

# Terms & Conditions of Sale

## Alumasc Building Products Ltd

### A Division of the Alumasc Group plc

#### 1. DEFINITIONS

In these Terms and Conditions of sale of Goods the defined terms shall have the meaning given to them in the Order Acknowledgement. In the absence of either an Order Acknowledgement or use of a defined term in the Order Acknowledgement, these Terms and Conditions shall be interpreted using the following defined terms:

**"Additional Items"** means the following where incurred:

(a) any taxes (including value added tax), duties or other charges levied by any government or other authority in respect of or by reason of the sale, export or import of the Goods or any part thereof but excluding taxes assessed on profits or gains; and/or

(b) the cost of storage of the Goods if for any reason the Customer does not arrange for collection or accept delivery of the Goods following notification by the Company; **"Applicable Anti-Bribery Law"** means any law prohibiting bribery, fraud, kickback, or other similar actions and any similar anti-corruption law or regulation of any country relevant to the performance of the Contract, including the Bribery Act and the US Foreign Corrupt Practices Act 1977;

**"Associated Person"** means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors;

**"Bribery Act"** means the UK Bribery Act 2010 (as amended from time to time); **"Company"** means Alumasc Building Products Limited trading as Gatic, a division of the Alumasc Group, whose registered office is Station Road, Burton Latimer, Kettering, Northamptonshire NN15 5JP (company registration number 02992960) and reference to the acknowledgement, consent, authority or agreement of the Company shall mean acknowledgement, consent, authority or agreement in writing signed by a director or other authorized officer of the Company;

**"Contract"** means together the Order Acknowledgement and these Terms and Conditions (or in the absence of an Order Acknowledgement, these Terms and Conditions alone);

**"Customer"** means the company, firm or person buying (or who has requested to buy) the Goods from the Company;

**"Expected Delivery Date"** means the estimated date when the Goods are to be delivered by or made available for collection by;

**"Goods"** means all and every item of goods or part thereof supplied or to be supplied by the Company to the Customer;

**"Intellectual Property Rights"** means all copyrights, registered and unregistered trademarks, business names, logos, domain names, registered and unregistered design rights, patents and rights in applications for patents, all rights to sue for passing off, rights to use designations, trade secrets, database rights, confidential information, and all other rights having equivalent or similar effect, anywhere in the world including all applications and rights to apply for and all extensions and renewals thereof;

**"Order Acknowledgement"** means the document referred to as "Order Acknowledgement" and in a form provided by the Company which sets out the commercial terms agreed by the Parties relating to the sale of Goods by the Company to the Customer;

**"Parties"** means the Company and the Customer and **"Party"** shall mean each of them; **"Price"** means the price of the Goods which shall be exclusive of value added tax and other taxes and includes carriage, insurance and delivery charges (unless agreed otherwise in the Order Acknowledgement);

**"Premises"** shall mean the delivery address to which the Goods are to be delivered;

**"Quotation"** means any information or estimate (written or oral) provided by the Company to the Customer in respect of Goods requested to be provided by the Company to the Customer, prior to the issue of an Order Acknowledgement by the Company in respect of such Goods;

**"Special Terms"** means any terms and conditions agreed in writing by the Parties to apply in addition to, or in substitution of the Terms and Conditions;

**"Terms and Conditions"** means these standard terms and conditions of sale of Goods set out herein; and

**"Warranty Period"** means: (i) for Gatic Access Covers/Gratings and Gatic Slotdrain a period of 1 (one) year from the date of delivery, and (ii) for all other Goods a period of three (3) months from the date of delivery.

#### 2. APPLICATION OF TERMS AND CONDITIONS

2.1. All Goods supplied by the Company are supplied on these Terms and Conditions. No other terms and conditions which the Customer may seek to impose whether or not such terms and conditions are contained or referred to in any offer, acceptance or counteroffer made by the Customer shall regulate the supply of the Goods.

2.2. No variation to a Contract shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

2.3. The Contract contains the whole agreement between the Company and the Customer in relation to the supply of the Goods and supersedes all prior representations, arrangements, understandings, agreements and terms and conditions of sale and/or purchase between the Company and the Customer relating to the subject matter hereof. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law.

2.4. The Customer has not relied upon, and will have no remedy in respect of, any warranty, statement, representation or understanding made by the Company unless it is expressly set out in the Contract.

2.5. The only remedy available to the Customer in respect of any such statement, representation, warranty or understanding shall be damages for breach of contract under the terms of the Contract and the Customer shall not have the right to rescind for negligent or innocent misrepresentation in relation to the Contract.

