



Gilcrest Manufacturing

TERMS & CONDITIONS OF BUSINESS

Of

GILCREST MANUFACTURING LIMITED– SUPPLY ONLY

GENERAL

1.1

In these conditions:

‘GILCREST MANUFACTURING’ means Gilcrest Manufacturing Limited, Portview Road, Avonmouth, Bristol, BS11 9LQ (registered in England under number 4401860).

‘BUYER’ means the person, firm or company who accepts a quotation from Gilcrest Manufacturing for the sale of Goods (as next defined) or whose order for the Goods is accepted by Gilcrest Manufacturing.

‘GOODS’ means manufactured building products, building systems or ancillaries (including any instalment of the Goods or any parts for them) which Gilcrest Manufacturing is to supply in accordance with these Conditions (as next defined)

‘CONDITIONS’ means the terms and conditions of sale of Gilcrest Manufacturing set out in this document and includes any special terms and conditions agreed in Writing (as defined below) between the buyer and Gilcrest Manufacturing.

‘CONTRACT’ means the contract for the purchase and sale of the Goods.

‘WRITING’ includes telex, cable, facsimile transmission, electronic mail and post and any other comparable means of communication.

1.2

Any reference in the Conditions to any provision of a statute shall be constructed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3

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

1.4

These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the buyer with reference to the

Goods and shall not be affected by any previous dealings between the Seller and the Buyer.

SALE BASIS

2.1

No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Gilcrest Manufacturing.

2.2

Gilcrest Manufacturing employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Gilcrest Manufacturing in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations, which are not so confirmed.

2.3

Any typographical, clerical or other error omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Gilcrest Manufacturing shall be subject to correction without any liability on the part of Gilcrest Manufacturing.

2.4

Any advice or recommendation given by Gilcrest Manufacturing or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Gilcrest Manufacturing is followed or acted upon entirely at the Buyer's own risk, and accordingly Gilcrest Manufacturing shall not be liable for any such advice or recommendation which is not confirmed.

2.5

Gilcrest Manufacturing (without prejudice to its other rights) in its absolute direction suspend or terminate the supply of any Goods, if the Buyer breaches their terms and conditions of the Contract or becomes insolvent or if a trustee in bankruptcy, receiver, liquidator, administrative receiver is appointed over all or any of its assets or it enters into a voluntary arrangement with its creditors or if Gilcrest Manufacturing reasonably believes that any of the said events may occur.

SPECIFICATIONS

3.1

The specification and design of the Goods (including the copyright, design right or other intellectual property in them) shall be the property of Gilcrest Manufacturing. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of Gilcrest Manufacturing then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of goods shall not infringe any of the rights of any third party.

3.2

Gilcrest Manufacturing reserve the right to make any changes in the specification of the Goods without notice to the Buyer which are required to conform with any

applicable safety or other statutory or EU requirements or, where the Goods are to be supplied to Gilcrest Manufacturing specification, which do not materially affect their quality or performance.

3.3

No order which has been accepted by Gilcrest Manufacturing may be cancelled by the Buyer except with the agreement in Writing of Gilcrest Manufacturing and on the terms that the Buyer shall indemnify Gilcrest Manufacturing in full against all loss (including loss of profit), costs (including the cost of all labour and materials used or pre-ordered), damages, charges and expenses incurred by Gilcrest Manufacturing as a result of cancellation.

3.4

These terms and conditions shall take precedence over the clients terms and conditions of business unless expressly agreed to the contrary by Gilcrest Manufacturing and confirmed to the client in writing signed by the appropriate employee of Gilcrest Manufacturing

3.5

If the Goods are to be manufactured or any process is to be applied to the Goods by Gilcrest Manufacturing in accordance with a specification submitted by the Buyer the Buyer shall indemnify Gilcrest Manufacturing against all losses, damages, costs and expenses awarded against or incurred by Gilcrest Manufacturing in connection with or paid by Gilcrest Manufacturing in settlement of any claim for the Goods being unsuitable for its intended use due to the specification submitted by the Buyer and/or infringement of any industrial or intellectual property rights of any other person which results from Gilcrest Manufacturing use of the Buyers specification.

