

# BENCHMARK JOINERY (SOUTH EAST) LTD

## TERMS AND CONDITIONS

### 1. Interpretation

For the purposes of the Contract the terms listed below shall bear the respective meanings as ascribed thereto:

- (a) **'the Firm'** means Benchmark Joinery (South East) Limited, The Yard, Mascalls Pound Farm, Maidstone Road, Paddock Wood, Kent, TN12 6LT.
- (b) **'the Customer'** means the person, Firm, or company with whom the Contract is made.
- (c) **'the Contract'** means the Contract between the Firm and the Customer for the supply of Services and/or the sale of Goods of which these conditions form part.
- (d) **'the Service(s)'** means the service(s) agreed to be provided as described in the Firm's order acknowledgement.
- (e) **'the Goods'** means the Goods or any part thereof agreed to be sold as described in the Firm's Estimate.

### 2. General

All estimates given to all Contracts made by the Firm or its agents are subject to these Conditions and all terms and conditions referred to by the Customer or contained in any order receipt acceptance of quotation confirmation or otherwise brought to the notice of the Firm are hereby excluded. These conditions may be varied only by agreement in writing between the parties. The provision of the Service is conditional upon receipt by the Firm of its Acceptance of Estimate duly signed by or on behalf of the Customer.

### 3. Prices

**3.1.** The price of the Service and the Goods shall be shown on the Firm's estimate. Any additional worth beyond that shown on the Firm's estimate shall be charged at the Firm's hourly rate prevailing at the time of supply. The price is exclusive of VAT which shall be charged at the prevailing rate.

**3.2.** The Firm reserves the right, by giving notice to the Customer at any time before commencement of the service, to increase the price of the Goods to reflect any increase in the cost to the Firm, which is due to any factor beyond the control of the Firm, (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the cost of labour materials or other costs of manufacture), any change in delivery dates quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Firm adequate information or instructions.

### 4. Supply

**4.1.** Any dates quoted for the supply of the Service are approximate only and the Firm shall not be liable for any delay in supplying the Service howsoever caused. Time for commencement and the duration of the Service shall not be of the essence unless previously agreed by the Firm in writing. The Service may be commenced by the Firm in advance of the quoted supply date upon giving reasonable notice to the Customer.

**4.2.** If the Customer fails to permit the Firm to commence Contract at the stated time (otherwise then by reason of any cause beyond the Customer's reasonable control or by reason of the Firm's fault) then the Firm shall be entitled to immediate payment in full for the Service and on receipt of payment the Firm will endeavour to provide the Service and/or supply the Goods at or around the dates to be agreed by the parties.

### 5. Cancellations

No order which has been accepted by the Firm may be cancelled by the Customer except with the arrangement in writing of the Firm and on terms the Customer shall indemnify the Firm in full against all loss (including loss of profit) cost (including the cost of all labour and materials used), damages, charges and expenses incurred by the Firm as a result of cancellation.

### 6. Payment

**6.1.** Where a Customer is a non-account Customer of the Firm, a deposit of 50% of the estimate price plus VAT thereon for each order shall be payable by the Customer at the time of placing the order (provided the Firm accepts such order) and the balance of the price shall be invoiced for payment on delivery/collection.

**6.2.** Payment is to be made on delivery/collection. Where Goods are not delivered nor collected, payment is due within 7 days of the invoice date.

**6.3.** Where the Customer is an account Customer of the Firm, payment is to be made within 30 days of the end of the month in which the supply of the Service commenced or delivery of the Goods was made.

**6.4.** If any payment that is due hereunder by the Customer to the Firm is overdue, interest will be chargeable thereon as well after as before judgement on a day to day basis at the rate of 15% per annum from the day any sum becomes overdue, until the sum due is paid in full with interest and the Customer agrees to indemnify the Firm, on an indemnity basis, in respect of all legal costs and expenses incurred by the Firm in seeking to obtain payment in full for the Goods and/or Services.

**6.5.** Payment shall be of the essence and failure to make any payment to the Firm on the due date shall entitle the Firm at its option to treat the Contract as repudiated and act accordingly without prejudice to the foregoing failure by the Customer to pay any sum hereunder on the date applicable thereto shall (without prejudice to any other remedies the Firm may have) entitle the Firm and its opinion to cancel the provision of any further Services whether under this or any other Contract.

### 7. Risk and Title

**7.1.** Risk in the Goods shall pass to the Customer at the time the Goods are delivered to the Customer in accordance with the Contract.

**7.2.** Not with standing 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 Customer until the Firm has received either in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to sold by the Firm to the Customer for which payment is then due.

