

# Tricel Composites (NI) Limited - TERMS AND CONDITIONS OF SUPPLY

## 1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

**Contract:** the Customer's purchase order and Tricel Composites (NI) Limited (hereinafter referred to as 'the Supplier') acceptance of it, or the Customer's acceptance of a quotation for Goods and Services incorporating these Conditions and any relevant Installation and Maintenance Instructions.

**Customer:** the person, firm or company named in the Contract who purchases Goods and/or Services from the Supplier.

**Customer's Equipment:** any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

**Customer In-put:** the site preparation works to be carried out at the Delivery Address and all Documents, information and materials provided by the Customer relating to the Services including (without limitation), the Customer In-puts specified in the Installation and Maintenance Instructions

**Delivery Address:** the address specified in the Customer order and otherwise the Supplier's principal place of business.

**Document:** includes, without limitation, in addition to any document in writing, any specification, drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Goods:** all Goods manufactured or supplied by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services.

**Group:** in relation to a company (where incorporated) that company, its subsidiaries and company of which it is a subsidiary, its holding company and any other subsidiaries of that holding company.

**Supplier:** the Supplier named in the Supplier's quotation and/or acknowledgement of acceptance of the Customer's purchase order. **Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Goods or Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**Services:** the installation and commissioning of the tanks by the Supplier under the Contract together with any other services which the Supplier provides, or agrees to provide, to the Customer under the Contract.

**Installation and Maintenance Instructions:** the site preparation and facilities required by the Supplier in respect of the Goods and for the provision of the Services.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings in these conditions shall not affect their interpretation References to conditions are to the conditions of the Contract.

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 statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or reenactment and includes any subordinate legislation for the time being in force made under it.

1.5 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## 2. Application of conditions

2.1 These Conditions shall:

- (a) Apply to and be incorporated into the Contract; and
- (b) Prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Goods and Services on these Conditions. A contract for the supply and purchase of the Goods and Services will only be established once that has been accepted by the Supplier:

- (a) Either expressly by a written acknowledgement issued and executed by the Supplier; or
- (b) (If earlier) by the Supplier starting to provide the Services,

The Customer's standard terms and conditions (if any), enclosed with, attached or referred to in any purchase order or other Document shall not govern or apply to the Contract.

2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.3. Any quotation is valid for a period of 30 days from its date, unless the Supplier withdraws it sooner.

2.4 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them.

They shall not form part of the Contract and this is not a sale by sample.

### 3. Delivery

3.1 Delivery of the Goods shall take place at the Delivery Address.

3.2 Any dates specified by the Supplier for delivery of the Goods and performance of the Service are intended to be an estimate and time for delivery or performance may not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

3.3 Subject to the other provisions of these conditions the Supplier shall not be liable for any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or Services (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

3.4 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate Customer Inputs, instructions, licences or authorisations:

- (a) Risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence);
- (b) The Goods shall be deemed to have been delivered; and
- (c) The Supplier may store the Goods until delivery actually takes place, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3.5 The Customer shall provide at the Delivery Address and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

### 4. Non-delivery

4.1 The quantity of any consignment of Goods as recorded by the Supplier on despatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

4.2 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.

4.3 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time.

## 5. Risk/title

5.1 The Goods are at the risk of the Customer from the time of delivery.

5.2 Ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) The Goods; and
- (b) All other sums which are or which become due to the Supplier or any other member of its Group from the Customer on any account.

5.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

- (a) Hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) Store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
- (c) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) Maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.

5.4 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) The Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) The Customer encumbers or in any way charges any of the Goods or purports to do so.

5.5 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.

5.6 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

5.7 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier or any other member of its Group to the Customer in the order in which they were invoiced to the Customer.

5.8 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this condition 5 shall remain in effect.

## 6. Quality

6.1 The Supplier warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of delivery or performance the Goods and the Services shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979

6.2 The Supplier shall not be liable for a breach of the warranty in condition 6.1 unless:

- (a) the Customer gives written notice of the defect to the Supplier, and, if the defect is as a result of damage in transit to the carrier, within 10 days of the time when the Customer discovers or ought to have discovered the defect; and

(b) The Supplier is given a reasonable opportunity after receiving the notice of examining the Goods or Services and the Customer (if asked to do so by the Supplier) returns the Goods to the Supplier's place of business at its own cost for an examination to take place there.

6.3 The Supplier shall not be liable for a breach of the warranty in condition 6.1 if:

- (a) The Customer makes any further use of the Goods after giving such notice; or
- (b) The defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
- (c) The Customer moves, alters or undertakes any works of installation or repair of such Goods without the Supplier's written consent; or
- (d) The Customer fails to comply with its obligations as set out in the Installation and Maintenance Instructions.

6.4 Subject to condition 6.2 and condition 6.3, if any of the Goods or Services do not conform with the warranty in condition 6.1 the Supplier shall at its option repair or replace such Goods or Services (or the defective part).

6.5 If the Supplier complies with condition 6.4 it shall have no further liability for a breach of the warranty in condition 6.1 in respect of such Goods or Services.

6.6 If the Customer is a consumer that Customer's statutory rights are not affected by these conditions.

## 7. Health & Safety

7.1 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under condition 7.2(a), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

7.2 The Customer shall

- (a) be responsible (at its own cost) for preparing and maintaining the relevant premises for the delivery of the Goods and the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this condition 7.1;
- (b) Inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
- (c) Ensure that all Customers' Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements.