2.6. Nothing in these Terms and Conditions shall restrict or exclude the Company's liability for fraudulent misrepresentation.

2.7. Acceptance of the Goods by the Customer or the signature of a representative of the Customer on any Quotation, invoice or other document which expressly refers to the Contract shall be conclusive evidence before any court or arbiter that these Terms and Conditions apply. Previous dealings between the Company and the Customer shall not vary or replace these Terms and Conditions or be deemed in any circumstance whatsoever so to do.

2.8. Clause headings appearing in these Terms and Conditions are for convenience only and shall not be construed as forming part of these Terms and Conditions or taken into account in the interpretation thereof.

2.9. Any reference in these Terms and 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.

#### 3. QUOTATIONS AND FORMATION

3.1. All Quotations given by the Company are estimates only and a binding Contract will only be formed following both:

3.1.1. receipt of an order from the Customer to the Company for Goods (pursuant to a Quotation or not, as the case may be); and

3.1.2. issue of an Order Acknowledgement by the Company or (if sooner) the Company procuring the Goods or commencing the manufacture of the Goods, at which point the Customer's offer will have been accepted and the Contract will be formed.

3.2. In circumstances when the Goods are of a bespoke or non-standard nature requiring the approval of drawings by the Customer, a failure of the Customer to provide such approval in a timely manner may result in delays to the Expected Delivery Date.

3.3. Without prejudice to any of its other rights under the Contract, the Company reserves the right to obtain a letter of intent from the Customer in relation to any costs and expenses it will incur prior to the issue of an Order Acknowledgement.

3.4. The acceptance of any order from a Customer by the Company is subject to the availability of the necessary materials and to the Company being able to obtain any necessary authorisation and/or licences and to the same remaining valid. In the event that the Company cannot provide the Goods as ordered, the Company will notify the Customer and the Customer may cancel such order without incurring any liability to the Company.

3.5. Any lead times referred to in any Quotation are provided for estimate purposes only.

#### 4. PRICES

4.1. All prices quoted in the Quotation are the Company's current prices at the time of providing the Quotation. The price payable for the Goods shall be the Price at the date of despatch and the Company shall be entitled to adjust the Price of the Goods at any time between the date of the Quotation and the date of delivery of the Goods, to take account of any increase in costs incurred by the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), changes to its price lists or any change in delivery dates, quantities or specifications for the Goods requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

4.2. If the Company discovers a typographical error in the Price, it will inform the Customer as soon as possible and give the Customer the option of reconfirming its order at the correct price or cancelling it, without incurring liability for cancellation pursuant to clause 21.2. If the Customer cancels in such circumstances and has already paid the Price, the Company will provide a full refund of the Price paid.

4.3. The Price quoted in respect of the Goods do not include installation of the Goods.  
4.4. Unless otherwise stated in the Order Acknowledgement all Prices are quoted and orders are accepted net of discounts and allowances and exclusive of value added tax and the off-loading of the Goods at the time of delivery. Any Additional Items shall be added to the Price.

#### 5. DELIVERY AND PERFORMANCE

5.1. Delivery shall be made by the Company immediately following notification to the Customer that the Goods are ready for collection at the Company's premises or upon delivery by a third-party carrier to the Premises. Section 32(2) of the Sale of Goods Act 1979 shall not apply.

5.2. Expected Delivery Dates are given in good faith but are an estimate only. Time for delivery of Goods is not of the essence and the Company shall not be liable for any loss (including loss of profit), damage, costs, charges or expenses caused directly or indirectly by failure (for any reason) to meet the Expected Delivery Date, and further, the Customer shall have no right to cancel the Contract in the event of such a failure.

5.3. The Company shall be entitled to make delivery of the Goods listed in an Order Acknowledgement by instalments and to invoice separately for each instalment, including in relation to bulk call off orders. Deliveries of further instalments may be withheld until the Goods comprised in earlier instalments have been paid for in full. Default by the Company, howsoever caused, in respect of one or more instalments shall not entitle the Customer to terminate the Contract as a whole.

5.4. Where the Company has agreed to deferred deliveries, such deliveries shall in any event be accepted by the Customer within 3 (three) months from the date of the Order Acknowledgement.

5.5. Goods which the Customer agrees to collect ex works must be collected within 3 (three) days of the Company notifying the Customer that the Goods are ready (or such shorter period if agreed by the Parties).

