

CONDITIONS OF CONTRACT

1. GENERAL

“The Company” referred to in the following conditions means Rack-Storage (UK) Limited and “The Purchaser” means this person, firm or company contracting with Rack Storage (UK) Limited

- (i) The quotations are made and all orders are accepted subject to the following conditions. All other conditions contained in any order or otherwise are excluded from the contract or any variation thereof unless expressly accepted by the Company in writing
- (ii) In these conditions the expression “Goods” shall mean plant, materials, equipment or any part or parts thereof supplied by the Company and this expression “Services” shall mean all works of design, repair or supervisory services and work of erection on site and any other act to be performed by the Company
- (iii) Quotations are not offers and no contract is deemed to come into existence unless and until the Purchaser’s order to carry out the services or supply this material specified in a quotation is accepted by the Company in writing.

2..SITE SURVEYS

- (i) All quotations may be subject to a site survey being made by the Company’s technical staff to verify the information given by the Purchaser
- (ii) The Company reserves the right to amend the design subject to the site survey
- (iii) The Company accepts no responsibility to ensure that the Purchaser’s premises are adequate to withstand the loads imposed, and the Purchaser is deemed to warrant that all floors, foundations, walls roofs, partitions, joists, beams and any other parts of the site and buildings are in such a strong and fit condition that the work can be carried out safely and are suitable for the Company’s materials and services and for carrying the loads distributed.

3. VALIDITY

This quotation is valid for a period of 60 days from the date herein, unless expressly stated to be valid for longer, and thereafter will be subject to confirmation before acceptance of an order

4. TERMS OF PAYMENT

- (i) Unless otherwise agreed terms of payment by the Purchaser shall be
- (a) On all contracts for the supply of Goods or Services cash payable within 30 days from the end of the month of invoicing
- (b) When Goods and/or Services are supplied against a contract over a period extending beyond the calendar month during which supply commences the Company reserves the right to call for payments by instalments comprising interim progress payments and a final payment in accordance with Schedules previously agreed with the Purchaser. When it is agreed that Interim and final payments are to be conditional on the issue of the Architects Certificate, payments shall be made within 21 days of the date of any such Certificate
- (c) The Purchases shall be deemed to have taken over the goods on this date of practical completion and minor defects that do not affect their use for the purpose for which they are intended shall not delay the terms of payment
- (ii) The time for payment shall be of the essence of the contract and the Company shall be entitled to charge interest at the rate of 1% above Bank of England minimum lending rate on all overdue accounts and in addition may postpone the fulfilment of it’s own obligations and suspend work until such overdue payment is made
- (iii) No dispute arising as to quality or performance of the Goods or Services or defects or omissions shall entitle the Purchaser to delay payment unless the Company shall agree liability thereon in an agreed sum or shall have been found liable by a court of competent jurisdiction

5. PRICES

- (i) All prices are NET unless otherwise stated
- (ii) All prices quoted for Goods or Services are subject to fluctuation in the cost of labour, materials, transport, overheads, currency exchange rates, taxation, Government Orders and Regulations whether new or existing, and any increase in such costs after the date of Quotation and up to the date of delivery will be added to the contract price
- (iii) The Company reserves the right to make an additional charge in respect of variations requested by the Purchaser to the terms and specifications of the contract or for work to be carried out other than during normal working hours
- (iv) The Purchaser shall not be entitled to any claim in respect of any repairs or alterations undertaken by the Purchaser without the written consent of the Company

6. TITLE AND RISK

- (i) Title shall pass to the Purchaser when payment in full shall have been made to the Company
- (ii) Risk shall pass to the Purchaser on delivery save that where goods are to be installed by the Company they will be unloaded, stacked and stored on the site at the risk of the Purchaser

7. DELIVERY AND DELAY

- (i) Time for delivery and performance is given in good faith as accurately as possible but is not to be of the essence of the contract. The Purchaser shall have no right to damages or to impose Penalties or to cancel the order for delay from any cause unless agreed by the Company in Writing
- (ii) Time for delivery and performance shall in every case be conditional upon receipt of final instructions being obtained from the Purchaser within seven days of the date of the purchaser's written order and all necessary approvals by the Purchaser being obtained for/with upon request
- (iii) The Purchaser shall notify the Company in writing of all necessary forwarding instructions within seven days of notification that the Goods are ready for despatch. In the event of delay by the Purchaser in giving forwarding instructions the Purchaser shall pay all costs and expenses including a charge for storage occasioned thereby and the Company shall be entitled to arrange transport and storage at the Purchasers expense and risk
- (iv) Dates quoted for delivery of orders not requiring installation by the Company refer to dates upon which the Goods are ready for despatch but dates quoted for delivery of orders requiring installation refer to dates on which the Goods will arrive on site
- (v) Unless otherwise specified delivery shall be made of all Goods to the nearest convenient unloading points (either road or rail) to the Purchasers works or appropriate site and the Purchaser shall be responsible to notify the Company of any restrictions to access such as weight, height or loading hours for unloading vehicles or containers and transportation to the Site of erection. The Company shall have the sole right to determine the relevant unloading point.
- (vi) If deliveries are required over an extending period each consignment shall be considered as a separate transaction and invoiced separately