**7.3.** Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Firm's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and property stored, protected and insured and identified as the Firm's property. Until that time the Customer shall be entitled to re-sell or use the Goods in the ordinary course of its business, but shall account to the Firm 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 monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

**7.4.** Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been re-sold) the Firm shall be entitled at any time to require the Customer to deliver upon the Goods to the Firm and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

### 8. Warranty

**8.1.** Subject to the conditions set out below the Firm warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of their initial use or 3 months from delivery or 3 months from commencement of the Service, whichever is the first to expire.

**8.2.** The above warranty is given by the Firm subject to the following conditions:

**8.2.1.** The Firm shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

**8.2.2.** The Firm shall be under no liability in respect of any defect arising from wear and tear wilful damage, negligence, abnormal working conditions, failure to follow the Firm's instructions (whether oral or in writing), misuse or alteration or the repair of the Goods without the Firm's approval;

**8.2.3.** The Firm 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 the Service has not been paid by the due date for payment;

**8.2.4.** The above warranty does not extend to parts, materials, or equipment not manufactured by the Firm, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Firm.

**8.2.5.** The above warranty does not extend to colour matching of wood which is a natural product and subject to colour variation.

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

**8.5.** Any claim by the Customer, which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification, shall, (whether or not delivery is refused by the Customer), be notified to the Firm within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Customer does not notify the Firm accordingly, the Customer shall not be entitled to reject the Goods and the Firm shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

**8.6.** If the Goods and/or Service are not in accordance with the Contract for any reason, the Customer's sole remedy shall be limited to the Firm making good any shortage by replacing such Goods or re-performing such Service, or if the Firm shall elect, by refunding a proportionate part of the price of the Goods or Service.

**8.7.** Except in respect of death or personal injury caused by the Firm's negligence, the Firm shall not be liable to the Customer by reason of any representation or any implied warranty, condition other term or any duty of 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 the Firm it's employees or agents or otherwise), which arise out of or in connection with the supply of the Goods or their use or re-sale by the Customer, except as expressly provided in these Conditions.

**8.8.** The Firm shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Firm's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the reasonable control without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Firm's control;

**8.8.1.** Act of God, explosion, flood, tempest, fire or accident;

**8.8.2.** War or threat of war, sabotage, insurrection, civil disturbance or requisition;

**8.8.3.** Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority;

**8.8.4.** Import or export regulations or embargoes;

**8.8.5.** Strikes, lock-outs or other industrial actions or trade disputes whether involving employees of either the Firm or the Customer or a third party;

**8.8.6.** Difficulties in obtaining raw materials, labour, fuel, parts of machinery;

**8.8.7.** Power failure or breakdown of machinery.

### 9. Insolvency of Customer

**9.1.** This clause applies if:

**9.1.1.** The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or, (being an individual or firm), becomes bankrupt or, (being a company), goes into liquidation, (otherwise than for the purposes of amalgamation or reconstruction); or

**9.1.2.** Any encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer, or;

**9.1.3.** The Customer ceases, or threatens to cease to carry on business; or

**9.1.4.** The Firm reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer.

**9.2.** If this clause applies, then without prejudice to any other right or remedy available to the Firm, the Firm shall be entitled to cancel the Contract or suspend any further provision of Services under the Contract without any liability to the Firm and if the Service has been provided or provided in part but not paid for the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

### 10. Liability

The Firm shall have no liability to the Customer for any consequential loss of the Customer arising out of or in connection with the provision of any Services pursuant to this Contract, (except in respect of death or personal injury resulting from negligence), and the total liability of the Firm for any other loss of the Customer so arising in respect of any one event or series of connected events shall not exceed the price paid by the Customer for the Service under this Contract.

### 11. Customer's Obligations

**11.1.** The Customer shall ensure that the Firm's representatives have full and free access to the premises in respect of which the Service is to be provided to enable the Firm by its agents or employees to perform its duties.

**11.2.** The Customer shall take all such steps as may be necessary to ensure the safety of any of the Firm's representatives who visit any premises of the Customer.

**11.3.** The Customer shall be responsible for and indemnify the Firm against loss or damage and claims made upon it for which it may be or become liable in respect of any injury to persons or damage to property arising from non-compliance with any of the terms hereof by the Customer unless the Customer proves that the loss damage or injury is due to the wilful misconduct of the Firm it's employees or agents.

### 12. Miscellaneous

**12.1.** Any notice required or permitted to be given by either party 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.

**12.2.** No waiver by the Firm of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**12.3.** 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 provisions in question shall not be affected thereby.

**12.4.** Any dispute arising under or in connection with these Conditions or the provision of Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the Managing Director of Benchmark Joinery (South East) Limited.

**12.5.** The Contract shall be governed under English Law.