

FINE IRON (WALES) LIMITED – TERMS AND CONDITIONS OF SALE

The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

DEFINITIONS:

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

Contract: the contract between Fine Iron and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from Fine Iron.

Deliverables: the deliverables set out in the Order produced by Fine Iron for the Customer.

Delivery Location: has the meaning given in clause 5.1.

Deposit: a non-refundable amount equal to 45% of the price payable in accordance with clause 11 or as otherwise agreed in writing between the parties.

Force Majeure Event: has the meaning given to it in clause 17.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings that are agreed in writing between the Customer and Fine Iron.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in Fine Iron's quotation or the Customer's written acceptance of Fine Iron's quotation.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the data controller and in relation to which Fine Iron is providing services under the Contract.

Services: the services, including the Deliverables, supplied by Fine Iron to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services, provided in writing by Fine Iron to the Customer.

Special Terms: any additional terms and conditions which may be applicable to the Goods and Services and marked as 'Special Terms' and attached to the Contract.

Fine Iron: Fine Iron (Wales) Limited registered in England and Wales with company number 05286061.

2. INTERPRETATION:

2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

2.4 A reference to writing or written includes fax and email.

3. BASIS OF CONTRACT

3.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

3.2 The Order shall be deemed to be accepted on the earlier of:

(a) the Customer issuing written acceptance of the Order; or

(b) at the verbal or other instruction of the Customer,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

3.3 Any samples, drawings, descriptive matter or advertising issued by Fine Iron and any descriptions of the Goods or illustrations or descriptions of the Services contained in Fine Iron's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.5 Any quotation given by Fine Iron shall not constitute an offer, and is only valid for a period of 30 days from its date of issue unless stated in writing expressly to the contrary.

3.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3.7 The Contract shall consist of the Goods Specification, Order and any Special Terms attached to the Contract in addition to these Conditions.

3.8 If there is any conflict or ambiguity between these Conditions and the Special Terms, the Special Terms shall prevail.

4. GOODS

4.1 The Goods are described in Fine Iron's catalogue as modified by any applicable Goods Specification.

4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Fine Iron against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Fine Iron arising out of or in connection with any claim made against Fine Iron for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Fine Iron's use of the

Goods Specification. This clause 4.2 shall survive termination of the Contract.

4.3 Fine Iron reserves the right to amend the Goods Specification for any reason; whether supplied by Fine Iron or Customer and if required by any applicable statutory or regulatory requirement and Fine Iron shall notify the Customer in any such event.

4.4 Fine Iron shall own the Intellectual Property Rights in the Goods Specification it produces.

4.5 Where Fine Iron produces a Goods Specification, the Customer shall be responsible for determining that it is fit for the Customer's purpose in all respects, without limitation, in respect of dimension, appearance, finish, materials and functionality. The Customer shall countersign the Goods Specification document to confirm the same.

5. DELIVERY OF GOODS

5.1 The Goods shall be delivered to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after Fine Iron notifies the Customer that the Goods are ready.

5.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Fine Iron shall not be liable for any delay or failure in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Fine Iron with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.4 If Fine Iron fails to deliver the Goods, its liability shall be limited to the price of the Goods.

5.5 If the Customer fails to take delivery of the Goods at the Delivery Location, then except where such failure or delay is caused by a Force Majeure Event or by Fine Iron's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Fine Iron notified the Customer that the Goods were ready and accordingly any sum due on delivery shall become payable; and

(b) Fine Iron shall store the Goods until delivery takes place, and reserves the right to charge to the Customer for all related costs and expenses (including insurance) for storage and re-delivery.

5.6 Without prejudice to the warranty at clause 6 below, the Customer shall have 7 days within which to inspect the Goods and notify Fine Iron of any shortages, defects and damaged parts (excluding transit damage, dealt with at 5.7).

5.7 The Customer must check the Goods prior to the delivery driver leaving the Delivery Location. The Customer must advise Fine Iron immediately and before accepting the Goods should there be any damage due to transit.

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6. QUALITY OF GOODS

6.1 Fine Iron warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall be free from material defects in design, material and workmanship.

6.2 Subject to clause 6.3, Fine Iron shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

(a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;

(b) Fine Iron is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by Fine Iron) returns such Goods to Fine Iron's place of business at the Customer's cost.

6.3 Fine Iron shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2 (to the extent possible);

(b) the defect arises because the Customer failed to follow Fine Iron's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

(c) the defect arises as a result of Fine Iron following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of Fine Iron; or

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

6.4 Except as provided in this clause 6, and subject to the Customer being a business, Fine Iron shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 If the Customer is a consumer within the meaning of the Consumer Contract Regulations 2013, the provisions contained in this clause 6 shall not affect the Customer's statutory rights.

6.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Fine Iron.

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until Fine Iron receives payment in full (in cash or cleared funds) for the Goods.

8. SUPPLY OF SERVICES

8.1 Fine Iron shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

8.2 For the avoidance of doubt, Fine Iron provides framework and iron services and does not hold itself out to be structural engineers or provide load and structural calculations and is **not** a supplier of glazing or any associated glazing services such as load and structural calculations or installation.