8. DAMAGE IN TRANSIT, NON-RECEIPT, RETURNED GOODS

- (i) All goods and materials shall be examined by the Purchaser on delivery. The Company shall not be liable for claims in respect of shortage or damage in transit unless the Carrier and the Company is notified in writing within three days of delivery or in the case of non-delivery notice in writing is given in respect thereof within seven days of the date of notice of despatch of the Goods from the Works of this Company or its subcontractors. In the absence of written notice the Goods will be deemed to have been received in the correct quantity and free from Defects which would have been apparent on inspection.
- (ii) Credit for shortage or damage will only be allowed when the Company's conditions in the preceding sub clause are met

9. CANCELLATION

Cancellation will only be accepted by the Company on condition that the costs and expenses and the loss of profits and other loss or damage sustained by the Company (as to which in the absence of agreement between the Parties the Certificate of the Auditor of the Company shall be conclusive) will be reimbursed by the Purchaser to the Company forthwith

10. INSTALLATION

- (i) When work on site is undertaken the Purchaser shall provide:
 - (a) A clear and level site with sufficient space adjacent for the placing of material and shall supply necessary foundations and temporary cover over the site to protect the Goods and Construction work effectively from the elements
 - (b) Water, light, compressed air, power, lifting tackle and fork lift truck with driver necessary in connection with the erection and shall undertake all filling in or making good of floors, roofs, provision of cover plates over inspection pits and any other civil engineering work, including removal of rubbish
 - (c) A satisfactory and continuous means of access to the site free from all obstructions together with off loading facilities and parking facilities for vehicles of the Company, its employees and agents
 - (d) Health and welfare facilities may be required by Law under the regulations current from time to time for employees of the Company while they are engaged at the site in the performance of

- the contract
- (e) All service connections, permanent and temporary for fuel, electricity, air water and drains, both to main plant and auxiliary equipment shall be the responsibility of the Purchaser
 - (ii) The Purchaser shall indemnify the Company in respect of all claims made or proceedings taken against the Company by any third party including, but not limited to employees of the Company, the Purchaser's employees or the employees of any contractor employed by the Purchaser or the personal representatives or dependents of any such employees or other third parties in respect of personal injury or damage to property (including damage as a result of fire or explosion) caused by or arising out of the Goods and Services in any manner whatsoever, except where it is proven that the Company or its employees have been negligent
 - (iii) All persons provided by the Purchaser to assist the Company shall in all respects remain employees of the Purchaser
 - (iv) The Purchaser shall ensure that the Company's employees are able to carry out their work with continuity and without hindrance and any expense incurred by the Company as a result of the Purchaser's failure to so ensure will be charged extra
 - (v) The Company shall be entitled to appoint one or more sub contractors to carry out all or any of its obligations
 - (vi) Where contractors other than those employed by the Company are involved their programmes will be arranged by the Purchaser to permit the Company's work to be carried out with continuity and with one visit to the site. Should the Company be subject to delays or required to make a return visit to the site additional Costs will be chargeable to the Purchaser
 - (vii) On completion of the contract all surplus materials supplied by the Company shall unless otherwise agreed, remain the property of and be removed from the site by the Company. Until such material is removed the Purchaser shall take reasonable precautions for the safe custody of such surplus materials
 - (viii) The Company cannot give any underwriting that its employees employed by it's sub contractors will be Members of a Trade Union

11. RECTIFICATION

Except in accordance with Condition 15 or otherwise agreed in writing the Company shall not be liable for the cost of rectifying Goods or Services

