

1 DEFINITIONS AND INTERPRETATION

In these conditions, unless the context requires otherwise:

- 1.1 'Buyer' means the person or persons who notify the Seller of their acceptance without any amendment or modification of an offer by the Seller to supply Goods as set out on the Suppliers Proposal Form within seven days of the date on that Proposal Form ;
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing between the parties;
- 1.3 'Contract' means any contract between the Buyer and the Seller for the purchase of Goods;
- 1.4 'Delivery Date' means the date specified in the Proposal Form or otherwise agreed between the Seller and the Buyer on which the Goods are to be delivered by the Seller;
- 1.5 'Goods' means the articles which the Buyer agrees to buy from the Seller;
- 1.6 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT;
- 1.7 'Proposal Form' means the Supplier's standard form completed with details of the Goods that the Supplier is willing to sell to the Buyer and any special provisions applicable to that transaction.
- 1.8 'Seller' means G. Davies Limited (Company Registration No. 06441029) of Unit 6 Crest Industrial Estate, Pattenden Lane, Marden, Kent, TN12 9QJ trading as GDStones;
- 1.9 All headings are for ease of reference only and shall not affect the construction of this contract;
- 1.10 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract;
- 1.11 No waiver or forbearance by the Buyer (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future; and
- 1.12 The Seller shall not assign, sub-contract, license or otherwise dispose of any part of its rights or obligations under this contract without the prior written consent of the Buyer.

2 CONDITIONS OF SALE

- 2.1 The Conditions shall apply to all Contracts to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any offer or similar document or in correspondence. These Conditions constitute the entire understanding between the Buyer and the Seller with respect to the subject matter covered by the contract of purchase and supersede all previous agreements and understandings between the parties.
- 2.2 Dispatch or delivery of the Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.3 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 PRICE

- 3.1 The Price of the Goods shall be the price specified in the Seller's standard order form as completed and submitted by the Buyer and accepted by the Seller.
- 3.2 Subject to clause 3.3, below, the Buyer shall pay the Price for the Goods, which cannot be varied without the prior written authorisation of the Seller signed by an authorised representative of the Seller.
- 3.3 If the Buyer wishes to change the quantity or specification of the Goods this may be done only with the prior written consent of the Seller and the Price will be varied to reflect the change in quantity or specification and such variation in the Price will not take effect without the prior written authorisation of the Seller, signed by an authorised representative of the Seller.
- 3.4 The Price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice.

4 PAYMENT

- 4.1 Delivery and payment are not concurrent conditions.
- 4.2 The terms of payment for the Goods will be as set out in the Proposal Form or otherwise agreed between the parties.

5 NO RIGHT OF SET-OFF

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have or for any reason whatever.

6 THE GOODS

- 6.1 The quantity and description of the Goods shall be as set out in the Proposal Form or otherwise agreed between the parties. Any sample or range sample provided by the Seller are for indicative purposes only and cannot represent the full range of possible variations.

7 WARRANTIES AND LIABILITY

- 7.1 The Seller warrants that the Goods supplied will at the time of delivery correspond to the description set out in the Buyer's purchase order on the Seller's standard order form as accepted by the Seller.
- 7.2 The Seller shall ensure that (subject to clause 7.3 below) all the Goods shall be cut, manufactured, stored, tested and packed in accordance with British Standard 5385 and that all the Goods are of satisfactory quality and fit for purpose.
- 7.3 The Seller warrants that:
 - 7.3.1 the tolerances of length, width and square of the Goods shall not exceed $\pm 1.5\text{mm}$,
 - 7.3.2 the tolerances of the thickness of the Goods shall not exceed $\pm 10\%$ of the nominal size,
 - 7.3.3 the deviation from flatness of the Goods (except for natural cleft faces) shall not exceed 0.2% of the slab length, and shall not exceed 3mm,
 - 7.3.4 the Goods shall be free from machining marks, and
 - 7.3.5 colour, markings, fossils and veins of the Goods shall be as described in the Proposal Form or otherwise agreed between the parties.

8 TESTING AND INSPECTION DURING MANUFACTURE

- 8.1 The Seller shall comply with the specification and all applicable British Standards and legal requirements concerning the design, manufacture, processing, storage and testing of the Goods.
- 8.2 The Seller shall permit the Buyer to inspect and test the Goods during their manufacture and processing and packing.
- 8.3 If the Buyer is not reasonably satisfied that the Goods or their manufacture or processing or packing comply in all material respects with the contract the Buyer shall as soon as reasonably practicable notify the Seller.

