

**TERMS AND CONDITIONS OF BUSINESS**

**1. INTERPRETATION**

- 1.1 In these Conditions:  
"Buyer" means the person, firm or company who accepts a quotation of the Seller for the sale of the Goods or for the provision of the Services, or both, whose order for the Goods or Services, or both is accepted by the Seller.  
"Conditions" means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing by the Seller.  
"Contract" means the contract for the purchase and sale of the Goods or for the provision of the Services or both.  
"Goods" means the goods (including any instalment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions and which (unless the context otherwise requires) includes the Services which the Seller is to provide in accordance with these conditions.  
"Quotation" means all quotations, tenders and offers relating to the sale of the Goods or to the provision of the Services or both.  
"Seller" means FMS Interior Services Limited its assignees and successors in title (registered in England under number 4673796)  
"Services" means the service or services (including any part performance thereof) which the Seller is to provide for the Buyer in accordance with these Conditions.  
"Work" means all work which is carried out or which is required to be carried out in connection with the provision of the Services.  
"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 quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless confirmed in writing by the Seller.
- 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 and waives any claim for breach of any such representations which are not so confirmed.
- 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 Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at 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 Any Quotation issued by the Seller is not an offer but an invitation to treat and remains open for acceptance for a period of 30 days only from the date of making of the Quotation unless previously withdrawn by the Seller.
- 2.7 Any order placed by the Buyer is subject to acceptance by the Seller and a contract will only be formed when the Seller has accepted the Buyer's offer to buy.

**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 or unconditionally accepted orally 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 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 (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 to be applied to the Goods by the Seller in accordance with 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 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.
- 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 cancellation. No request by the Buyer for cancellation of an order (or return of Goods) will be considered by the Seller unless submitted to the Seller in Writing.
- 3.7 The Seller shall be entitled to terminate the contract without liability should the Seller be prevented or hindered by a cause beyond its reasonable control from performing the Contract. In such an event the Seller shall be entitled to recover an appropriate proportion of the contract price and any additional expenses incurred.

**4. PRICE OF THE GOODS**

- 4.1 The price of Goods shall be the Seller's quoted price or where no price has been quoted for (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 or withdrawal by the Seller, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The price of the Goods is based upon costs subsisting at the date of the Quotation. 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:
- 4.2.1 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).
- 4.2.2 any change in delivery dates, quantities or specifications (including design specifications) for the Goods or Service which is requested by the Buyer, or his agent or
- 4.2.3 any delay caused by any instructions of the Buyer or a 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 a net ex work basis, and where the Seller agrees to deliver the Goods otherwise at the Seller's premises, the Buyer shall be liable to pay the Seller's charges including transport, packaging and insurance charges.

- 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 price is inclusive of delivery to ground level only. Delivery above or below ground level is excluded from the price and may involve the Seller or its carriers in extra labour charges, which the Buyer shall be additionally liable to pay to the Seller.
- 4.6 The price is exclusive of installation and delivery charges for fire safes which will be additionally payable to the Seller and invoiced at the individual installers rates.
- 4.7 The Seller reserves the right to charge an additional charge of £5 to cover administration costs where the order is for Goods the value of which is less than £30.
- 4.8 The price is inclusive of any discount agreed by the Seller. The Buyer is not entitled to any discount for prompt payment and no such claims by the Buyer will be considered by the Seller.
- 4.9 Any discounts reflected in the price shall be disallowed on accounts referred to third party collection agents and any costs incurred by the Seller for referral of such an account to a third party collection agency shall be an additional charge payable by the Seller and shall be added to any such account.
- 4.10 If the Seller accepts the return of any Goods by the Buyer, (other than in circumstances where the Buyer is entitled to reject the Goods in accordance with these Conditions) the Seller reserves the right to charge an additional charge of up to 15% of the selling price of such Goods to cover administration and handling costs. Where the Quotation relates to the provision of Services alone or in addition to the above, the following terms shall also apply:
- 4.11 The Quotation is based on the Work being effected during normal working hours (9am to 5pm) and on the days from Monday to Friday.
- 4.12 Variations or additional Work shall be charged on a time and material basis, unless the subject of a separate Quotation accepted by the Buyer.
- 4.13 The laying of cables and conduit runs is by the shortest practicable routes.
- 4.14 The price is exclusive of any work carried out by other trades, any statutory fees or charges for work done by any Supply Authority or Local Authority.
- 4.15 The Work is not to be phased to suit other trades or operations thus impeding Seller's workforce.
- 4.16 Whilst reasonable care will be taken the Quotation does not include the cost of any incidental redecoration or other works consequent upon the proper execution of the Work.

