



WALKER BROS. (ELLAND) LIMITED

Conditions of Sale and Supply

Interpretation

1.1 In these Conditions:-

“Conditions”	means the conditions of sale and supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between you and us
“Confidential Information”	means information relating to our business services and affairs which may from time to time be, or be treated by us, as confidential. This will include all trade secrets including without limitation formulae, processes, methods, inventions, technics data and know-how relating to our business
“Contract”	means the Contract between you and us for the purchase and sale of the Goods and/or the supply of the Services incorporating these Conditions
“Customer” and “you”	means the party entering into the Contract on these Conditions
“Goods”	means any goods (including any instalment of goods) which we are to supply in accordance with these Conditions
“Services”	means the installation services which we are to supply in accordance with these Conditions

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

1.3 These are the Conditions upon which we, Walker Bros. (Elland) Ltd (company number 3294347) deal with you, the Customer. They govern all our dealings with you to the exclusion of any other terms and conditions subject to which any order for the Goods and/or the Services is purported to be made by you.

1.4 No variation of these Conditions shall bind us unless we agree it in writing.



- 1.5 Neither our employees nor our agents are authorised to make any representations concerning the Goods or the Services unless confirmed by us, acting by an authorised signatory, in writing. You acknowledge that you do not rely on any representations which are not so confirmed. Brochures advertising and other promotional material issued by or on behalf of us do not form part of the Contract nor is any statement contained therein a representation or warranty on which you have relied in entering into the Contract.
- 1.6 If we waive any breach of the Contract, it should not be considered by you to be a waiver of any further breach.
- 1.7 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part the remainder of these Conditions shall continue to apply.
- 1.8 The Contract shall be governed by the laws of England.

Order and Specification

- 2.1 No order submitted by you shall be deemed to be accepted by us unless and until confirmed by us in writing.
- 2.2 You shall be responsible to us for ensuring the accuracy of the terms of any order (including without limitation any drawings or technical specification) which you submit and for giving us any necessary information relating to the Goods and/or the Services within a sufficient time to enable us to perform the Contract in accordance with its terms.
- 2.3 The quantity, quality and description of the Goods shall be those which we agree to supply, but, for the avoidance of doubt, should the terms of your order and our tender differ, we shall manufacture and/or supply and/or install the Goods in accordance with the description contained in our tender and you will be responsible for ensuring such description is accurate.
- 2.4 The description, type and duration of the Services shall be those set out in your order and/or our proposal or tender (but for the avoidance of doubt should the terms of your order and our proposal or tender differ then we shall supply the Services in connection with the description contained in our proposal or tender) and you will be responsible for ensuring such description is accurate.
- 2.5 You may not cancel any order for either Goods or Services which we have accepted unless we agree to such cancellation in writing and you agree to indemnify us in full against all costs, loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses which we have incurred as a result of the cancellation.
- 2.6 We reserve the right to make any changes in the specification or packaging of the Goods and/or in the type of the Services which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
- 2.7 We reserve the right to sub-contract out the supply of the Goods or the provision of the Services (in whole or in part) at our sole discretion.



Contract Price

- 3.1 The price of the Goods and/or the Services shall be our quoted price. All prices quoted are valid for thirty days only or such other period as may be stated in our quotation. After this time we may alter the price at any time before we accept your order without giving you any notice. Any weekly rates which we quote for the Services are based on a five day week.
- 3.2 We reserve the right, by giving you notice at any time before delivery of the Goods and/or the commencement of the performance of the Services to increase the price of the Goods and/or the Services to reflect any increase in the costs of processing the Goods or providing the Services due to any factor beyond our control, for example any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery date or quantities requested by you or any delay caused by any of your instructions or your failure to give us adequate information or instructions.
- 3.3 If we agree to deliver the Goods to any location outside our own premises, you will be liable to pay any extra charges incurred regarding transport, packaging, insurance and all other reasonable costs relating to the delivery of the Goods, unless otherwise agreed in writing.
- 3.4 All prices quoted by us will be exclusive of value added tax, which you will also be liable to pay to us.

Terms of Payment

- 4.1 Unless other payment terms are agreed at any time prior to our acceptance of your order and/or your acceptance of your proposal, we shall be entitled to invoice you for the price of the Goods and/or the Services on or at any time after delivery of the goods and/or commencement of the performance of the Services. If you are either unable to take delivery of the Goods, or if we are unable, due to any fault of yours, to perform the Services we are entitled to invoice you for the price at any time after we notify you that the Goods are ready for collection, or we have attempted to effect delivery of the Goods or at any time after we notify you that we are ready to perform the Services in accordance with the Contract.
- 4.2 You must pay the price for the Goods and/or the Services no later than 30 days after the end of the month in which supply occurred notwithstanding that delivery of the Goods may not have taken place and that property in the Goods has not passed to you or (as the case maybe) that performance of the Services may not have been completed. The time of payment of the price shall be of the essence of the Contract.
- 4.3 If you fail to pay us on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to:-
- 4.3.1 cancel the Contract or suspend any further deliveries of Goods to you or suspend any further performance of the Services (as the case may be);
- 4.3.2 appropriate any payment made by you to such of the Goods and/or Services (or to goods supplied or Services performed under any other contract between you and us) as we may think fit (notwithstanding any purported appropriation by you); and



