

# OTF Builders LTD



## TERMS & CONDITIONS OF CONTRACT

The following Conditions shall apply to all contracts entered into by or on behalf of OTF Builders Ltd ("OTF Builders")

### 1. DEFINITIONS

#### 1.1 In these Terms

"CONDITIONS" means the standard conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;  
"CONTRACT" means the contract for the sale and purchase of the Goods and supply of the Services;  
"CONTRACT PRICE" means the Price of the Goods and Services to be supplied by OTF Builders as agreed  
"CONSTRUCTION PROJECT" means the construction project of the Customer referred to in the Specification consisting of a number of separate, independent contracts including this Contract;  
"CUSTOMER" means the person who accepts OTF Builders's Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;  
"GOODS" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;  
"PLANNING FEE" means all costs and expenses incurred by or on behalf of OTF Builders in connection with the initial and all subsequent planning applications on behalf of the Customer "OTF Builders" means OTF Builders Ltd Limited (registered in England under number 09798938);  
"SERVICES" means the services of construction/erection of the Goods into a timber framework to be supplied by OTF Builders in accordance with these Conditions as more particularly set out in the Specifications;  
"SPECIFICATIONS" means the specifications for the Goods and/or Services as agreed between the Customer and OTF Builders;  
"WRITING", and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 A reference in these Terms to a 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 Terms are for convenience only and shall not affect their interpretation.

### 2. GENERAL

2.1 Acceptance by OTF Builders of the Customer's order is conditional upon acceptance by the Customer of these conditions, which shall prevail over any terms or conditions of the Customer (apart from alterations to or departures from these conditions specifically agreed by OTF Builders in writing).

2.2 The Customer hereby acknowledges that the Goods and Services supplied hereunder relate only to the supply and construction of a timber framework which forms part of the Customer's Construction Project. The Customer may further acknowledge and confirms that in entering into this Contract the Customer is aware that the Customer may be required to contract directly with other contractors separately and independently from OTF Builders in order to complete the Construction Project and recognises that OTF Builders are not providing or contracting to provide any other work other than the supply of the Goods and Services hereunder. Accordingly OTF Builders is not responsible for the completion of or failure to complete any additional works required completing the Construction Project which is not included within the Goods or Services to be supplied hereunder.

2.3 OTF Builders shall sell and the Customer shall purchase the Goods in accordance with OTF Builders's written quotation, subject in either case to these Conditions.

2.4 OTF Builders's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by OTF Builders in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

### **3. TENDERS, QUOTATIONS, CONCLUSIONS OF CONTRACTS**

3.1 All tenders /quotations issued by OTF Builders shall not be considered to be offers placed by OTF Builders but shall be valid for a period of 30 days from the date thereof or such longer period as may be agreed between the parties in writing.

3.2 The Contract Price is based upon uninterrupted access to the Customer's premises until completion of the Services and OTF Builders reserves the right to increase the Contract Price in circumstances where uninterrupted access is not provided.

3.3 The Contract may not be cancelled by the Customer without the prior written consent of a Director of OTF Builders 3.4 The Customer consents to OTF Builders providing the Services as soon as possible and if appropriate within the 14 day period allowed for cancellation ("Cancellation Period") set out in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. The Customer acknowledges that as a consequence of this consent, should it exercise its right to cancel within the Cancellation Period it shall be required to pay OTF Builders for the Services providing during the Cancellation Period up to the date of cancellation.

### **4. CONSTRUCTION TIME**

4.1 OTF Builders will use its best commercial endeavours to deliver the goods and, where appropriate, to complete the Services at the rate and within the time estimated in the Specification but OTF Builders shall not be liable for any loss or damage whatsoever suffered by the Customer as a result of any failure by OTF Builders, for whatsoever reason, to deliver the Goods or to complete the Services within the time so specified. Unless specifically agreed in writing between OTF Builders and the Customer time of delivery of the Goods or completion of the Services shall not be of the essence of the Contract.

4.2 Goods will not be delivered nor will Services be commenced by OTF Builders until all and any approvals, permissions or consents, necessary for the Construction Project have been obtained, including, without limitation, any planning permissions or buildings regulations consent. OTF Builders will not be liable to the Customer for any delays in the provision of, or failure to provide the Goods or Services where such delays or failure arise from matters which are beyond the reasonable control of OTF Builders. The Customer shall be responsible for ensuring the accuracy of any permissions or consents applied for by the Customer or by OTF Builders on behalf of the Customer.

