

1. INTERPRETATION

1.1 In these Conditions, the following words have the corresponding meanings:

ARC: ARC Building Solutions Limited a company incorporated and registered in England and Wales with company number 06338081 and having its registered office at Unit J, Gildersome Spur, Leeds, England, LS27 7JZ;

Business Day(s): a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

Conditions: the terms and conditions set out in this document as amended from time to time;

Contract: the contract between ARC and the Customer for the sale and purchase of the Goods in accordance with these Conditions;

Customer: the person or firm who purchases the Goods from ARC whose details are set out in the Order;

Delivery Date: the date specified for delivery of the Goods as set out in the Order;

Delivery Location: has the meaning given to it in clause 4.3;

Deposit: the deposit to secure the Order, as set out in the Order, if applicable;

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, extremes of weather, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, pandemics, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors or difficulty or increased expense in obtaining workmen materials or transport or other circumstances affecting the supply of the Goods or of raw materials by ARC's normal source of supply or the manufacture of the Goods by ARC's normal means or the delivery of the Goods by ARC's normal route or means of delivery;

Goods: the goods (or any part of them) set out in the Order;

Insolvency Event: the Customer: (a) enters liquidation or a winding up petition is presented against the company; (b) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; (c) proposes to make any arrangements with its creditors or passes a resolution to place the company into liquidation; or (d) suffers an event which, under the law of a different country, is equivalent to any of the previously specified acts or events;

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of ARC's quotation, or overleaf, as the case may be;

Specification: any specification for the Goods, including any related drawings, that is agreed by the Customer and ARC, as set out in the Order; and

Warranty: the warranty set out in clause 5.1.

1.2 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a party includes its personal representatives, successors or permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.6 A reference to writing or written includes faxes but not e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when ARC issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by ARC and any descriptions or illustrations contained in ARC catalogues or brochures, or on its website, are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by ARC shall not constitute an offer. A quotation shall only be valid for a period of 28 calendar days from its date of issue and ARC

reserves the right to withdraw or revise any quote at any time prior to ARC's acceptance of the Customer's order.

2.7 If, subsequent to any Contract which is subject to these Conditions, a contract of sale is made with the same Customer without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed to be subject to these Conditions.

3. GOODS

3.1 The Goods are described in ARC's catalogue or as modified by any applicable Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify ARC against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by ARC in connection with any claim made against ARC for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with ARC's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 ARC reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 Delivery and despatch dates mentioned in any quotation, Order or elsewhere are approximate only and not of any contractual effect and ARC shall not be under any liability to the Customer in respect of any failure to deliver on any particular date or dates. Time for delivery shall not be of the essence.

4.2 ARC shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and ARC reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.3 Delivery shall be to the Customer's premises or the Customer's site upon request (the "**Delivery Location**") unless otherwise stipulated or agreed by ARC.

4.4 The Customer shall be solely responsible for unloading of Goods at the Delivery Location. The Customer shall unload and inspect the Goods immediately on their arrival at the Delivery Location. The Customer shall indemnify ARC against any and all liabilities, claims or costs incurred by ARC arising as a result of ARC or its subcontractor assisting the Customer in the unloading, loading or other removal of the Goods at the Delivery Location.

4.5 If the Customer refuses or fails to take delivery of Goods for any reason or fails to take any action necessary on its part for delivery and/or shipment of the Goods ("**Failed Delivery**") ARC shall be entitled to:

- (a) terminate the Contract with immediate effect;
- (b) dispose of the Goods as ARC may determine; and / or
- (c) recover from the Customer any loss and / or costs incurred as a result of the Failed Delivery (including without limitation the delivery cost of the Failed Delivery and storage costs from the date of Failed Delivery).

4.6 If the quantity of Goods delivered exceeds the quantity specified in the Order ARC shall inform the Customer and arrange for collection of the excess Goods.

4.7 If the quantity of Goods delivered falls short of the quantity specified in the Order ARC will arrange to redeliver the balance at a date agreed by both parties unless the Customer notifies ARC in writing within 48 hours of receipt of the shortfall that they do not want ARC to redeliver the balance. ARC will charge for the quantity of Goods delivered.

4.8 ARC may deliver the Goods by instalments, which shall be invoiced and paid for separately in accordance with these Conditions. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

5.1 ARC warrants that on delivery, and for a period of 3 months from the date of delivery (the "**Warranty Period**"), the Goods shall:

- (a) conform with the Specification in all material respects;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by ARC.

5.2 Subject to Clause 5.3, if:

- (a) such defects appear within the Warranty Period and the Customer notifies ARC in writing within fourteen days of discovering the defect;
- (b) ARC is accorded facilities to inspect and test the Goods as it thinks fit;
- (c) ARC is satisfied that the Goods are defective as a result of a defect in materials or workmanship or otherwise do not correspond with the Specification, or in the absence of an applicable specification, the description of the Goods; and
- (d) ARC is satisfied that no one other than ARC has dealt with or tampered with the Goods so as to contribute to their defective state and that the Goods have been properly used, handled, maintained, stored and serviced in each case in accordance with ARC's written instructions and good practice (where appropriate) and have not been used whilst allegedly defective or otherwise than in accordance with their intended use,

ARC shall, at its option, repair or replace or rectify the defective Goods or return the defective Goods and refund the price of the defective Goods in full.