- 4.3.3 charge you interest (both before and after judgment) on the amount unpaid at the rate of 8% per annum above the base rate of Lloyds TSB Bank plc from time to time in force, until payment is made in full, together with compensation for late payment under the Late Payment of Commercial Debts (Interest) Act 1998 and the Regulations made thereunder.

Delivery of Goods

- 5.1 You will take delivery of the Goods by collecting them at our premises when we notify you that the Goods are ready for collection or, if some other place for delivery is agreed between us, by us delivering the Goods to that place.
- 5.2 Any dates quoted for delivery of the Goods are approximate only and we shall not be liable for any loss or damage due to our failure to deliver the Goods promptly, or at all, howsoever caused. Time for delivery shall not be of the essence unless previously agreed by us in writing. We are entitled to deliver the Goods in advance of the quoted delivery date upon giving you reasonable notice.
- 5.3 If we fail to deliver the Goods for any reason other than any cause beyond our reasonable control or your fault, and we are accordingly found to be liable to you, our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 5.4 If you fail to take delivery of the Goods or fail to give adequate delivery instructions (for reasons other than our fault) then, without prejudice to any right or remedy available to us, we may:-
- 5.4.1 store the Goods until actual delivery and charge you for the reasonable costs (including insurance) of storage; or
- 5.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.

Performance of the Services

- 6.1 We will perform the Services at the times and places agreed between us.
- 6.2 Any dates quoted for performance of the Services are approximate only and we shall not be liable for any loss or damage due to our failure to perform the Services promptly, or at all, howsoever caused. Time for performance shall not be of the essence unless previously agreed by us in writing. We are entitled to perform the Services in advance of the quoted date upon giving you reasonable notice.
- 6.3 If we fail to perform the Services for any reason other than any cause beyond our reasonable control or your fault, and we are accordingly found to be liable to you, our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of obtaining services from a third party in substitution for those not performed by us over the price of the Services.
- 6.4 You must provide us, or our employees, agents and representatives with all information which we reasonably require to enable the effective provision of the Services.



- 6.5 Where the Services are provided on your premises you must make available to us, our employees, agents and representatives, such facilities as we, our employees, agents and representatives may reasonably request to enable the Services to be performed properly and safely.
- 6.6 If, at your request and at our sole discretion, we provide additional repair or maintenance services in respect of the Goods (or any part of them) which are necessary as a result of any fault of you or of your representatives, agents or employees, such services shall be known as “the Additional Services” and shall be charged at our standard hourly day rate from time to time, and you shall pay such charges pursuant to the provisions of clause 4.2. The remaining provisions of this clause 6 and the provisions of clause 7 shall apply to the Additional Services as though they are included in the definition of Services.

Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to you:-
- 7.1.1 in the case of Goods to be delivered at our premises, at the time when we notify you that they are available for collection; or
- 7.1.2 in the case of Goods to be delivered elsewhere at the time of delivery or (if you fail to take delivery of the Goods) the time when we have attempted to effect delivery of the Goods.
- 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 you until we have received in cash or cleared funds, payment in full of the price of the Goods and all other goods agreed to be sold by us to you and/or Services agreed to be provided by us to you for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to you, you shall hold the Goods as our fiduciary agent and bailee and shall keep the Goods separate from your own and those of third parties and properly stored, protected and insured and identified as our property. Until that time you shall be entitled to resell or use the Goods in the ordinary course of your business but shall account to us 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 of your monies or property or those of third parties and, in the case of tangible proceeds, properly stored protected and insured.
- 7.4 Until property in the Goods passes to you (and provided the Goods are still in existence and have not been resold or reprocessed) we shall be entitled at any time to require delivery of the Goods to us. If you fail to do so we will be entitled to enter upon your premises or those of any third party where the Goods are stored and repossess the Goods.
- 7.5 You will not be entitled to charge by way of security for any indebtedness any of the Goods to which we retain the property, and if you do so all monies owed at that time by you to us shall (without prejudice to any other of our rights or remedies) become immediately due and payable.