4.3 If the Customer fails to obtain all and any necessary consents for the Construction Project, (i) the Customer shall, at OTF Builders' request appoint OTF Builders as its agent for the purpose of obtaining such consents and/or (ii) OTF Builders may at its sole discretion notify the Customer in writing that the Contract shall determine forthwith and without any further liability being incurred by either party. OTF Builders shall, within 14 days of receiving written notification of such failure, reimburse to the Customer that part of the Contract Price already paid by the Customer less the Planning Fee which shall in such circumstances remain payable by the Customer. Where the amount previously paid by the Customer is less than the Planning Fee the Customer shall pay the difference to OTF Builders immediately upon receiving OTF Builders's invoice for the same.

### **5. MATERIALS & OWNERSHIP**

5.1 The property of the goods, whether fixed or unfixed, shall not pass to the Customer until the full Contract Price of the goods and all sums from time to time owing by the Customer in respect of the goods (but excluding any charges levied for the installation or erection of the goods) to OTF Builders (whether under this or any other Contract) shall have been paid in full; such goods are referred to as "retained goods". Until payment of all such sums the Customer shall hold the retained goods in a fiduciary capacity for and behalf of OTF Builders.

5.2 Until such time as the property in the retained goods passes to the Customer, OTF Builders shall be entitled at any time to require the Customer to deliver up the retained goods and shall be deemed irrevocably to authorise OTF Builders to enter upon any of the Customer's premises, with or without vehicles, for the purpose of removing the retained goods.

5.3 The repossession of retained goods by OTF Builders in accordance with this clause 4 shall be without prejudice to all or any of OTF Builders' other rights against the Customer under the Contract.

5.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness the retained goods or any part of them which remain the property of OTF Builders, but if the Customer does so the full Contract Price (insofar as it has not been paid) shall (without prejudice to any other right or remedy of OTF Builders) forthwith become due and payable.

## **6. RISK**

All goods delivered to the Customer whether fixed or unfixed and notwithstanding clause 5.1 above shall be at the sole risk of the Customer and in the event of the goods or any part thereof being lost, damaged, destroyed or stolen, howsoever occurring before payment for them in full has been made to OTF Builders, the Customer shall nonetheless pay to OTF Builders the full value of any such goods and the full value of any of the work damaged, destroyed or lost together with any additional costs incurred by OTF Builders in replacing any such goods and in reinstating or restoring any such work provided, however, the Customer shall not be responsible for any damage or loss sustained arising solely from the negligence of OTF Builders, its servants or Agents.

## **7. DELIVERY**

7.1 Delivery of the goods shall be made, and risk of damage to or loss of the goods shall pass to the Customer when OTF Builders delivers the goods roadside to that Customer or to a place designated by the Customer.

7.2 Claims against OTF Builders for short or incorrect delivery shall be notified to OTF Builders in writing within 7 days of receipt of the goods. OTF Builders shall make good shortage or errors in delivery within a reasonable time thereafter and OTF Builders shall not thereafter be liable for any loss whatsoever arising out of such shortages or errors in delivery. The Customer shall not be entitled to reject the goods if no notice of short or incorrect delivery is notified to OTF Builders as set out above.

7.3 All delivery dates are week commencing and are estimate only.

7.4 Provision must be made by either the client or the client's builder for OTF Builders's waste by form of skip.

7.5 In the event of the Customer fails to take delivery of the Goods (or any instalment of the Goods) or fails to give OTF Builders adequate delivery instructions at the time of delivery (other than by reason of any cause beyond the Customer's reasonable control or by reason of OTF Builders's fault) then without limiting any other right or remedy available OTF Builders may store the Goods and any relevant storage charges incurred for the same shall be charged to the Customer and be immediately due and payable or sell the goods at the best price obtainable and charge the Customer any shortfall below the price of the goods under the Contract.

## **8. JOINERY**

All joinery to be supplied unfinished by OTF Builders and without any ironmongery. It is the responsibility of the Customer to clean and or finish unfinished joinery as supplied by OTF Builders, whether by Sandblasting or other cleaning methods.