5.6. If the Customer fails to take delivery within the period set out in clause 5.4 or to collect the Goods within the period set out in clause 5.5 above, the Company shall be entitled to:

5.6.1. invoice the Customer for the Goods from the date of the failure to accept delivery or to collect the Goods and to charge for storage of the Goods, the Goods being held at the Customer's risk; and/or

5.6.2. sell such Goods after 28 (twenty-eight) days from such failure or refusal to take delivery or collect the Goods and deduct any monies payable to the Company by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall below the Price.

5.7. All weights are subject to an allowance of plus or minus 4% (four per cent). It is agreed that it would be unreasonable to reject the Goods or to claim damages for breach of contract if the weight of the Goods falls within this permitted allowance and the Customer shall be obliged to accept and pay at the contract rate for the quantity delivered.

#### 6. PAYMENT

6.1. The Company may invoice the Customer on the date of delivery or once the Company has given the Customer oral or written notice that the Goods are ready for collection. All invoices must be paid in full in cleared funds within 30 (thirty) days from the date of invoice unless otherwise expressly stated in the Order Acknowledgement.

6.2. The Customer shall indemnify the Company against all expenses and costs (including legal costs) incurred by the Company in recovering overdue amounts.

6.3. Without prejudice to any other rights of the Company, the Company reserves the right, at its discretion, and upon providing notice to the Customer, to require payment to be received by the Company before delivering the Goods to the Customer.

6.4. Where payment requested in accordance with this clause 6 is not received within 30 (thirty) days of demand, the Company reserves the right to sell or dispose of the Goods produced for the Customer and to recover any additional loss from the Customer.

6.5. Where the Customer has been granted credit terms by the Company (in its sole discretion), the full Price (including value added tax) of the Goods shall be paid within 30 (thirty) days from the date of invoice. This shall be the final date for payment. The Company may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice and without liability for any losses that the Customer may suffer as a result of such withdrawal and upon such withdrawal all amounts due or accruing to the Company (under the Contract or otherwise) shall become immediately payable notwithstanding any other clause.

6.6. Payment shall be made in full without deduction, set off or abatement on any grounds. The Company may bring an action for the Price even if property in the Goods may not have passed to the Customer.

6.7. Time for payment of the Price shall be of the essence.

6.8. Interest shall be payable by the Customer on overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

6.9. Without prejudice to any other rights the Company may have, the Company shall be entitled to suspend the obligations under the Contract to deliver Goods without liability for any losses that the Customer may suffer as a result of such suspension until such time as all sums due from the Customer to the Company which have passed the final date for payment, including interest as aforesaid, have been paid in full.

6.10. A cheque given by the Customer shall not be treated as payment until it has been cleared.

6.11. The Company shall at any time be entitled to appropriate any payment made by the Customer in respect of any Goods in settlement of such invoices as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer.

#### 7. RISK, DAMAGE OR LOSS IN TRANSIT

7.1. Risk of damage to or loss of the Goods shall pass to the Customer upon delivery or upon collection as the case may be.

7.2. The Customer is responsible for off-loading all Goods on arrival at the Premises. It is the Customer's obligation to choose competent employees and supervise the off-loading of all Goods. The Company shall not be liable for any loss or damage to the Goods during the course of off-loading from any act or omission by the Customer, their employees or their sub-contractors.

7.3. The Customer shall inspect the Goods upon delivery or upon collection as the case may be. The Company cannot accept responsibility for loss of or damage to the Goods in transit unless the Company is notified within 3 (three) days of delivery in the case of damage or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of (or when the Customer ought reasonably to have discovered) the defect or failure or in the case of non-delivery within 10 (ten) days of the date of despatch. Where delivery is by a third-party carrier, the Company's responsibility for the Goods ceases when the Vehicle carrying the Goods arrives at the Premises. Claims for shortage or damage cannot be considered by the Company after a clear receipt has been given

to the third-party carrier. If the carrier's sheet is signed 'unexamined' or similar any damage or shortage must be notified in writing to the third-party carrier within 3 (three) days of delivery.

#### 8. PROPERTY

8.1. Notwithstanding the passing of risk under clause 7 above, unless and until full payment with cleared funds of all monies due from the Customer shall have been made to the Company in respect of all the Goods supplied or to be supplied to the Customer, property in and title in such Goods (both legal and equitable) shall remain with the Company and the following provisions of this clause 8 shall be applicable.