PRICE & PAYMENT

4.1

The price of the Goods shall be Gilcrest Manufacturing quoted price at the date of acceptance of the order. Where the Goods are supplied for export, by pre-arranged letter of credit, from the United Kingdom, Gilcrest Manufacturing published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Gilcrest Manufacturing without giving notice to the Buyer.

4.2

Gilcrest Manufacturing reserve the right, by giving notice to the Buyer at any time before delivery, to increase the price of Goods to reflect any increase in the cost to Gilcrest Manufacturing which is due to any factor beyond the control of Gilcrest Manufacturing, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Gilcrest Manufacturing without giving notice to the Buyer.

4.3

Except as otherwise stated under the terms of any quotation or in any price list of Gilcrest Manufacturing, and unless otherwise agreed in Writing between the Buyer and Gilcrest Manufacturing, all prices are given by Gilcrest Manufacturing

on an ex-works basis, and where Gilcrest Manufacturing agrees to deliver the Goods otherwise than at Gilcrest Manufacturing premises, the Buyer shall be liable to pay Gilcrest Manufacturing charges for transport, packaging and insurance.

4.4

The price of the Goods is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to Gilcrest Manufacturing.

4.5

The cost of any pallets or returnable containers or ancillaries will be charged to the Buyer in addition to the price of the Goods, if they are required to ensure safe delivery of the Goods.

4.6

To refuse to make or suspend delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery.

4.7

Gilcrest Manufacturing expects full payment prior to delivery of products, unless specifically agreed in writing by Gilcrest Manufacturing prior to manufacture.

4.8 Gilcrest Manufacturing reserves the right to charge interest on all overdue debts. Gilcrest Manufacturing will add all costs of collection to overdue debts incurred, including but not restricted to solicitors costs incurred, any court costs incurred and statutory interest.

DESCRIPTION, SAMPLES & CANCELLATION

5.1

The contract is not a contract or sale of goods by description and all drawings descriptive matter, specifications and advertising howsoever issued by Gilcrest Manufacturing for the sole purpose of giving an approximate idea of the Goods described to them. They shall not form part of the contract.

5.2

Any sample of the Goods is exhibited and inspected solely to enable the Buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample.

RISK & DELIVERY

6.1

The Goods shall be delivered to the Buyers premises (or elsewhere as agreed by Gilcrest Manufacturing in writing) and Gilcrest Manufacturing shall arrange for carriage of the Goods to such place of delivery and the carrier shall be deemed to be the Buyers agent. Risk in the Goods will pass to the Buyer on the Goods leaving Gilcrest Manufacturing premises or, if the Buyer wrongfully fails to take delivery, at the time when Gilcrest Manufacturing has tendered delivery.

6.2

If Gilcrest Manufacturing agrees in writing the goods may be delivered by Gilcrest Manufacturing making the Goods available to the Buyer or any agent of the Buyer at Gilcrest Manufacturing premises and in such case risk in the Goods will pass on removal of the Goods from Gilcrest Manufacturing premises.

6.3

Gilcrest Manufacturing has the right to deliver the Goods by instalments in any sequence. Any default or failure by Gilcrest Manufacturing in respect of one or more instalments will not vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.

6.4

Any dates quoted by Gilcrest Manufacturing for the delivery of the Goods are approximate only and do not form part of the Contract and the Buyer will have to regard to quoted delivery dates and Gilcrest Manufacturing shall have no liability for loss, expenses, charges or damages of whatever nature incurred by the Buyer if the approximate dates are not met. Time of delivery shall not be of the essence. The Goods may be delivered by Gilcrest Manufacturing in advance of any quoted delivery date upon giving reasonable notice to the Buyer.

6.5

If the Buyer fails to take delivery of the Goods (for any part, of them) on the due date for whatever reason (including without limit inadequate access or an inappropriate area to receive the Goods) or to provide any instructions documents licenses or authorisation required to enable the Goods to be delivered on the due date Gilcrest Manufacturing shall be enlisted to its option (and without prejudice to its order rights) upon given written notice to the Buyer.