## 5. TERMS OF PAYMENT

- 5.1 Subject to any special terms in Writing between the Buyer and the Seller and subject to clauses 5.3 and 5.4 below, the Seller shall be entitled to invoice the Buyer 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 Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (less any discounts to which the Buyer is entitled, but without any other deduction) within 30 days of the date of Seller's invoice, notwithstanding that delivery may not have taken place that the property in the Goods has not passed to the Buyer or that pursuant to Clause 8.6 below the Seller is to replace the Goods or any part thereof. The time of payment shall be of the price shall be of the essence of the Contract Receipts for payment will be issued only upon request.
- 5.3 In the case of contracts over, £5,000 unless otherwise stated 30% of the total contract price shall be paid on acceptance of the order by the Seller and 30% within 14 days of the due date which is to be determined by the Seller being either the delivery of the majority in value of the Goods to the site or upon commencement of the work. The balance shall be paid immediately upon practical completion of the work, as determined by the Seller.
- 5.4 Where the estimated and/or actual time for performance of the contract exceeds 4 weeks invoices or written applications may, at the

discretion of the Seller be submitted monthly. Such invoices will require payment of the net amount of any amount due. The net amount is the total value of the Work executed less any previous payments. The amount stated in the invoice is payable within 30 days of the date of the Seller's invoice.

- 5.5 If the Buyer fails to make any payment on the due date or in accordance with Clauses 5.3 or 5.4 then without prejudice to any other right or remedy available to the Seller and without incurring any liability for any damage or loss caused thereby, the Seller shall be entitled to:
  - 5.5.1 cancel the contract or suspend any further deliveries or Works to or on behalf of the Buyer and remove any Goods already delivered or installed.
  - 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 any judgement) on the amount unpaid, at the rate of 1¼ per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest.)

## 6. DELIVERY

- 6.1 Delivery of 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 for 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 or completion of the Works are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or completion of Work howsoever caused. The Seller is entitled to alter the date in the event of it being unable to deliver the Goods or complete the Works owing to events outside its reasonable control. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered and invoiced by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where delivery of the Goods includes printed paper and is to be made by the Seller in bulk, the Seller reserves the right to deliver up to ten per cent more or ten per cent less than the quantity ordered with a pro rata adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Unless otherwise agreed by the Seller the Seller shall not be bound to deliver the Goods in one lot or consignment and is entitled to deliver and invoice for split deliveries and installations. 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 instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Seller fails to deliver the goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest reasonably available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.6 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 the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
  - 6.6.1 store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage and transportation and other reasonable costs, or
  - 6.6.2 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.
- 6.7 If the Buyer fails to give notice in writing to the Seller of the non

delivery of any Goods within 14 days of the receipt of the advice note or invoice, delivery will be assumed to have been made and the Goods will be charged for in full.

## **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 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 Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 The provisions in Clause 7.1 shall apply equally to Goods which are subject to installation by the Seller as part of the Works and the Buyer shall accordingly be responsible for insurance of such Goods from the time of delivery.
- 7.3 Notwithstanding delivery and the passing of risk 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 to be sold by the Seller to the Buyer for which payment is then due.
- 7.4 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. Until that time the Buyer shall be entitled to 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 moneys or property of the Buyer and third parties and, in the case of tangible proceeds properly stored, protected and insured.
- 7.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), 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 stored and repossess the Goods.
- 7.6 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8. WARRANTIES AND LIABILITIES**