8.2. Until title to the Goods passes to the Customer, the Customer shall keep the Goods in good and substantial repair and condition and the Goods shall be protected and stored in such a way as to be clearly identifiable as belonging to the Company. The Customer must: (a) not destroy or deface any identifying marks on the Goods or their packaging; (b) keep the Goods insured on the Company's behalf for the full Price of the Goods against "all risks" to the reasonable satisfaction of the Company and produce the policy of insurance to the Company upon request; and (c) hold all proceeds of such insurance on trust for the Company and shall not mix them with any other money nor pay the proceeds into an overdraft bank account.

8.3. Insofar as Goods may be delivered to the Customer prior to the time when payment is received by the Company, the Customer shall (a) hold the same in a fiduciary capacity for and on behalf of the Company (as its bailee) until such time as payment is received by the Company in accordance with clause 6 hereof; and (b) in such capacity and until such time, shall remain liable to account to the Company for the same, or if the same shall be sold by the Customer in accordance with clause 8.4, shall be liable to account for that part of the proceeds of sale (the "Company's part of the proceeds") which is equivalent to the Price.

8.4. The Customer shall not resell, exchange or barter the Goods in any way whatsoever, other than in the normal course of its business and providing that the Customer shall pay the Company's part of the proceeds of such a sale into a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Company by the Customer acting in a fiduciary capacity. The entire proceeds arising by virtue of any such sale, use or disposal shall be held on trust for the Company and shall not be mixed with any other monies or paid into any other overdraft bank account and shall at all times be identifiable as monies belonging to the Company.

8.5. For so long as the property in the Goods remain in the Company, where the Goods are attached either to buildings or plant or machinery of the Customer, the Customer agrees that it is not its intention that the Goods thereby become fixtures and fittings or part of the plant and machinery, but the Goods shall remain as chattels and be severable from the buildings or plant and machinery.

8.6. Upon request, the Customer shall assign forthwith to the Company the benefit of any agreement whether written or oral under which the Goods have been sold to a third party notwithstanding and contrary to clause 8.4 above including but not limited to any claim for the Price thereof or their recovery or value; thereafter, the Company shall be entitled to pursue any remedy open to the Customer and shall be entitled to retain any sum or property recovered as payment of any sum owing to the Company by the Customer.

8.7. The Company reserves the right to repossess any Goods sold hereunder to the Customer in respect of which payment is overdue and can re-sell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company (or its successors in title) through its servants and agents to enter with or without vehicles upon all or any Premises on which such Goods may be situated and to take possession of any such Goods (the cost of which shall be borne by the Customer) where appropriate detaching them from any new objects of which they have become part or with which they have become mixed without liability to the Customer for any consequential damage to the said objects. These rights shall continue to subsist notwithstanding the termination of the Contract whether through the happening of any events specified in clause 17 or otherwise and without prejudice to any accrued right of the Company hereunder.

8.8. The Company shall be entitled to seek a court injunction (at any time before title passes) to prevent the Customer from selling, transferring or otherwise disposing of the Goods.

8.9. The Company shall be entitled to recover the price of Goods notwithstanding that the property in Goods has not passed to the Customer.

#### 9. WARRANTY

9.1. The Company warrants that it has title to and the right to sell the Goods.  
9.2. No representation or warranty is given by the Company as to the suitability or fitness of the Goods for any particular purpose and the Customer shall satisfy itself in this respect and is totally responsible therefore.

9.3. In no event shall the Company have any liability to the Customer:

9.3.1. for any defect in the Goods, where the defect complained of arises from any specification, instruction, drawing, design or other material or information supplied by the Customer or arises from fair wear and tear, wilful damage, the Customer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without the Company's approval or from failure to follow the Company's instructions (whether oral or in writing or whether relating without limit to the fabrication, installation, operation, use or maintenance of the Goods), or misuse or alteration or repair of the Goods without the Company's approval;

9.3.2. for the Goods if the total Price for the Goods has not been paid by the date when payment is due; or

9.3.3. for any parts, materials or equipment not wholly manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Company.

#### 10. CATALOGUES

Whilst the Company endeavours to keep all information, illustration and specification in any catalogues, brochures, circulars or website content issued by the Company in respect of its own Goods up to date as possible, these must not be taken as absolutely binding in detail and may be subject to variation from time to time by the Company. The Company does not warrant the accuracy of those catalogues, brochures, circulars or website content and will not be responsible for any loss or damage incurred or suffered by the Customer as a result of any inaccuracies or errors therein, whether such catalogues, brochures, circulars or website content are produced by the Company or by a third party where the Company acts as agent or distributor for such third party.

