



## **Prefix Systems UK Ltd**

### **Terms and conditions of sale**

#### **CONDITIONS OF SALE**

#### **1. Definitions**

- 1.1 In these Conditions:
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| "Buyer"      | means the person who accepts a quotation of the Seller for the sale of the Goods or whose 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.   |
| "Seller"     | means Prefix Systems (UK) Limited (Company Registration number 3995507) Limited of Systems House, Cunliffe Road, Blackburn, Lancashire BB1 5UA   |
| "Conditions" | means the standard terms and conditions of sale set out in the document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.  |
| "Contract"   | means the contract for the purchase and sale of the Goods.   |
| "Writing"    | includes telex, cable, facsimile transmission, e-mail and comparable means of communication.   |
| "Ex-works"   | the buyer must take delivery at the exporter's factory and pay all the costs of freight, insurance and other expense items to get the goods transported from the supplier's factory to their overseas destination. |
- 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.
- 1.4 Acceptance of these terms implies consent to divulge known credit and payment experiences with third parties.

#### **2. Basis of the sale**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in all cases to these standard Trading Terms and 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 agreed in Writing between the authorised representatives of the Buyer and 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 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 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.
- 2.5 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.

#### **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 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 in 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 (if 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 a 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, trade mark 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 specifications of the Goods which are required to conform to any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specifications, 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.

#### **4. Price of the goods**

- 4.1 The price of the Goods shall be either the Seller's written quoted price, errors and omission excepted, or, where no price has been quoted (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, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 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 an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

#### **5. Terms of payment**

- 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 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 or 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 of 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 to the Seller the price of goods as shown in the Seller's invoice and in accordance with any payment schedule specified by the Seller. All payments shall be made in cleared funds in to such bank account as the Seller may specify.
- 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 :-
- 5.3.1 Cancel the contract or suspend any further deliveries to the Buyer; and
- 5.3.2 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
- 5.3.3 Charge the Buyer interest from the date of the invoice(s) at the rate of 4 per cent per annum above bank base rate 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 the Goods shall be made by either:-
- 6.1.1 The Buyer collecting the Goods at the Seller's premises at any time after the Seller informs the Buyer they are ready for collection; or
- 6.1.2 The Seller delivering the Goods to the Buyer's premises or any other place agreed in writing by the Seller and the Buyer. Where the Seller agrees to deliver the goods otherwise than at the Seller's premises, the Seller shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. 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 Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's default, 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 available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 Upon delivery to the Buyer all Goods should be examined. The Seller shall not be liable for any shortages in, or non-delivery of, or transport damage of, Goods unless the same is notified by the Buyer to the Seller (together with all specific details) in writing within 2 working days of the actual or anticipated date of delivery (as relevant). Subject to such notice being provided the Seller shall, if it is satisfied that any Goods have not been delivered and the cause thereof being beyond the reasonable control of the Seller, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Buyer for such Goods.
- 6.5 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:-
- 6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 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

#### **7. Risk and Property**

- 7.1 Risk of damage to Goods, or loss of the Goods shall pass from the Seller to the Buyer as follows:-
- 7.1.1 On collection from the Seller's premises or upon the Seller notifying the Buyer the goods are available for collection from the Seller's premises; or
- 7.1.2 Upon delivery to the Buyer's premises or such place requested by the Buyer and agreed by the Seller, or
- 7.1.3 If the Buyer fails to take delivery of the goods upon the Seller tendering delivery to the Buyer
- 7.2 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 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 hold the Goods as the Seller's fiduciary agent and bailey, 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, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 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.
- 7.5 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.

#### **8. Quality**

- 8.1 The Buyer is relying on its own skill and judgement in relation to the Work irrespective of any knowledge which the Seller or its servants, agents employees may have as to the purpose for which the Work is supplied or its suitability.