8.3 Any such dates provided for the supply of Services shall be estimates only and time shall not be of the essence for the performance of the Services.

8.4 Fine Iron reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.

8.5 Fine Iron warrants to the Customer that the Services will be provided using reasonable care and skill.

9. CUSTOMER'S OBLIGATIONS

10. The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

(b) co-operate with Fine Iron in all matters relating to the Services;

(c) provide Fine Iron, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Fine Iron to provide the Services;

(d) provide Fine Iron with such information and materials as Fine Iron may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Customer's premises for the supply of the Services and ensure that the site is safe for the purpose of providing the Services;

(f) comply with any additional obligations as set out in the Order, Service Specification and the Goods Specification.

10.2 If Fine Iron's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, Fine Iron shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Fine Iron's performance of any of its obligations;

(b) Fine Iron shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Fine Iron's failure or delay to perform any of its obligations as set out in this clause 10.2; and

(c) the Customer shall reimburse Fine Iron on written demand for any costs or losses sustained or incurred by Fine Iron arising directly or indirectly from the Customer Default.

11. CHARGES AND PAYMENT

11.1 The price for Goods shall be the price set out in the Order, or as amended following any survey or engineers report. The Deposit shall be payable on or before the Commencement Date, with the remainder of the price payable in accordance with Fine Iron's invoice.

11.2 For the avoidance of doubt, the Deposit is **non-refundable** and the Customer acknowledges that this is reasonable due to the bespoke nature and preparation requirements of the Goods.

11.3 The charges for Services shall be calculated in accordance with Fine Iron's fee rates, as set out in the Order

11.4 Fine Iron shall be entitled to charge an overtime rate on the daily fee rate for any additional time worked by individuals whom it engages on the Services outside the fee rate set out in the Order.

11.5 Fine Iron reserves the right to increase the price of the Goods and Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Services to Fine Iron that is due to:

(a) the findings of a survey or engineers report, conducted after the Order;

(b) any factor beyond the control of Fine Iron (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs and changes to legislation and regulations relating to the Goods and Services);

(c) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(d) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give Fine Iron adequate or accurate information or instructions in respect of the Goods or Services.

11.6 The Customer shall pay each invoice submitted by Fine Iron within 7 days of the date of the invoice or in accordance with any terms agreed by Fine Iron and confirmed in writing to the Customer.

11.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT).

11.8 If the Customer fails to make a payment due to Fine Iron under the Contract by the due date, then, without limiting Fine Iron's remedies under clause 15 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.7 will accrue on a daily basis at the annual rate of 6% above the base lending rate of National Westminster Plc.

11.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by Fine Iron.

12.2 The Customer grants Fine Iron a fully paid-up, non-exclusive, royalty-free licence to copy and modify any materials provided by the Customer to Fine Iron for the term of the Contract for the purpose of providing the Services to the Customer.

13. DATA PROTECTION

13.1 The Customer and Fine Iron acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the

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- data controller and Fine Iron is the data processor in respect of any Personal Data.
- 13.2 The Customer acknowledges that Fine Iron may use the Goods Specification and any photographs, plans and drawings produced in connection with this Contract for the purpose of advertising, subject to receiving the Customer's prior written consent.
- 13.3 The Customer acknowledges that Fine Iron is reliant on the Customer for direction as to the extent to which Fine Iron is entitled to use and process the Personal Data. Consequently, Fine Iron will not be liable for any claim brought arising from any action or omission by Fine Iron, to the extent that such action or omission resulted directly from the Customer's instructions.
14. **Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 14.1 Nothing in these Conditions shall limit or exclude Fine Iron's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) defective products under the Consumer Protection Act 1987.
- 14.2 Subject to clause 14.1, Fine Iron shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of or damage to goodwill; and any indirect or consequential loss.
- 14.3 Subject to clause 14.1, Fine Iron shall not be liable to the Customer for any structural load and structural load calculations and for the avoidance of doubt Fine Iron do not hold themselves out to be structural engineers.
- 14.4 Subject to clause 14.1, Fine Iron's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to [£5,000,000].
- 14.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.6 This clause 14 shall survive termination of the Contract.
15. **TERMINATION**
- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (b) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (c) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.2 Without affecting any other right or remedy available to it, Fine Iron may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment
- 15.3 Without affecting any other right or remedy available to it, Fine Iron may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Fine Iron if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1, or Fine Iron reasonably believes that the Customer is about to become subject to any of them.
16. **CONSEQUENCES OF TERMINATION**
- On termination of the Contract the Customer shall immediately pay to Fine Iron all of Fine Iron's outstanding unpaid invoices and interest and, in respect of Services and Goods.
17. **FORCE MAJEURE**
- Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
18. **GENERAL**
- 18.1 **Assignment and other dealings.**
- The Contract is personal to the Customer and only Fine Iron may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 18.2 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the email address specified in the Order or other Contract document.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission, with the onus of proof of successful transmission to lie with the sender.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 18.3 **Severance.**
- If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.4 **No partnership or agency.**
- Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18.5 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 18.6 **Third parties rights.**
- The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.7 **Variation.**
- Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 18.8 **Governing law.**
- The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 18.9 **Jurisdiction.**
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.