#### 11. ADDITIONAL WORK

11.1. The Company will undertake 'measurement at site' work upon receiving a request in writing from the Customer. The Customer shall provide such access and supply such information as shall be necessary for the proper carrying out of such work by the Company. The Company will submit its working drawings to the Customer for approval and no work will be undertaken until such approval in writing has been received. Should any discrepancy arise after delivery or installation of the Goods, unless such discrepancy is in variance with the approved drawings, the Company accepts no responsibility and any alteration will be charged for.

11.2. If agreed, the Company will at the expense of the Customer, test the Goods to ascertain performance levels and provide a report of the results of that test. The report will be accurate at the time of the test to the best of the belief and knowledge of the Company and the Company accepts no liability in respect of its accuracy beyond that set out in this clause.

#### 12. AGENCY

Where the Company sells goods manufactured by a third party, the Company does so as agent only and shall not be responsible for any default by the third party or for any loss or damage incurred or suffered by the Customer.

#### 13. LIABILITY FOR THE PRODUCTS

Where Goods are manufactured to the Customer's specification or are modified, altered, processed or amended at the Customer's request, the Customer shall satisfy itself that the

Goods are suitable for its use or purpose before placing an order and the Company shall not be liable in any way for the Goods or for their performance or fitness for any particular and special purpose.

#### 14. DESIGN AND INTELLECTUAL PROPERTY RIGHTS

- 14.1. In furtherance of the Company's policy of continual development, the Company reserves the right to change the design of components incorporated within the Goods without giving prior notice.
- 14.2. Where the Goods are made to a specification, instruction, drawing, design or other material or information supplied by or on behalf of the Customer to the Company pursuant to the Contract:
- 14.2.1. the Customer is responsible for the suitability and accuracy of the specification, instruction, design, drawing or other material or information (even where finally produced by the Company); and
- 14.2.2. the Customer warrants that the use by the Company of such specification, instruction, design, drawing or other material or information shall not infringe any third party's Intellectual Property Rights. If any claim is brought or threatened against the Company in respect of such an infringement, the Company shall be entitled to suspend carrying out further work for the Customer, and the Customer shall indemnify the Company on demand against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Company as a result of any such claim or threatened claim brought against the Company.
- 14.3. The Customer acknowledges and agrees that any and all Intellectual Property Rights as may subsist in and/or may be acquired in or in connection with the Goods provided by the Company to the Customer pursuant to the Contract, together with any goodwill attaching thereto, shall as between the Company and the Customer, remain the sole property of and vest in the Company.
- 14.4. Where the Goods are not manufactured by the Company, the Company makes no representation or warranty that the design, manufacture, use or sale of the Goods is not an infringement of any third party's Intellectual Property Rights.

#### 15. LIABILITY/EXCLUSIONS

##### 15.1. Introduction

- 15.1.1. Nothing in the Contract shall exclude or limit the Company's liability for fraudulent misrepresentation, death or personal injury caused by the negligence of the Company, or for any other matters which cannot be excluded or limited by law.
- 15.1.2. The Company may be willing to undertake liability additional to that provided for by this clause 15 in exchange for a higher price, such higher liability (if any) being that which is set out in the Special Terms section of the Order Acknowledgement.

##### 15.2. Defects

The Company agrees to repair or (at its discretion) replace or (at its discretion) issue a credit note in respect of Goods which are found to be defective in design, materials or workmanship and which are returned to the Company within the applicable Warranty Period provided that each of the following are satisfied:

- 15.2.1. notification of any defect is given to the Company within 7 (seven) days of it becoming apparent to the Customer;
- 15.2.2. the Goods have only been operated under normal operating conditions and have only been subject to normal use;
- 15.2.3. any Goods or parts of Goods replaced shall become the property of the Company;
- 15.2.4. the defect has not arisen from a design made, modified, furnished or specified by the Customer; and
- 15.2.5. the Goods have been assembled or incorporated into other goods only in accordance with any instruction issued by the Company.

##### 15.3. Exclusion of Consequential Loss

Without prejudice to the generality of the foregoing, the Company shall not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise, even if the Company was advised of the possibility of them in advance, howsoever and whatever the cause thereof for any: (a) economic loss of any kind whatsoever; (b) loss of profits, loss of contracts, revenues or anticipated savings; (c) damage to the Customer's reputation or goodwill; (d) damage to property of the Customer or anyone else whatsoever; (e) loss resulting from any claim made by any third party; and/or (f) special, indirect or consequential loss or damage of any nature whatsoever.