- 8.2 Subject to Conditions 8.1 and 8.3 the Seller warrants that all Goods shall upon delivery and
- 8.2.1 in the case of Ultraframe System Components, Ultrasky and Elevation Roof Components for white unpainted, powder coated aluminium and foiled roofs for 10 years from the date of delivery;
  - 8.2.2 in the case of WARMRoof Components foiled for woodgrain effect foil for 5 years from the date of delivery;
  - 8.2.3 in the case of PVC Ultraframe System Components sprayed for colour effect for 5 years from the date of delivery;
  - 8.2.4 in the case of complete WARMroof roofs supplied with tiles / cladding for 10 years from the date of delivery;
  - 8.2.5 in the case of complete WARMroof roofs supplied without tiles / cladding for 5 years from date of delivery;
  - 8.2.6 in the case of Ultralite 500 (PVCu) Roof Components for white roofs for 10 years from the date of delivery (but this warranty does not cover possible colour changes to the Ultralite panel greater than a value 3 when tested in accordance with ASTM D1925, and
  - 8.2.7 in the case of electrical components and ironmongery for 12 months from the date of delivery be of satisfactory quality and be reasonably fit for any purpose for which they are commonly supplied and that all Services shall be carried out with reasonable skill and care and all conditions warranties or other terms whether express or implied, statutory or otherwise, inconsistent with the provision of this Condition 8.2, are expressly excluded
  - 8.2.8 in the case of Opus composite window & doors for 10 years from the date of delivery; subject to installation guidelines
  - 8.2.9 in the case of Aluminium window & doors for 10 years from the date of delivery;
  - 8.2.10 in the case of Glass units supplied as part of a complete order for 10 years from the date of delivery; subject to installation guidelines
  - 8.2.11 in the case of Clearview rooflight for 10 years & triple glazed unit for 5 years from date of delivery.
  - 8.2.12 in the case of Verandah system support post and beam for 10 years from date of delivery
  - 8.2.13 in the case of IX250 orangery system supplied without external deck finish for 10 years from date of delivery
  - 8.2.14 in the case of brown, light oak and black extruded guttering & external ridge capping for 5 years from date of delivery
  - 8.2.15 in the case of fading or chalking of brown, light oak and black extruded guttering & external ridge capping for 3 years from date of delivery
- 8.3 The warranty given in Condition 8.2 will not apply
- 8.3.1 Where the defect complained of arises from any specification supplied by the Buyer or arises from fair wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions or misuse or alteration or repair of the Goods without the Seller's approval or arises from any failure to follow the Company's instructions (whether oral or in writing) and whether relating without limit to the fabrication, lateral support, ventilation, operation, use or maintenance of the Goods (the Buyer acknowledges that the Goods are intended for use in Northern European environmental conditions and use of any Goods where the ranges of environmental condition, including without limit ultra violet light, heat or humidity is not in accordance with the Seller's instructions and will not be covered by the warranty given in Condition 8.2;
  - 8.3.2 If the Seller or its agents is not given a reasonable opportunity to safely inspect the Work;
  - 8.3.3 If the total price for the Goods or Services has not been paid by the due date for payment;
  - 8.3.4 To any parts, materials, equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Seller; or
  - 8.3.5 To any perils usually treated as insurance risks, including without limitation, fire and flood, whether or not such insurance is actually held.
  - 8.3.6 In respect of powder coated aluminium windows and doors. The material coated is sited within direct influence of zones of salt water (within 500 metres of high tide line) acid or industrial or other aggressive emission sources which are known or believed to be damaging or corrosive to thermosetting powder coating.
- 8.4 The obligations of the Seller under the Contract are limited such that in the event of a breach by the Seller of the warranty in Condition 8.2 or any defect in any Goods or Services the Seller shall only be obliged (and shall have no further liability in the contract, negligence or otherwise for any defect in the quality of the Goods and/or Services or fitness for purpose of the Goods) at its option whether to refund the price (if already paid) attributable to the faulty Goods or Services or repair, rectify or replace the faulty Goods or Services (provided that the Buyer has provided safe access to the Goods to the Seller or its agent)

## **9. Limitation of Liability**

- 9.1 Nothing in these Conditions shall exclude or limit the liability of the Seller for death or personal injury caused by the Seller's negligence
- 9.2 The Seller shall not be liable to the Buyer in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatsoever the cause thereof (i) for any economic loss of any kind whatsoever, including without limit loss of profit, business contracts, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation of goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage (including without limit removal or rectification work required in connection with the installation of repaired or substitute Goods) of any nature whatsoever
- 9.3 Without prejudice to Condition 8.2, 9.1 and 9.2 the Seller's liability in contract tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall be limited to the greater of the Contract price or the amount received by the Seller for the claim under its insurance policy covering such risks provided that nothing in this Condition shall oblige the Seller to obtain an insurance or claim upon any insurance which it holds. The Buyer acknowledges that delay in notifying any claim may prevent the Seller recovering any money under such policy.
- 9.4 Where the Goods or any part of them are manufactured by or on behalf of the Seller to the design or specification of the Buyer then the Buyer shall indemnify the Seller against all actions, claims, costs, demands, expenses and liabilities whatsoever nature suffered or incurred by the Company as a result of the infringement of any third parties IPRs. If any claim is brought or threatened against the Seller in respect of an infringement the Seller shall be entitled to suspend further deliveries of Goods to the Buyer.
- 9.5 Where the Goods are not manufactured by the Seller the Seller gives no assurance or guarantee that the sale or use of the Goods will not infringe IPRs of any third party.