5.3 ARC shall not be liable for the Goods' failure to comply with the Warranty if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 5.2;
- (b) the defect arises because the Customer failed to follow the ARC's oral or written instructions as to the storage, commissioning,

	installation, safety, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;	8.6	ARC may invoice the Customer for the Goods on or at any time after the completion of delivery.
(c)	the defect arises as a result of ARC following any drawing, design or specification supplied by the Customer;	8.7	Subject to clause 8.10, the Customer shall pay each invoice submitted by ARC:
(d)	the Customer alters or repairs such Goods without the written consent of ARC;	(a)	in full without any deduction or set-off within 30 days of the end of the month following the date of the invoice; and
(e)	the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or	(b)	in full and in cleared funds to a bank account nominated in writing by ARC.
(f)	the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.	8.8	Time for payment shall be of the essence of the Contract.
5.4	Except as provided in this Clause 5, ARC shall have no liability to the Customer in respect of the Goods failure to comply with the Warranty.	8.9	Any extension of credit allowed to the Customer may be changed or withdrawn at any time.
5.5	The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.	8.10	If in the opinion of ARC the credit-worthiness of the Customer shall have deteriorated prior to delivery ARC may require full or partial payment of the price prior to delivery or the provision of security for payment by the Customer in a form acceptable to ARC.
5.6	The Warranty shall apply to any repaired or replacement Goods supplied by ARC.	8.11	If the Customer fails to make a payment due to ARC under the Contract by the due date, then, without limiting ARC's remedies under Clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.11 will accrue each day at 4% a year above the National Westminster Bank PLC's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
6. TITLE AND RISK		8.12	ARC reserves the right to suspend the provision of Goods to the Customer where any amounts are overdue under any Contract with the Customer until all such amounts have been paid.
6.1	Risk in the Goods shall pass to the Customer on completion of delivery. The Customer will retain the risk in any Goods which are returned by the Customer to ARC until they are delivered to ARC's premises.	8.13	All amounts due under the Contract shall be paid in full by the Customer without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). ARC shall be entitled to offset any sum or sums owing to it from the Customer against any sums owed to the Customer by ARC.
6.2	Title to the Goods shall not pass to the Customer until ARC receives payment in full (in cash or cleared funds) for the Goods and any other goods that ARC has supplied to the Customer in respect of which payment has become due.	9. INTELLECTUAL PROPERTY RIGHTS	
6.3	Until title to the Goods has passed to the Customer, the Customer shall:	9.1	All Intellectual Property Rights in the Goods (other than Intellectual Property Rights in any materials provided by the Customer pursuant to clause 9.2) belong and shall belong to ARC or its third party licensors (as the case may be).
(a)	store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as ARC's property;	9.2	The Customer acknowledges that ARC may place its branding and logos on the Goods.
(b)	not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;	9.3	The Customer shall provide ARC with the artwork (in a format of layered files), branding, wrapping, Customer name, branding, get up, logos and trade marks to be placed on the Goods together with any other materials requested by ARC for the provision of the Goods (the " Customer Materials "). The Customer grants ARC a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Customer Materials, for the term of the Contract for the purpose of complying with its obligations and exercising its rights under the Contract.
(c)	maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;	9.4	The Customer shall indemnify ARC against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by ARC in connection with any claim made against ARC for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with ARC's use of the Customer Materials.
(d)	notify ARC immediately if it becomes subject to any of the events listed in Clause 12.1(b) to Clause 12.1(d); and	9.5	The Customer agrees that ARC may publicise (using the Customer Materials) that the Customer is a customer of ARC on its website and in its list of customers, press releases and other promotional materials.
(e)	give ARC such information as ARC may reasonably require from time to time relating to:	10. LIABILITY	
6.3.e.1	the Goods; and	10.1	Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; or (c) any other liability which cannot be limited or excluded by law.
6.3.e.2	the ongoing financial position of the Customer.	10.2	ARC shall not be liable to the Customer:
6.4	Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before ARC receives payment for the Goods. However, if the Customer resells the Goods before that time:	(a)	for non-delivery unless a written claim is received by ARC and its carrier within 7 days from the date of ARC's invoice;
(a)	it does so as principal and not as ARC's agent; and	(b)	for damage to or loss of the Goods or any part of them in transit (where the Goods are carried by ARC's own transport or by a carrier on behalf of ARC) unless the Customer notifies ARC of any such claim within 10 days of receipt of the Goods or the scheduled date of delivery whichever shall be the earlier; or
(b)	title to the Goods shall pass from ARC to the Customer immediately before the time at which resale by the Customer occurs.	(c)	for defects in the Goods caused by (i) fair wear and tear, abnormal or unsuitable conditions of storage or use or (ii) any act, neglect or default of the Customer or of any third party.
6.5	At any time before title to the Goods passes to the Customer, ARC may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, ARC may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.	10.3	ARC shall not be liable for:
7. DEPOSIT		(a)	loss of profits;
7.1	Where the Customer is required to pay a Deposit, the terms of this clause 7 apply.	(b)	loss of sales or business;
7.2	The Deposit is non-refundable. ARC shall invoice the Customer for the Deposit once the Order has been placed by the Customer and accepted by ARC. The Customer shall pay the Deposit on the date ARC accepts the Customer's Order pursuant to clause 7.3 (the " Deposit Due Date ").	(c)	loss of agreements or contracts;
7.3	If the Customer fails to pay the Deposit by the Deposit Due Date, ARC may cancel the Contract by notice in writing to the Customer.	(d)	loss of anticipated savings;
8. PRICE AND PAYMENT		(e)	loss of use or corruption of software, data or information;
8.1	The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in ARC's published price list in force as at the date of delivery.	(f)	loss of or damage to goodwill; and / or
8.2	ARC may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:	(g)	indirect or consequential loss.
(a)	any factor beyond ARC's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);	10.4	Subject to clauses 10.1, 10.2 and 10.3 ARC's total liability to the Customer under the Contract including in contract, tort (including negligence), misrepresentation, restitution or otherwise shall:
(b)	any request by the Customer to change the Delivery Date(s), quantities or types of Goods ordered, or the Specification; or	(a)	in relation to defective, damaged or undelivered Goods be limited to a sum equal to the price paid for the defective, damaged or undelivered Goods which give rise to the liability; and
(c)	any delay caused by any instructions of the Customer or failure of the Customer to give ARC adequate or accurate information or instructions.	(b)	in relation to any other claim be limited to a sum equal to the price paid by the Customer under the Contract pursuant to which the claim arose.
8.3	The price of the Goods:	10.5	All conditions, warranties and representations expressed or implied by statute common law or otherwise in relation to the Goods are hereby excluded.
(a)	excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to ARC at the prevailing rate, subject to the receipt of a valid VAT invoice; and		
(b)	unless otherwise specified includes the costs and charges of packaging, insurance and transport of the Goods, where the Goods are to be delivered within the United Kingdom.		
8.4	If the Customer instructs ARC to deliver by any means other than its usual mode of transport the cost of delivery shall be charged to the Customer. The cost of delivering Goods to locations outside the British Isles shall be added to the price and must be paid in full in advance of dispatch of the Goods.		
8.5	The Customer shall meet the cost of any special packaging requested by the Customer or any packaging rendered necessary by delivery by any means other than ARC's normal means of delivery.		