6.5.1

To store (or arrange for storage of) the Goods and upon each written notice delivery will be deemed to have taken place, risk in Goods will pass to the Buyer and the Buyer will pay to Gilcrest Manufacturing on demand all costs and expenses (including but not limited to storage and insurance charges) arising from the failure and any additional costs and expenses of whatever nature incurred by Gilcrest Manufacturing in rearranging and making delivery of the Goods or:

6.5.2

To sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

6.6

Any claim that any Goods have been delivered to a damaged state (where the damage is obvious from physical inspection of the Goods at the date of delivery) must be marked by the Buyer on the delivery note at the time of delivery of the Goods, be notified by the Buyer verbally to Gilcrest Manufacturing within 24 hours of delivery of the Goods.

6.7

Any claim that any Goods have been delivered in a damaged state (where the damage is not obvious from physical inspection of the Goods at the delivery but

become obvious thereafter) must be notified by the Buyer verbally to Gilcrest Manufacturing within 24 hours of the alleged delivery of the Goods. If panels are accepted and installed, the user is deemed to have accepted the goods under a supply only contract and no subsequent claims will be accepted unless Gilcrest Manufacturing have agreed in writing beforehand.

6.8

Any claim that any Goods have not been delivered must be marked by the Buyer on the delivery note at the alleged time of the delivery of the Goods and be notified by the Buyer verbally to Gilcrest Manufacturing within 24 hours of the alleged delivery of the Goods.

6.9

Any claim under conditions 6.6, 6.7 or 6.8 must be confirmed by the Buyer in writing to Gilcrest Manufacturing within 7 days of delivery, verbal notification or alleged delivery of the goods respectively. Each notification of a claim must give full details of the damage or non-delivery as appropriate.

6.10

The Buyer must afford Gilcrest Manufacturing or anyone nominated by Gilcrest Manufacturing (including without limit the carrier of the Goods) reasonable opportunity and facility to investigate any claims made by the Buyer regarding the damage or non delivery under conditions 6.6, 6.7 and 6.8 and if requested by Gilcrest Manufacturing shall promptly return any Goods, complete with a collection note signed by the transport representative, which are the subject of a claim (together with any packaging) securely packaged and carriage paid to Gilcrest Manufacturing for examination.

6.11

If the Buyer proves to Gilcrest Manufacturing reasonable satisfaction that Goods have been delivered damaged or not delivered then Gilcrest Manufacturing will at its option within a reasonable period replace the Goods or give credit for their invoice value or repair damaged Goods provided always that Gilcrest Manufacturing shall have no liability for any damage caused by the Buyer or the carrier in taking delivery of the Goods or for any damage which may have occurred due to a matter referred to in the condition 7.6.4.

PROPERTY, WARRANTIES & LIABILITY

7.1

The Buyer shall not be entitled to withhold payment of any amount payable under the Contract to Gilcrest Manufacturing because of any disputed claim the Buyer in respect of defective Goods or any other breach of the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to Gilcrest Manufacturing any monies which are not then presently payable by Gilcrest Manufacturing for which Gilcrest Manufacturing disputes liability.

7.2

Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) Gilcrest Manufacturing shall be entitled at any time to require the Buyer to deliver up the Goods to Gilcrest Manufacturing and enter upon any premises of the Buyer or any third party where the Goods are stored to repossess the Goods.

7.3

Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Gilcrest Manufacturing agent and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Gilcrest Manufacturing property. The Buyer shall still be entitled to sell or use the Goods in the ordinary course of its business but shall immediately account to Gilcrest Manufacturing for the proceeds of sale of the Goods, including any insurance proceeds.

7.4

Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until Gilcrest Manufacturing has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by Gilcrest Manufacturing to the Buyer for which payment is then due.

7.5

Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Gilcrest Manufacturing has tendered delivery of the Goods.

7.6

Subject to the conditions set out below Gilcrest Manufacturing warrants that at the time of delivery the Goods will correspond with their specification and will be free from defects in material workmanship for a period of six months from the date of their initial use or six months from delivery, whichever is the first to expire. Subject to the following conditions:

7.6.1

Gilcrest Manufacturing shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification by the Buyer.