Warranties and Liabilities

- 8.1 Subject to the Conditions set out below we warrant that the Goods will be of satisfactory quality at the time of delivery and that the Services will be provided using reasonable care and skill.
- 8.2 We shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods and/or Services is not paid by the due date for payment.
- 8.3 We shall be under no liability to you for any defect in the Goods or for any failure to provide satisfactory Services arising from any specification which you provide.
- 8.4 Subject as expressly provided in these Conditions, and except where the Goods and/or Services are sold and/or provided 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.
- 8.5 You must notify us within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within seven days after discovery of the defect or failure of any claim which you make based on any defect in the quality quantity or condition of the Goods or their failure to correspond with specification (whether or not delivery is refused by you) or within seven days of the date of completion of performance of the Services of any claim which you make based on any defect in the Services. If delivery is not refused and you do not notify us accordingly you shall not be entitled to reject the Goods you shall be bound to pay the price as if the Goods had been supplied and/or the Services provided in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods or the Services arises in accordance with these Conditions which is based on any defect in the quality or condition of the Goods or their failure to meet specification or on any defect in quality of the Services we shall be entitled to replace the Goods (or the part thereof in question) or (as the case may be) remedy any defective Services free of charge or, at our sole discretion, to refund to you the price for the Goods and/or (as the case may be) the Services (or a proportionate part of the price), but we shall have no further liability to you.
- 8.7 Except in respect of death or personal injury caused by our negligence, we shall not be liable to you 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 us, our employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by you or the provision of the Services.
- 8.8 We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of our obligations in relation to the Goods and/or the Services if the delay or failure was due to any cause beyond our reasonable control.
- 8.9 We shall not be liable to you in respect of any failure to provide the Services due to your failure to adequately fulfil the requirements of Conditions 6.4 or 6.5.



- 8.10 We shall not be liable to you for any loss suffered by you as a result of your failure to follow any directions for the use of the Goods that we supply including (but not limited to) any instruction manual which we provide.
- 8.11 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions) (Restrictions on Statements) Order 1976) your statutory rights are not affected by these Conditions.

Insolvency

- 9.1 This Condition applies if:-
- 9.1.1 you make any voluntary arrangement with your creditors (whether formal or informal) or become bankrupt or go into liquidation; or
 - 9.1.2 a Receiver or administrator is appointed over any of your property or assets; or
 - 9.1.3 you cease to carry on business; or
 - 9.1.4 we reasonably apprehend that any of the events mentioned above is about to occur and notify you accordingly.
- 9.2 If this Condition applies then we shall be entitled to cancel the Contract or to suspend any further deliveries of the Goods and/or performance of the Services under the Contract without any liability to you and if the Goods have been delivered or the Services have been performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

Assignment

10. You shall not assign the Contract or any rights accruing under it without our prior written consent.

Intellectual Property

- 11.1 Any specifications or designs for the Goods prepared by us or on our behalf (including the copyright, design right or other intellectual property in them) shall remain at all times our property. Where any designs or specifications have been supplied by you for manufacture by us to your order then you warrant that the use of those designs or specifications for the manufacture, processing, assembly and supply of the Goods to you will not infringe the rights of any third party.
- 11.2 All and any documents and other materials, data, or other material (including the copyright, design right or other intellectual property in them) provided by us to you during the provision of and/or relating to the Services shall, unless otherwise agreed in writing between us, remain our property. You shall, however, be allowed to use such material for the purpose of utilising the Services by way of non-exclusive licence, subject to payment in full of all sums owing under the Contract. You must keep all and any Confidential Information which we have provided confidential both during and following the termination of the Contract.
- 11.3 All specifications, photographs, illustrations and other material produced by us in the manufacture and/or supply of the Goods or in the provision of Services and all reference to weights, measurements and other technical details contained in such materials are all provided for identification purposes only and are



intended to be approximate. We shall not be liable for loss suffered by you as a result of your reliance on such materials or details.

12. **Notices**

12.1 Any notice to be given under these Conditions shall be delivered by hand or sent by first class post to the usual address or registered office of the addressee or to such other address in Great Britain as the intended recipient may from time to time have notified the other party for the purpose of this clause, or sent by facsimile transmission.

12.2 Notice shall be deemed to have been received:-

12.2.1 if sent by first class post 24 hours after posting;

12.2.2 if delivered by hand on the day of delivery;

12.2.3 if sent by facsimile at the time of transmission.

13. **Non-Solicitation**

13.1 You undertake to us that you will not at any time during and for one year after the completion of the provision of the Services or the supply of the Goods, solicit, approach, employ or otherwise engage the services of any of our employees, agents or representatives who have been involved in the provision of the Services or the supply of the Goods.

13.2 We agree that we will not, at any time during and from one year after the completion of the provision of the Services or the supply of the Goods, solicit, approach, employ or otherwise engage the services of any of your employees, agents or representatives with whom we or our employees, agents or representatives have had direct contact as a result of our provision of the Services or the supply of the Goods.