## **9. SITE FOOTPRINT / ACCESS**

In all cases the Customer is responsible for the accuracy of the groundwork or building footprint in relation to their house, garden. The Customer will be responsible for agreeing the footprint setting out prior to excavation of foundations. The Customer shall provide good access (sufficient for the use of heavy goods vehicles and machinery) and shall be responsible for rectifying any damage to any lawn, hedge, driveway or other Customer property caused by the provision of the Services including the use on the Site of any heavy goods vehicles or machinery unless such damage is caused by the negligence of OTF Builders who, in such circumstances shall be responsible for the same. OTF Builders will quote any repair work required but will not be responsible for cost allowed.

## **10. STAINING**

All stain marks are natural and will occur and fade with time. Any site protection of goods or fixtures from staining must be done by others e.g. driveway, dwarf walls etc.

## **11. COMPLIANCE WITH LAW AND REGULATIONS**

It shall be the sole responsibility of the Customer to comply in every aspect with all relevant Planning and Building Regulations requirements, statutes, order in council, regulations, by-laws or other lawful requirements and to obtain all necessary consents, licenses, permits or authorities which may be required in connection with any work to be performed pursuant to the Contract notwithstanding that OTF Builders may provide assistance in this respect.

## **12. PAYMENT TERMS**

12.1 Upon entering into the Contract the Customer shall forthwith pay to OTF Builders a deposit of 50% of the Contract Price.

12.2 Following payment, OTF Builders shall agree with the Customer a timescale for delivery of the goods.

12.3 The Customer shall pay 40% of the Contract Price to OTF Builders when the Goods are available for delivery to the Customer.

12.4 The remaining 10% of the Contract Price shall be paid by the Customer to OTF Builders at its sole discretion notifying the Customer of completion of the Services.

12.5 OTF Builders may suspend delivery of Goods or the provision of the Services at anytime when any sum pursuant to clauses above are due and have not been received by OTF Builders in cleared funds and OTF Builders cannot guarantee that the timing of the resumption of the Services shall be proportional to the length of the Customer's delay in paying and the Customer shall indemnify OTF Builders in respect of any costs incurred by OTF Builders as a result of such delay. Any sum pursuant which has not been so received on the date due shall incur interest at a rate of 5% per annum above the base rate of Barclays Bank plc from time to time.

12.6 The Customer shall not be entitled to withhold payment as a result of any failure of any other contractor in complying with the terms of that contractor's agreement with the Customer in connection with the Construction Project.

12.7 All payments made pursuant to this clause 12 shall be made without set-off deduction or counterclaim by the Customer.

12.8 In the unlikely event that planning permission is refused and in the event that any resubmitted or altered application that you instruct us to make is also refused (as opposed to being passed in an amended form from that applied for in which case this clause does not apply) the contract shall terminate and any payment made pursuant to clause 12.1 above shall be refunded to the Customer by OTF Builders less a sum sufficient to cover OTF Builders's (or such third party as they may instruct) reasonable costs and expenses of the planning application which may or may not be limited to the planning fee.

## **13. STRIKES ETC. (FORCE MAJEURE)**

13.1 OTF Builders shall not be liable to the Customer if it is unable to carry out any provision of the Contract for any reason beyond its control including (but without limitations) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock-out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts or materials required for the performance of the Contract ("Force Majeure").

13.2 OTF Builders shall notify the Customer as soon as reasonably practicable after the circumstances preventing performance arise. During the continuance of such event of Force Majeure OTF Builders' contractual obligations shall be suspended until the Force Majeure has OTF Builders fully abated, without liability to the Customer for any loss or damage whatsoever suffered directly or indirectly by reason of any such suspension.

## **14. DRAWINGS AND PLANS**

Whilst OTF Builders will take all reasonable care to ensure that working plans, diagrams and drawings provided by and or to the Customer are accurate, it is the Customer's responsibility to confirm that they are correct and adequate to facilitate the erection or installation of the goods in a proper and workmanlike manner, it shall, in those cases where the erection or installation of the goods is not undertaken by OTF Builders, and in relation to any part of the structure not erected by OTF Builders, be the sole responsibility of the Customer to ensure that all working plans, diagrams and drawings meet with the Customer's requirements in every aspect and furthermore, it shall be the sole responsibility of the Customer in such cases to ensure the erection of the goods in a proper and workmanlike manner.

## **15. WARRANTY**

15.1 OTF Builders warrants to the Customer that the structure of the Goods shall be free from structural defects for a period of 10 years from the date of completion of the Services.