7.6.2

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

7.6.3

The Buyer must afford Gilcrest Manufacturing reasonable opportunity and facility to investigate any alleged breach of warranty and if requested in writing by Gilcrest Manufacturing must promptly return any Goods which are

the subject of the alleged breach (together with packaging) securely packed and carriage paid to Gilcrest Manufacturing for inspection: and

7.6.4

Gilcrest Manufacturing shall be under no liability in respect of any defect or damage arising from fair wear & tear, wilful damage, negligence, abnormal working conditions, failure to follow Gilcrest Manufacturing instructions (whether oral or in writing), mishandling of the Goods, misuse or alteration or repair of the Goods without Gilcrest Manufacturing prior approval, incorrect installation or erection of the Goods and any defect originating from any design or specification by the Buyer: and

7.6.5

The above warranty does not extend to parts, materials or equipment not manufactured by Gilcrest Manufacturing, in respect of which the Buyer shall be entitled (where the terms of such warranty or guarantee permit this) to the benefit of any such warranty or guarantee as is given by the manufacturer to Gilcrest Manufacturing: and

7.6.6

Gilcrest Manufacturing shall be under no liability under the above warranty if the Buyer makes further use of such Goods after giving notice: and

7.6.7

The above warranty does not extend to any damage or loss caused by transit.

7.6.8

Where any valid claim in respect of any of the Goods which is based on any defect in quality or condition of the Goods or their failure to meet specification is notified to Gilcrest Manufacturing in accordance with these Conditions, Gilcrest Manufacturing shall be entitled to replace the Goods (or the part in question) or at Gilcrest Manufacturing sole discretion, to refund to the Buyer the price of the Goods (or a proportionate part of the price) to a maximum of the original contract value. Gilcrest Manufacturing shall have no further liability to the Buyer. Gilcrest Manufacturing will not accept consequential loss claims under any circumstances. Nor consider any claims for any liability to third parties.

7.6.9

Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification, shall be notified to Gilcrest Manufacturing within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify Gilcrest Manufacturing accordingly, the Buyer shall not be entitled to reject the Goods and Gilcrest Manufacturing shall have no liability for such defect or failure and the Buyer bound to pay the price as if the Goods had been delivered in accordance of the Contract.

7.6.10

Gilcrest Manufacturing shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to

perform, any of Gilcrest Manufacturing obligations in relation to the Goods. If the delay or failure was due to any cause beyond Gilcrest Manufacturing reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Gilcrest Manufacturing reasonable control:

7.6.10.1

Act of God, explosion, flood, tempest, fire or accident;

7.6.10.2

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

7.6.10.3

Acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.

7.6.10.4

Import or export regulations or embargoes;

7.6.10.5

Strikes, lockouts or other industrial actions or trade disputes (whether involving employees of Gilcrest Manufacturing or a third party);

7.6.10.6

Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

7.6.10.7

Power failure or breakdown in machinery

7.7 Gilcrest Manufacturing, under no circumstances, accept any form of consequential loss.

INSOLVENCY OF BUYER

8.1

This clause applies if:

8.1.1

The Buyer 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 amalgamation or reconstruction); or

8.1.2

An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

8.1.3

The Buyer ceases, or threatens to cease, to carry on business; or

8.1.4

Gilcrest Manufacturing reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

8.2

If this clause applies then Gilcrest Manufacturing shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due any payable notwithstanding any previous agreement or arrangement to the contrary.

EXPORT TERMS

9.1

In these conditions 'incoterms' means the International Rules for the interpretation of Trade Terms of The International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Intercoms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Intercoms and the Conditions, the latter shall prevail.

9.2

Where the Goods are supplied for export from the United Kingdom the provisions of his clause 9 shall (subject to any special terms agreed in Writing between the Buyer and Gilcrest Manufacturing) apply notwithstanding any other provision of these Conditions.

9.3

The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and the exportation from the country of manufacture and for the payment of any duties there on.

9.4

The Buyer shall be entitled to attend the testing and inspection of the Goods by Gilcrest Manufacturing and Gilcrest Manufacturing premises before transportation. Gilcrest Manufacturing shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

9.5

Payment of all amounts due to Gilcrest Manufacturing shall be made by irrevocable letter of credit opened by the Buyer in favour of Gilcrest

Manufacturing and confirmed by a bank in the United Kingdom acceptable to Gilcrest Manufacturing.

9.6

This agreement constitutes the entire agreement between the parties's and replaces any previous agreement.

9.7

These Conditions and each and every Sale of goods made pursuant thereto shall be governed by the laws of England and Wales and the Client and the Buyer agree to submit to the non-exclusive jurisdiction of the English Courts.