##### 15.4. Limitation

- 15.4.1. Subject to any express warranties which are referred to in the Special Terms, without prejudice to clauses 15.1.1, 15.2 and 15.3, the Company's total liability in contract, misrepresentation, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract including without limit from the Company's negligence, breach of statutory duty or otherwise, shall not in any event exceed the higher of £100,000 (one hundred thousand pounds) or the Price payable for the Goods which are the subject of the claim.
- 15.4.2. Subject to clause 11.2, no condition, warranty or other term, express or implied (by statute or otherwise) is given by the Company that the Goods (whether or not the Company or its employees or agents have recommended their use) meet a particular standard or will enable the Customer to attain any particular performance or result, or will be suitable for any particular purpose or use under specific conditions or will provide any particular capacity, notwithstanding that the requirement for such performance, result or capacity or that such particular purpose or conditions may have been known (or ought to have been known) to the Company, its employees or agents.

##### 15.5. Indemnity

The Customer shall on demand, keep the Company fully indemnified against all costs, claims, demands, expenses (including legal expenses) and liabilities of whatsoever nature made by third parties caused in whole or in part or arising out of any act or omission of the Customer in connection with the use, storage or sale of the Goods.

#### 16. COMPLAINTS PROCEDURE

Where a Customer's complaint or claim requires inspection of the Goods then:

- 16.1. where the Customer's site on which the Goods are situated is in the mainland United Kingdom, such inspection shall be undertaken by the Company on the Customer's site;
- 16.2. where the Customer's site on which the Goods are situated is outside the mainland United Kingdom (if in the Company's absolute discretion, the nature of the complaint so warrants) the Company may either send in its own representative or appoint an independent body to inspect the goods;
- 16.3. the Company and the Customer shall seek to agree on the nature and cause of any defect or damage giving rise to the complaint or claim and failing such agreement, the Company shall appoint an independent expert to investigate the complaint or claim, such expert to be the agent of the Company and all costs, fees and expenses of appointing such an expert shall be borne by the Customer; and
- 16.4. the Company shall bear the costs of re-delivery of the Goods if it is agreed or determined under sub-clause 16.3 above that the Company is responsible for the defect or damage complained of or claimed by the Customer.

#### 17. TERMINATION

- 17.1. Without prejudice to any of its other rights the Company shall, at its option, be entitled by notice to terminate the Contract immediately in whole or in part and demand payment of any amount due or accruing to the Company (whether under the Contract or otherwise), re-sell the Goods and/or withhold or cancel any deliveries and the Customer shall keep the Company indemnified on demand against all costs, demands, expenses and losses suffered by the Company including (but without limitation to) loss of profits or consequential loss if any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) occurs or is likely to occur:
- 17.1.1. (a) the Customer has a bankruptcy petition presented against it or a bankruptcy order is made; (b) the Customer makes or seeks to make any composition or arrangement with its creditors; (c) the Customer passes a resolution for its winding up or makes a proposal to its creditors for a voluntary arrangement or applies for any interim order (within the meaning of Section 268 Insolvency Act 1986); (d) an encumbrancer takes possession of any of the Customer's assets, or any of the Customer's property is taken in execution or process of law; (e) a petition is presented or an order is made or a resolution is passed for the winding-up of the Customer; (f) a petition is presented or an order is made for an administration order to be made in relation to the Customer; (g) the Customer's directors make a proposal for a voluntary arrangement with the Customer's creditors; (h) the Customer is unable to pay its debts (within

the meaning of Section 123 Insolvency Act 1986); or (i) a receiver or administrative receiver is appointed over any of the Customer's assets; or

- 17.1.2. the Customer fails to make any payment owed to the Company in accordance with clause 6 and for this purpose 'the Company' shall be deemed to include any other company which is a subsidiary of The Alumasc Group plc and 'the Customer' shall be deemed to include, where it is a member of a group of companies, any other company in that group; or
- 17.1.3. the Customer fails to make payment in advance when requested in accordance with clause 6.3 above within 7 (seven) days of being requested to do so; or
- 17.1.4. the Customer fails to take delivery of or to collect the Goods within 28 (twenty-eight) days of being notified by the Company that they are to be delivered or are ready to be collected; or
- 17.1.5. the Customer is in breach of the terms and conditions of any contract with the Company (including breach of these Terms and Conditions) and for this purpose 'the Company' shall be deemed to include any other company which is a subsidiary of The Alumasc Group plc and 'the Customer' shall be deemed to include, where it is a member of a group of companies, any other company in that group.