12. LIABILITY

- (i) The Purchaser agrees that apart from 4 the express terms of the Quotation by the Company or in any other document expressly stipulated therein to form part of the contract and to be outside the provisions of this condition no statement or representation has been made by the Company relating to the performance or efficiency or other characteristics of the Goods or Services supplied or performed or if any such statement or representation has been made the Purchaser warrants that he understood them to be statements of opinion only and that he did not rely on them
- (ii) Save as provided by Condition 15 hereof the Company shall not be liable in contract, tort or otherwise for any direct or indirect costs, damages or expenses relating to damage to property or injury or loss to any person, firm or company or for any loss of profit or production arising out of or occasioned by any error in design or drawings or any defect in or failure of the Goods or Services supplied by the Company or occasioned by reason of any act or omission in its performance of any contract whether or manufacture, supply, design, repair, site supervisory service otherwise whatsoever

13. DESCRIPTION, DRAWINGS, DATA, CONFIDENTIAL INFORMATION

- (i) The Company reserves the right to change and improve the design of some or all of the component parts included in this quotation and thereafter supplied accordingly
- (ii) All drawings, documents and other information supplied by the Company are supplied on the express condition that the Purchaser will not without the written consent of the Company:
 - (a) Give away, lend, exhibit or sell any such drawings or extracts therefrom or copies thereof
 - (b) Use them in any way except for the purpose of installing or operating the Goods for which they are issued
- (iii) All illustrations, weights, measures, temperatures, capacities and performance schedules contained in the Company's printed brochures and sales literature form no part of the contract. The Purchaser shall be responsible for the accuracy of all information and drawings supplied by it and the Company shall not be under any responsibility to check the accuracy thereof. Copyright in respect of all drawings and other documents prepared by the Company shall vest in and remain the property of the Company

14. TRADE MARKS, PATENTS, COPYRIGHT

Where the Goods or Services consist of any article to be manufactured, altered or worked upon by the Company in accordance with the design, specification or instructions of the Purchaser, the Purchaser warrants that any such article shall not in any way infringe any letters, patent, copyright or any other protection subsisting in favour of third parties and agrees to indemnify the Company against all actions, claims and demands, including any costs and expenses incurred by the Company in the letters, patent, copyright or other protection in respect of Goods or Services designed and supplied by the Company, the Purchaser shall inform the Company immediately. Thereupon the Company shall be at liberty at its absolute discretion to conduct all negotiations for the settlement of any such claim or any litigation or proceedings which may arise therefrom

15. GUARANTEE

The Company agrees to replace or repair at its option Goods supplied by it and proved of its satisfaction to be faulty (fair wear and tear or damage due to misuse or improper operation excepted) provided that such fault is notified in writing to the Company within six months from date of despatch from the Company's works or those of its subcontractors of such faulty goods or replacement part or parts, as the case may be. Any replacement shall include free delivery to the Purchaser's works. This guarantee is given in lieu of the implied conditions contained in sections 13, 14 and 15 of the Sale of Goods Act 1893 and any other condition or warranty implied by trade custom usage or Common Law. The Purchaser hereby acknowledges:

- i) goods that are purchased in a competitive market and that the bargaining strength of the Company was in no way a relevant factor in the purchase of Goods from this Company
- ii) that the Purchaser purchased the Goods in the course of business and not for private use
- iii) that the Purchaser knows the extent and meaning of this clause and the limitations thereby imposed by it upon sections 13, 14 and 15 of the Sale of Goods Act 1893

16. FORCE MAJEURE

The Company shall be under no liability for any delay, loss or damage caused wholly or in part by Act of God, government restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves the Company's servants or not or, by reason of any other act, matter or thing beyond the reasonable control of the Company

17. WRITTEN TRADE REFERENCES

The Purchaser shall if required by the Company, provide three satisfactory written trade references

18. PLANNING PERMISSION, LICENSES, REGULATIONS, BYE-LAWS

- (i) No responsibility is accepted by the Company for failure to comply with any statutory or other regulation of local bye-law affecting the siting, use operation or construction of the Goods. All consents and approvals required shall be obtained by the Purchaser
- (ii) All fees or charges made by Local Authorities in connection with regulations or the passing of plans will be payable by the Purchaser

19. LAW AND JURISDICTION

The contract shall be governed and construed in all respects in accordance with the Laws of England and shall be subject only to the jurisdiction of the English Courts

20. RIGHT OF SET-OFF AND COUNTER CLAIMS

No right of set-off shall exist in respect of any claims by the Purchaser against the Company unless such claims are agreed by the Company in writing and the Purchaser shall not withhold all or any part of any payment which has become due to the Company for work done

21. ASSIGNMENT BY THE PURCHASER

The Purchaser shall not make any composition or arrangement with or assignment by the benefit of his creditors in respect of the Company's Goods or Services without the Company's agreement in writing