any) belonging to the Buyer which are in the possession of the Seller.

14. **General**

14.1 Any notice to either party under these Conditions (other than orders which shall be placed in accordance with clause 3) shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at or sent by prepaid first class post, prepaid recorded delivery, telex or facsimile to the address of the party as notified in writing from time to time.

14.2

(a) The Seller may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it under the Contract by the Buyer without in any way prejudicing or affecting its rights in respect of any other liability or right not so released, compounded, compromised, waived or postponed.

(b) No single or partial exercise or failure or delay in exercising any right, power or remedy by the Seller shall constitute a waiver by the Seller of, or impair or preclude any further exercise of that or any right, power or remedy arising under the Contract or otherwise.

14.3 To the extent that any provision of these Conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of these Conditions, it shall not affect the enforceability of the remainder of these Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

14.4 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.

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

14.6 These Conditions and the relevant order for Goods set out the entire agreement and understanding between the parties in respect of the subject matter of each contract supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of the Contract.

14.7 ***Exclusion of third party rights***

No term of any Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

15. **Governing law and jurisdiction**

15.1 Each Contract shall be governed by and construed in accordance with English law.

15.2 Each of the parties irrevocably submits for all purposes in connection with each Contract to the exclusive jurisdiction of the courts of England.