15.2 Where such a defect has arisen from faulty materials employed or workmanship carried out by OTF Builders existing but not discoverable upon inspection at the time of delivery of the goods or (as the case may be) completion of the Services then OTF Builders shall at its sole option supply replacements or (as

the case may be) rectify the defective Services and in which case OTF Builders shall have no further liability to the Customer. The provisions of this clause 15 shall also apply to repaired or replacement goods or Services during the warranty period.

15.3 OTF Builders' liability under this Condition applies only to structural defects appearing before the Customer makes any modification or alteration to the goods and whilst the goods are being properly used stored or maintained and in particular (but without limitation) OTF Builders shall not be liable in the case of defects in Goods not manufactured by OTF Builders or defects arising from:-

15.3.1 Normal deterioration;

15.3.2 Improper or faulty handling, installation or maintenance other than carried out or authorised by OTF Builders;

15.3.3 Repair of or modification to the goods or Services by or on behalf of the Customer other than by OTF Builders;

15.3.4 Defects in or subsidence to any structure or surface to which the goods are affixed or attached;

15.3.5 Glass damage or breakage not attributable to manufacturing defect;

15.3.6 Failure to treat the goods in accordance with OTF Builders's installation instructions;

15.4 The Customer's rights against OTF Builders under this Condition are not assignable.

15.5 The main frame structural 10 year warranty runs from the date of Completion of the Services but shall not apply nor shall any warranty in this clause 15 apply in circumstances where all or any part of the Contract Price has not been paid in full.

## **16. LIMITS OF LIABILITY**

16.1 Subject to the provisions of clause 16.5 below the goods are supplied strictly on the terms that the Customer has satisfied itself of their suitability for their purpose. The Customer acknowledges that all details in catalogues, quotations and acknowledgements of order or similar documents or by word of mouth and all forecasts of performances, howsoever given, are approximate only and do not form part of the Contract unless set out in the Specification.

16.2 Save in respect of death or personal injury caused by OTF Builders's negligence or liability under the Consumer Protection act 1987 OTF Builders shall not be liable under the Contract, whether by way of indemnity or by reason of breach of contract, tort or breach of statutory duty or by way of representation (unless fraudulent) or any implied warranty, condition or other term or in any other manner for consequential or indirect loss of whatever nature suffered by the Customer or for special damages, loss of use, (whether complete or partial) of the goods, or loss of profit.

16.3 The entire liability of OTF Builders under or in respect of the Contract shall not exceed the Contract Price except as expressly provided by these Conditions.

16.4 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

16.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

## **17. GOVERNING LAW**

The Contract shall be governed by the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.

## **18. GENERAL**

18.1 Interest will be charged monthly on unpaid accounts at the rate of 4% above the Interbank Rate as published in the Financial Times.

18.2 Where the Contract is cancelled for whatever reason, the Customer shall indemnify OTF Builders in full against (i) all losses, costs and expenses incurred by OTF Builders up to the time of cancellation and (ii) OTF Builders' loss of profits on the Contract. For the avoidance of doubt a Customer's failure to give

instructions to pursue or otherwise progress any necessary application for planning permission shall be an event which OTF Builders shall treat as cancelling the Contract.

18.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

18.4 No term of this Contract is intended for the benefit of any third party and the parties do not intend that any term of this Contract should be enforceable by a third party either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

18.5 Any notices to be given by the Customer to OTF Builders hereunder or any other communications from the Customer to OTF Builders in respect of the Contract shall be in Writing and shall be effective if received by a director of OTF Builders, but not otherwise.

## **19. EXPORT**

19.1 Where the goods are supplied for export from the United Kingdom, the provisions of this Condition 17 shall (subject to any special terms agreed in writing between the Customer and OTF Builders) apply notwithstanding any other provision of these Conditions.

19.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

19.3 The Goods will be sold ex works.

## **20. PHOTOGRAPHS**

OTF Builders reserves the right to photograph the completed project for our records and/or marketing. Copies will be available at nominal cost but copyright will remain that of OTF Builders.

## **21. EXCLUSIONS**

Quotations for insulation may be subject to change due to building regulation requirements. All changes due to building regulation requirements not shown or included in our quotation are over and above our quotation and will be charged. OTF Builders do not recommend or guarantee the work of any third parties who may be contracted by the Customer on the Construction Project. No implied/collateral contract exists between the Customer and OTF Builders in respect of the provisions of any Goods or Services by any other party for the purposes of the Construction Project. OTF Builders shall not be liable for any loss arising from a defects which are due to defects in or on an adjoining building to which the Goods are attached.