11. CONFIDENTIALITY

11.1 The Customer undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of ARC, except as permitted by clause 11.2.

11.2 The Customer may disclose ARC's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising its rights or carrying out its obligations under the Contract. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 The Customer shall not use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12. FORCE MAJEURE

12.1 ARC shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

12.2 If a Force Majeure Event occurs ARC may in its sole discretion terminate any Contract for the supply of Goods pursuant to these Conditions or cancel delivery of Goods to the Customer or may, with the agreement of the Customer, deliver Goods at an agreed rate of delivery commencing after any suspension of deliveries.

12.3 If ARC has insufficient stocks to meet all its commitments due to a Force Majeure Event ARC may apportion available stocks between its customers at its sole discretion.

13. TERMINATION

13.1 Without limiting its other rights or remedies, ARC may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) one or more of the following applies to the Customer: (a) it is unable to pay its debts; (b) it ceases to trade; or (c) it suffers an Insolvency Event; or
- (c) the Customer fails to pay any amount due under the Contract on the due date for payment.
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.2 Without limiting its other rights or remedies, ARC may suspend provision of the Goods under the Contract or any other contract between the Customer and ARC if the Customer becomes subject to any of the events listed in Clause 13.1(b) to Clause 13.1(d) or ARC reasonably believes that the Customer is about to become subject to any of them.

13.3 On termination of the Contract for any reason the Customer shall immediately pay to ARC all of ARC's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, ARC shall submit an invoice, which shall be payable by the Customer immediately on receipt.

13.4 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. GENERAL

14.1 **Assignment and other dealings.** The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without ARC's prior written consent.

14.2 **Entire Agreement.** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

14.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Severability.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.6 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be: (a) delivered by hand or pre-paid first-class post or other next working day service at its registered office (if a company) or its principal place or business (in any other case); or (b) sent by email to, in the case of ARC, sales@arcbuildingsolutions.co.uk and, in the case of the Customer, to the

address specified in the Order, or such other address as the parties may agree from time to time. Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a Business Day. This clause does not apply to the service of any proceedings or other documents in any legal action.

14.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

14.8 **Lien.** ARC shall be entitled to a general lien on all goods and property owned by the Customer in ARC's possession (although the Customer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any goods sold and delivered to the Customer under any contract.

14.9 **Governing law and jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with English law. The parties hereby agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.