- 8.1 Subject as expressly provided in these Conditions and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.2 Where the Goods are sold under a consumer sale (as defined by The Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.
- 8.3 Any claim or complaint 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 and signed by a responsible person in the employment of the Buyer within 4 days from the date of delivery or completion of the Works or (where the defect or failure was not apparent on reasonable inspection) in a reasonable time after discovery of the defect or failure and packing must be returned to the Seller for examination. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall 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.
- 8.4 The Buyer is under a duty wherever reasonably possible to inspect the Goods on delivery or on collection as the case may be.
- 8.5 Any claim by the Buyer in relation to Goods damaged during installation by the Seller must be made in writing to the Seller within 4 days of installation of the said Goods.
- 8.6 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 be entitled to replace the Goods or the part in question free of charge (but subject to normal delivery periods) 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. The Seller will only replace free of charge Goods damaged in transit where the price quoted includes delivery, notification has been made in accordance with this provision and the Goods in question have been signed for as "not examined".

- 8.7 The Seller shall not be liable if the Goods or any part of them shall have been abused in any way or damaged by unreasonable wear and tear neglect improper use or failure to maintain in the correct manner.
- 8.8 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 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 for 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 so otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.9 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:
- 8.9.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
- 8.9.4 import or export regulations, embargoes;
- 8.9.5 strikes, lock-outs or other industrial action or trade disputes (whether involving employees of the Seller or of a third party);
- 8.9.6 difficulties in obtaining goods, raw materials, labour, fuel, parts or machinery including late delivery from suppliers of the Seller;
- 8.9.7 power failure or breakdown in machinery.

## **9. INDEMNITY**

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use of resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim provided that
- 9.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim.
- 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations.
- 9.1.3 Except pursuant to a final award, the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller.
- 9.1.4 The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do)
- 9.1.5 The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account the Seller for all damages and costs (if any) awarded in favour of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim and
- 9.1.6 Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such

steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## **10. INSOLVENCY OF BUYER**

10.1 This clause applies if:

10.1.1 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 purposes of amalgamation or reconstruction) or

10.1.2 An encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer, or

10.1.3 The Buyer ceases, or threatens to cease to carry on business, or

10.1.4 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.

10.2 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 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.

## **11. INSTALLATIONS**

11.1 The Buyer shall be responsible for obtaining all necessary permissions statutory or otherwise for the work covered by the Contract. The Buyer shall ensure that a consultant structural engineer or architect has been consulted where the structure of a building may be affected by Goods or Services installed by the Seller. The Seller is entitled to assume for purpose of tendering that the present building structure is capable of supporting the additional weight factors to be suspended from it and erected on it.

11.2 The Buyer shall provide suitable access to the site, permit the Seller facilities for uninterrupted working, accept delivery of, unload and provide suitable protection and storage space for the Goods and materials from the time of delivery at the Buyer's expense. All unfixed Goods and materials delivered to placed on or adjacent to the Works and intended therefor shall be at the risk of the Buyer.

11.3 The Buyer shall provide free of charge electric power or other energy and lighting for installation work as the Seller may require.

11.4 The Buyer shall prior to the installation date specified in the Contract ensure that the area in which the goods are to be installed is entirely clear of all furniture and other objects, is not undergoing any works of any kind and is otherwise in a state or readiness for installation of the Goods. In the event of any default by the Buyer hereunder, the Buyer (in addition to any other liabilities it may have to the Seller) shall be fully liable for all costs, charges and expenses incurred by the Seller including but not limited to storage and handling expenses and the Seller may at its option (but without prejudice to any of its other rights or remedies thereunder) suspend performance of the Contract until such area as aforesaid is ready in all respects for installation of the Goods.

## **12. ADDITIONAL GOODS OR SERVICES**

Any additions, Goods, materials, equipment or Services which are to be supplied or provided by the Seller to the Buyer and which it has been agreed either verbally or in writing between the Seller and the Buyer that the Seller shall supply or provide to the Buyer shall be deemed to be part of the Contract and subject to all its terms and conditions although the Seller may not necessarily have required and it must be the Buyer's responsibility to confirm instructions for extras in writing.

## **13. GENERAL**

13.1 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 at such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any such notice shall be deemed to be served on the morning following the day of posting.

13.2 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.

13.3 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 thereby.

13.4 The Contract shall be governed by the Laws of England.