#### 18. FORCE MAJEURE

The Company shall be relieved of its obligations and shall not be liable for any failure or delay in, or from carrying out all or any of its obligations under the Contract arising from circumstances outside the Company's control including but not limited to acts of God, strikes, lockouts, trade disputes (including by and with the Company's own employees), or any other labour disturbance, fire, accident, war, riot, power failure, inadequate performance of, failure of or incorrect processing by computer systems, flood, or any Government interference or restriction, import or export regulations, or any other contingency beyond the Company's control causing stoppage, delays or shortages in the supply of labour, fuel, transport or materials, preventing or interfering with the manufacture or delivery of the Goods affecting the performance of a Contract, default of suppliers or subcontractors, or any other circumstances whatsoever outside the Company's control. Furthermore, upon the occurrence of such circumstance, the Company shall be entitled by written notice to determine or suspend the Contract without incurring liability for any loss, expense or damage resulting to the Customer or any other party.

#### 19. CONFIDENTIALITY

The Customer shall keep confidential and shall not use, without the prior written consent of the Company, all or any information supplied by the Company to the Customer or disclosed to or obtained by the Customer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Customer, or disclosure of the same is required by law or by any other governmental or other regulatory body.

#### 20. EXPORT SALES

- Notwithstanding any other clauses in the Contract, where Goods are sold for export outside the UK:
- 20.1. the Uniform Laws on International Sales Act 1967 shall not apply and the Company shall be under no obligation to give notice under Section 32(3) of the Sales of Goods Act 1979;
- 20.2. Section 26(3) of the Unfair Contract Terms Act 1977 shall apply and not withstanding clause 15.1.1 all liabilities for injury or death arising directly from the use of the Goods are expressly excluded;
- 20.3. unless otherwise agreed in writing by the Company the currency will be pounds sterling; and
- 20.4. the Customer 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 destination and for the payment of any duties or taxes on them.

#### 21. CANCELLATION/CHANGES

- 21.1. Order Acknowledgements may only be cancelled by the Customer with the prior written consent of a director of the Company. Cancellation and/or changes will not be accepted where the Goods have been made to the Customer's special order and if accepted by the directors of the Company, will only be made on terms that the Customer shall on demand, indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation and/or changes agreed.
- 21.2. In the event of cancellation by the Customer and/or changes agreed by the Company, the Customer will indemnify the Company on demand against all expenses, losses (including loss of profit), costs, damages and charges incurred (directly or indirectly) by the Company as a result of such cancellation or change.

#### 22. RETURNS

- 22.1. Save for returns due to defect in the Goods, Goods may only be returned by the Customer with the prior written consent of a director of the Company. If such return is accepted by a director of the Company:
- 22.1.1. a restocking charge of thirty per cent (30%) of the Price shall be applied by the Company; and
- 22.1.2. the Customer shall be liable for the costs of delivering the Goods back to the Company; and
- 22.1.3. the Goods must be in the same condition as when they were delivered to or collected by the Customer.
- 22.2. Save for returns due to defect in the Goods and subject to the Customer's statutory rights, any Goods which are made to order cannot be returned by the Customer.

#### 23. TIME AND INDULGENCE

The rights and remedies of the Company under or in connection with the Contract or by law may be waived only by express written notice. No failure or delay by the Company in exercising any right, power or privilege under the Contract shall operate as a waiver thereof or acceptance of any variation of the Contract nor shall any single or partial exercise by the Company of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