- 9 WEIGHING THE GOODS**
The Seller shall procure that on dispatch the Goods are weighed and the weights when ascertained shall be recorded by the Seller on the Seller's packing list and notified to the Buyer.
- 10 DELIVERY**
Unless otherwise agreed in writing by the Seller and the Buyer the Goods shall be delivered by the Seller on or before the Delivery Date at the place notified by the Buyer to the Seller ('the departure point'). The Buyer shall unload the Goods from the vehicle sent by the Seller. The Seller shall promptly provide the Buyer with an invoice in respect of the Goods.
- 11 DELIVERY BY INSTALMENTS**
11.1 If agreed in writing by the Buyer the Seller may make the Goods available for collection by separate instalments.
11.2 Each separate instalment may be invoiced and paid for in accordance with the provisions of these Conditions.
11.3 The failure or refusal of the Buyer to take delivery or to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the sole option of the Seller):
11.3.1 without notice to suspend further deliveries of the Goods pending payment by the Buyer; and/or
11.3.2 to treat this contract as repudiated by the Buyer.
11.4 Any defect in or delay in delivery of any subsequent instalment shall not give the Buyer any right to set off any sum claimed from the Seller in relation thereto against any sum due in relation to any instalment actually delivered.
- 12 DELIVERY**
12.1 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods for any of them) promptly or at all
12.2 The Buyer shall accept the Goods on the Delivery Date and if it shall fail to do so shall indemnify the Seller against any additional costs arising from such failure.
12.3 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within {3} months of the Delivery Date.
- 13 DAMAGE OR LOSS IN TRANSIT**
The packaging in which the Goods are delivered is non-returnable and the Buyer is responsible for the disposal of that packaging.
- 14 EXPORT LICENCES AND OTHER FORMALITIES**
The Seller shall promptly obtain all necessary export licences, clearances and other consents necessary for the supply of the Goods.
- 15 TITLE AND RISK**
15.1 The Goods shall be at the Buyer's risk as from delivery.
15.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
15.2.1 the Buyer shall have paid the Price plus VAT in full; and
15.2.2 no other sums whatever shall be due from the Buyer to the Seller,
15.3 Until property in the Goods passes to the Buyer in accordance with clause 15.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
15.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
15.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
15.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause {16.4} shall cease.
15.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
15.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 16 ACCEPTANCE OF THE GOODS**
16.1 The Buyer shall be deemed to have accepted the Goods {24 hours} after delivery to the Buyer unless within that period it notifies the Seller that the Goods are not in accordance with the Contract. The Buyer shall provide such information as the Seller may reasonably request in respect of such rejection, including photographs of the items in dispute.
16.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract.
- 17 RECTIFICATION OR REPLACEMENT OF DEFECTIVE GOODS**
If any of the Goods supplied to the Buyer are not in accordance with the contract the Seller may at the option of the Seller by notice to the Buyer either rectify or replace such Goods and if it shall do so shall have no further liability to the Buyer in respect of such Goods.
- 18 GENERAL LIMITATION OF SELLER'S LIABILITY**
In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 19 PAYMENT OF DAMAGES BY THE BUYER**
The Buyer acknowledges that th Goods have been manufactured specifically to the requirements of the Buyer and are not readily saleable to any third party. Accordingly the Buyer agrees that if the Buyer declines to accept the Goods in breach of this contract the Buyer shall pay to the Seller as and by way of agreed liquidated damages an amount equal to the price of the Goods less the proceeds (if any) received by the Seller on reselling the Goods plus the costs and expenses of collection, storage, and resale or disposal.

20 GENERAL EXCLUSION OF SELLER'S LIABILITY FOR INDIRECT LOSS

The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

21 INTELLECTUAL PROPERTY

Where any specifications and designs of the Goods or any of the Goods have been provided by the Buyer the copyright, design right or other intellectual property in them shall remain the property of the creator of the formal cutting sheets supplied by the Buyer to the Seller and shall not be disclosed by the Seller to any third party without the Buyer's written consent.

22 INSOLVENCY OR OTHER DEFAULT OF BUYER

If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:

- 22.1 suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or
- 22.2 exercise any of its rights pursuant to clause 15.

23 FORCE MAJEURE

23.1 Neither party shall be liable for any default due to any act of God, war, civil disturbance, malicious damage, strike, lockout, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party ('Force Majeure Event').

23.2 Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.

24 NOTICES

24.1 Any notice under or in connection with this contract of sale shall be in writing and shall be served by first class post or by hand on the party or sent by airmail or e-mail at or to the address of the party set out in this contract or at or to such other address as may be subsequently notified by one party to the other.

24.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:

- 24.2.2 if sent by airmail 5 working days after posting; and
- 24.2.3 if sent by e-mail, when received.

25 PROPER LAW OF CONTRACT

This contract is subject to the law of England and Wales and all disputes arising out of this contract shall be subject to the exclusive jurisdiction of the courts of England and Wales.

26 THIRD PARTY RIGHTS

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of any Contract.