## **10. Indemnity**

- 10.1 If any claims are made against the Buyer that the Goods infringe or that their use or re-sale infringe the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, 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:-
  - 10.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;
  - 10.1.2 The Buyer shall give the Seller all reasonable assistance for the purposes of any such Proceedings or negotiations;

- 10.1.3 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 (which shall not be reasonably withheld);
- 10.1.4 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 such policy or cover (which the Buyer shall use its best endeavours to do);
- 10.1.5 The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of such claim; and
- 10.1.6 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.

#### **11. Intellectual Property**

- 11.1 The Seller authorises the Buyer to apply to the goods the registered trade mark of the Seller to use intellectual property (meaning any patents, copyright, registered design or unregistered design rights, and application for any of the foregoing, any rights in respect of confidential information and any other intellectual property right) for the purposes of exercising its rights and performing its obligations under this Agreement.
- 11.2 The Buyer shall have no rights in relation to any trade mark or intellectual property except as specified in this Agreement.
- 11.3 The Buyer shall use trade marks on or in relation to the goods in the manner specified by the Seller from time to time, not otherwise
- 11.4 All art works applied by the Seller from time to time for use in relation to the goods or their labelling or packaging, and all intellectual property in respect of it, shall belong exclusively to the Seller.
- 11.5 The Buyer shall at the request and expense of the Seller take all such steps as the Seller may reasonably require to assist the Seller in maintaining the validity and enforceability of any intellectual property and the trademarks and shall enter into such formal licences as the Seller may reasonably request for this purpose. The Buyer shall not represent that he has any title in or right of ownership to any of the trademarks or do or suffer to be done any act or thing which may in any way impair the rights of the Seller in any of the trademarks or bring into question the validity of its registration
- 11.6 The Buyer shall promptly and fully notify the Seller of any actual or threatened infringement of any of the intellectual property or the trade marks which come to the Buyer's notice or which the Buyer suspects has taken or may take place

#### **12. Insolvency of Buyer**

- 12.1 This clause applies if:-
  - 12.1.1 The Buyer makes any voluntary agreement with its creditors or (being an individual firm) becomes bankrupt or (being a company) becomes subject to an Administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 12.1.2 An encumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Buyer; or
  - 12.1.3 The Buyer ceases, or threatens to cease, to carry on business; or
  - 12.1.4 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.
- 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 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.

#### **13. Export Terms**

- 13.1 the Uniform Laws on International Sales Act 1967 shall not apply and the Company shall be under no obligation to notice under Section 32(3) of the Sales of Goods Acts 1979.
- 13.2 Section 26(3) of the Unfair Contract Terms Act 1977 shall apply and all liabilities for injury or death arising directly from the use of the Goods are expressly excluded.
- 13.3 Unless otherwise agreed in writing by the Company the currency will be pounds sterling and payment shall be by way of confirmed irrevocable letter of credit to be opened at a bank nominated by the Company at the Buyer's expense.
- 13.4 The Buyers shall be responsible for complying with any legislation or regulations governing the export of the Goods from the United Kingdom and governing the importation of the Goods into the country of designation and for the payment of any duties or taxes on them, and
- 13.5 The warranty in Condition 8.2 shall not apply

#### **14. General**

- 14.1 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 such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice
- 14.2 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.
- 14.3 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.
- 14.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 14.5 The terms and conditions of this Agreement are and shall at all times remain confidential as between the Seller and the Buyer and neither party shall disclose the existence of the terms of the Agreement except to their professional advisors, as required by any statutory or regulatory authority or a Court of law.
- 14.6 The provisions of the Contracts (Rights of Third Party's Act) 199 are excluded from this Agreement and no rights (express or implied) shall be conferred other than to the party to this contract

#### **15. Force Majeure**

In the event that the Seller is prevented or delayed in or from carrying out its obligations under the Contract as a result of any cause beyond its control such as but not limited to: acts of God, governmental intervention or restriction, import or export regulations, war, riots, strikes or trade disputes (including by and with the Seller's own employees), power failure, inadequate performance of, failure of or incorrect processing by computer systems, fire, flood, default of suppliers or subcontractors, or breakdown of plant, machinery or vehicles then the Seller shall be relieved of its obligations and liabilities under the Contract for as long as such fulfilment is prevented.

**BY SIGNING BELOW, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS OUTLINED ABOVE.**

Company \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Position \_\_\_\_\_

Signed \_\_\_\_\_

Version 3.2