## 8. Customer's obligations in relation to the Services

8.1 The Customer shall:

- (a) Co-operate with the Supplier in all matters relating to the delivery of the Goods and Services;
- (b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as set out in the Installation and Maintenance Instructions and as reasonably required by the Supplier;
- (c) Provide to the Supplier, in a timely manner, such Customer In-put and other information as the Supplier may require and ensure that it is accurate in all material respects;
- (d) Obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services,
  - (i) The installation of the Supplier's Equipment;
  - (ii) The use of Customer In-put; and
  - (iii) The use of the Customer's Equipmentinsofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- (e) Promptly inspect and test the Goods and Services when notified by the Supplier that they are complete.

8.2 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

8.3 Terms specific to Moulding sales.

(a) The Customer shall pay the quoted cost of any tool specially bought or made for the purpose of the order, and no part of such payment shall be returnable. Such tools shall, unless otherwise agreed, remain in the possession of the Supplier who shall keep them in reasonable repair but may dispose of them if they have not been used for three years.

(b) If the Supplier holds moulds/tools in respect of production for the customer, such moulds/tools will be fully insured by the customer. The Supplier shall not be required to carry any insurance in respect of such moulds/tools or for any consequential liability, which may arise therefrom.

## 9. Charges and payment

9.1 In consideration of the supply of the Goods and the Services by the Supplier, the Customer shall pay the charges as set out in the invoice

9.2 The Supplier shall be entitled to invoice for the Goods and Services on delivery of the Goods.

9.3 The total price for Goods and the Services shall be due to be paid in full and in cleared funds, to a bank account nominated in writing by the Supplier (without deduction or set-off) on the date of issue of the Supplier's invoice unless credit terms have been agreed with the Customer.

9.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

(a) Claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or

(b) Claim interest on the overdue amount from the due date until payment at the rate of 5% over the base rate of the Bank of England

(c) Suspend all Services until payment has been made in full; and/or

(d) Suspend services or delivery of goods under any other contract with the Customer or any other member of its Group.

9.5 Time for payment shall be of the essence of the Contract.

9.6 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 9.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

9.7 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier (or any other member of its Group) against any liability of the Supplier (or any other member of its Group) to the Customer.

## 10. Property rights

10.1 The Supplier reserves ownership of and copyright in all drawings or specifications which it prepares in relation to the Services and may not be used to obtain estimates or quotations from our competitors without our permission.

10.2 The Customer shall ensure that it has secured permission before the Delivery Date from all relevant persons to the Supplier using free of charge the Documents in Customer In-put.

10.3 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

## 11. Limitation of liability

11.1 This condition 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

(a) Any breach of the Contract including any deliberate breach of this Contract by the Supplier, or its employees, agents or subcontractors;

(b) Any use made by the Customer of the Goods or Services or any part of them; and

(c) Any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) For death or personal injury resulting from negligence; or
- (b) For any other matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or
- (c) For fraud or fraudulent misrepresentation;
- (d) under section 2(3), Consumer Protection Act 1987; or
- (e) Under conditions implied by section 12 of the Sale of Goods Act 1979 or

11.4 Subject to condition 11.2 and condition 11.3

- (a) The Supplier shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of contract or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Goods and Services.

## 12. Termination

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) remove square bracket here is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (c) The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

12.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) The Customer shall return all of the Goods and the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

## 13. Force majeure

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## 14. Variation

14.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. 14.2 Subject to condition

14.1, no variation of the Contract or these Conditions or of any of the Documents shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## 15. Waiver

15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy. 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 16. Severance

If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

## 17. Entire agreement

17.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. 17.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently).

17.3 Nothing in this condition shall limit or exclude any liability for fraud.

## 18. Assignment

18.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.

18.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

18.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

## 19. No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

## 20. Rights of third parties

A person who is not a party to the Contract shall not have any rights under or in connection with it. Save that any company in the same Group as The Supplier shall be entitled to perform any of the Supplier's obligations and to enjoy its benefits under the Contract.

## 21. Notices

21.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the Customer's purchase order or the Supplier's quotation or acknowledgement of acceptance or as otherwise specified by the relevant party by notice in writing to the other party and shall be deemed to have been duly received if delivered personally, when left at that address or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second working day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21.2 This condition 21 shall not apply to the service of any in any proceedings or other documents in any legal action.

21.3 Communications in relation to the Contract may be given by email to the address specified in the Customer's purchase order or the Supplier's quotation or acknowledgement of acceptance save that any notice required to be given under the Contract shall not be validly served if sent by e-mail.

## 22. Governing law and jurisdiction

22.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).

## 23. Right for a Consumer to cancel Contract (if concluded without meeting the Supplier)

This clause only applies if the Supplier is dealing with the Customer as a consumer without meeting the Supplier or its representatives (i.e., mail order, online and telephone sales).

23.1 The Customer may cancel the Contract with the Supplier for the Goods. To cancel the Contract the Customer must notify the Supplier in writing at any time up to the end of the seventh working day from the date of delivery of the Goods. The Customer does not need to give any reason for cancelling nor will the Customer have to pay any penalty.

23.2 If the Customer has received the Goods before cancellation of the Contract then the Customer must send the Goods back to the Supplier at its contact address at the Customer's own cost and risk. If the Customer cancels the Contract but the Supplier has already processed the Goods for delivery the Customer must not unpack the Goods when they are received by the Customer and the Customer must send the Goods back to the Supplier at its contact address at the Customer's own cost and risk as soon as possible.

23.3 Once the Customer has notified the Supplier that the Customer is cancelling the Contract, any sum debited to the Supplier from the Customer's credit card will be refunded to the Customer's account as soon as possible and in any event within 30 days of the purchase order PROVIDED THAT the Goods in question are returned by the Customer and received by the Supplier in the condition they were in when delivered to the Customer. If the Customer does not return the Goods or does not pay the costs of delivery, the Supplier shall be entitled to deduct the direct costs of recovering the Goods from the amount to be refunded to the Customer.