#### 24. ANTI-BRIBERY

- 24.1. The Customer shall not violate any Applicable Anti-Bribery Law.
- 24.2. The Customer has and shall at all times implement adequate procedures designed to prevent it or any Associated Person from engaging in any activity which would constitute an offence under the Bribery Act if it were carried out in the UK, or violate any Applicable Anti-Bribery Law.
- 24.3. The Customer represents that, in connection with the Contract, no financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by the Company or any third party) by or on behalf of the Customer or its Associated Persons, unless details of any such arrangement have been previously approved in writing by the Company.
- 24.4. Breach of any of the provisions in this clause 24 or of any Applicable Anti-Bribery Law is a material breach of the Contract and, without prejudice to any other right, relief or remedy, entitles the Company to terminate the Contract immediately.
- 24.5. The Customer shall promptly report to the Company in writing upon becoming aware that it or any of its Associated Persons relevant to the Contract (or to any agreement with the Company):
- 24.5.1. has committed an actual or suspected breach of this clause 24 or of any Applicable Anti-Bribery Law; or
- 24.5.2. is proposed for debarment or suspension from, or are ineligible for participation in, any government procurement programmes or contracts;
- 24.5.3. is the subject of any actual or threatened police, judicial or regulatory investigation or proceedings in relation to any suspected breach of any Applicable Anti-Bribery Law; or
- 24.5.4. has received any request or demand for any undue financial or other advantage in connection with the performance of the Contract.
- 24.6. The Customer shall keep detailed up to date books, accounts, and records that accurately reflect its transactions relating to the Contract, and the steps taken by it to comply with Applicable Anti-Bribery Law from the date of the Contract, and such books, accounts and records shall be retained for a period of not less than 6 (six) years after their creation.
- 24.7. The Customer shall from time to time, at the reasonable request of the Company:

- 24.7.1. confirm in writing that it has complied with its obligations under this clause 24 and must provide any information reasonably requested by the Company in support of such compliance;
- 24.7.2. permit the Company to have such access to its books, accounts, and records (and to take such copies thereof) as reasonably necessary in order to verify compliance with this clause 24, and to meet with those of its Associated Persons as are relevant to the Contract to audit such compliance, for up to 6 (six) years after termination or expiry of the Contract; and
- 24.7.3. permit the Company to appoint, and the Customer shall cooperate with, an independent accounting or auditing firm to carry out such audit as the Company reasonably requires in order to verify compliance with this clause 24 (including meeting with those of its Associated Persons as are relevant to the Contract), for up to 6 (six) years after termination or expiry of the Contract.
- 24.8. The Customer must give reasonable assistance and cooperation to the Company in relation to any police, judicial or regulatory investigation or enquiry in relation to any suspected bribery or corruption, whether during the term of the Contract or up to 6 (six) years after its termination.

#### 25. CONSUMER PROTECTION ACT 1987 (THE "ACT")

If the Customer incorporates Goods with or uses Goods ancillary to any composite or other products to be produced, manufactured, processed or supplied by the Customer then the Customer:

- 25.1. shall forthwith on demand provide the Company with copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said composite or other products (provided that such right of or actual inspection shall not constitute acceptance or approval by the Company of such instructions, information or warnings); and
- 25.2. shall indemnify the Company against all actions, claims, costs, demands, expenses and damages (including without limit for legal actions) of whatsoever nature suffered or incurred by the Company in the event that any claim or claims are made against the Company pursuant to the Act or otherwise relating to the said composite or other products of the Customer in circumstances in which the Goods were:
- 25.2.1. not the defective part of the said composite product;
- 25.2.2. rendered the defective part or became a defective product by reason of an act or omission of the Customer or by reason of instructions or warnings given by the Customer or other supplier of the said composite or other products; and
- 25.2.3. supplied in accordance with a specification and/or drawings furnished by or on behalf of the Customer; and
- 25.3. hereby acknowledges its duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by the Company with the Goods.

For the purposes of this clause 25 only, the word "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Act.

#### 26. SEVERABILITY

In the event that any part of the Contract or these Terms and Conditions shall be determined to be invalid, unlawful or unenforceable to any extent, such clause or provision shall be severed from the remaining clauses which shall continue to be valid and enforceable to the fullest extent permitted by law.

#### 27. ASSIGNMENT

- 27.1. The Customer shall not be entitled to assign nor transfer (nor purport to assign or transfer) its rights or obligations under the Contract (in whole or in part) to any other company or person, without the prior written consent of the Company.
- 27.2. The Company may assign, license or sub-contract all or any part of its rights or obligation under the Contract without the Customer's consent.

#### 28. NOTICES

- Any notice, consent, notification, acknowledgement, authority or agreement required or referred to in the Contract shall be:
- 28.1. in writing and given to the party for whom it is intended at the address stated in the Order Acknowledgement (unless otherwise notified in writing from time to time); and
- 28.2. given by special or recorded delivery post or telefax and shall be deemed to have been received 5 (five) days after posting or 1 (one) day after transmission as the case may be.

#### 29. JURISDICTION

The Contract, these Terms and Conditions and any dispute and/or any non-contractual obligations or disputes arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales to settle any dispute (including (without limitation) in relation to any non-contractual obligations).