

**1. DEFINITIONS**

- 1.1 "Affiliate": means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, another entity (and Controls has the meaning given in section 1124 of the Corporation Tax Act 2010 and Controls, Controlled and under common Control shall be interpreted accordingly).
- 1.2 "Buyer": means Duchy Homes Limited (company registration number 07852681) whose registered office is 3125 Century Way Thorpe Park, Leeds, LS15 8ZB or any of its Affiliates as named in an Order.
- 1.3 "Conditions": means the terms and conditions of purchase set out in this document and any other terms and conditions agreed in writing between the Buyer and the Seller.
- 1.4 "Delivery Date": means either: (a) the date (and where applicable the time) specified in the Order; (b) if none is specified, in accordance with the lead time agreed in writing between the Buyer and the Seller; or (c) if the Order specifies that it is a bulk order, the dates notified to the Seller by the Buyer.
- 1.5 "Goods": means the goods, equipment and/or materials set out in the Order.
- 1.6 "Order": means the purchase order for the Goods placed by the Buyer with the Seller.
- 1.7 "Price": means the total price for the Goods, inclusive of delivery, packing, carriage, insurance and unloading but excluding VAT.
- 1.8 "Purchase Contract": means the agreement between the Buyer and the Seller for the Goods incorporating these Conditions.
- 1.9 "Seller": means the person who sells the Goods to the Buyer.
- 1.10 All headings are for ease of reference only and shall not affect the construction of these Conditions.
- 1.11 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.12 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.13 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 A reference to writing or written excludes fax and but not email.

**2. CONDITIONS APPLICABLE**

- 2.1 Subject to any variation under clause 18, these Conditions shall be incorporated within and apply to the Purchase Contract to the exclusion of all other terms and conditions that the Seller seeks to impose or incorporate, or which (subject to clause 7.5) are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Order shall be deemed to be accepted the earlier of:
  - (a) dispatch or delivery of the Goods by the Seller;
  - (b) the Seller doing any act consistent with fulfilling the Order; and
  - (c) the Seller issuing a written acceptance of the Order, on which date the Purchase Contract will come into existence.

**3. PRICE AND PAYMENT**

- 3.1 The Price shall be the amount set out on the Order or as otherwise agreed in writing between the Buyer and the Seller. The Price is exclusive of VAT which shall be due at the prevailing rate.
- 3.2 If the Price is not stated on the Order, the Price shall be the lowest price currently quoted or charged at the date of the Order by the Seller for the Goods but shall in no event be higher than the price most recently charged to the Buyer by the Seller for such Goods.
- 3.3 The Seller's invoice (which shall be submitted at such frequency as is agreed by the parties, or in the absence of agreement, following delivery of the Goods) shall attach a copy of the receipted advice note as referred to in clause 5.5, the invoice shall contain the purchase order number, full description including quantity of the Goods, the number and date of the advice note, the total value of the invoice and the Value Added Tax where applicable shall be shown separately on all invoices.
- 3.4 The final date for payment of correctly rendered and undisputed invoices shall be the last day of the month in the month after the date of receipt of the Seller's invoice.
- 3.5 Receipts for all payments received by the Seller from the Buyer must be issued to the Buyer by the last working day of the month in which payment is received.
- 3.6 The Buyer may set off against the Price (and any applicable VAT) amounts due from the Seller whether under the Purchase Contract or any other agreement with the Seller.
- 3.7 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Buyer signed by the authorised representative.
- 3.8 If a party fails to make any undisputed payment due to the other party under the Purchase Contract by the due date for payment, then the defaulting party 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 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. It is agreed that the provisions of this clause constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

**4. THE GOODS**

- 4.1 The Goods must be correctly described on all invoices, packing and advice notes and each parcel must be clearly marked as to its contents and accompanied by a delivery note.
- 4.2 The Seller shall ensure that the Goods shall:
  - (a) be manufactured, stored, labelled, tested, packed, handled and delivered in accordance with all applicable statutory and regulatory requirements;
  - (b) be of satisfactory quality and fit the purpose for which the Buyer intends or may reasonably intend to use such Goods;
  - (c) comply in all respects with their description and any applicable specification, the particulars stated in the Order and contained in any technical requirement or specification issued in conjunction with the Order;
  - (d) be free from any defect in design, materials and workmanship and remain so for 12 months (or such longer period of the Seller's or manufacturer's guarantee) after delivery;
  - (e) be equal in all respects to any samples approved by the Buyer or shown to the Buyer by the Seller prior to the Order; and
  - (f) where no specification or sample has been provided, meet the Buyer's performance criteria and conform to industry best practice.
- 4.3 The Seller shall comply with any packaging and presentation requirements of the Buyer set out in the Order.

- 4.4 The Goods will be accompanied by detailed operating and maintenance instructions sufficient to allow the Buyer to use the Goods for their intended purpose or application.
- 4.5 The Seller shall check any designs provided by the Buyer and the Seller shall satisfy itself that any such designs satisfy the requirements of the Purchase Contract.
- 4.6 The Seller shall perform any ancillary services with the highest level of care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade.

**5. DELIVERY OF THE GOODS**

- 5.1 Delivery of the Goods shall be made to the Buyer's nominated address on the Delivery Date and with suitable protective outer cartons and packing. Time is of the essence of the Purchase Contract with regard to the Delivery Date.
- 5.2 Time of delivery (and any specific unloading requirements) must be notified to the Site Manager (whose contact details will be set out in the Order) a minimum of 48 hours beforehand, unless agreed otherwise in writing. Delivery must take place during the normal business hours of the delivery location as advised by the Site Manager. Failure to give notice may result in the delivery being returned or delayed at the Seller's expense until arrangements for its unloading can be made.
- 5.3 Where there is a need for mechanical off loading, each package (including the pallet) must measure less than 2 metres (length) x 2 metres (width), and the overall weight must not exceed one tonne. For items exceeding the size or weight specified above, the Seller must provide details of size, weight and provisions for unloading on receipt of the Order.
- 5.4 The Seller shall unload the Goods at the delivery address unless the Order specifies otherwise. Delivery of the Goods shall be completed on the completion of unloading the Goods at the delivery location.
- 5.5 The Goods upon delivery shall be accompanied by an advice note showing the Order number, date of the Order, date of the delivery, the quantity, weight and full description of the Goods delivered. The Seller shall upon delivery obtain a receipt for the Goods signed by an authorised signatory or representative of the Buyer, such receipt shall be upon a duplicate copy of the advice note and shall be forwarded to the Buyer with the Seller's invoice. For the avoidance of doubt, such receipt shall not signify the Buyer's acceptance or approval of the Goods.
- 5.6 The Buyer shall not be deemed to have accepted the Goods or any part thereof until after the Buyer (or any sub-buyers) has inspected the Goods. No approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Buyer nor any enquiry or inspection which the Buyer may make or has carried out on or for its benefit will operate to reduce, extinguish, exclude, limit or modify the Seller's obligation to fulfil its duties and obligations under the Purchase Contract.

**6. TITLE AND RISK**

Title and risk in the Goods shall pass to the Buyer on completion of delivery without prejudice to the Buyer's rights to reject at any time the Goods that do not conform with the terms of the Purchase Contract.

**7. REMEDIES OF BUYER**

- 7.1 If the Seller fails to deliver all or part of the Goods on the Delivery Date or the Goods do not comply with the Purchase Contract, without limiting any other rights or remedies available to the Buyer, the Buyer may exercise any one or more of the following rights and remedies:
  - (a) terminate the Purchase Contract;
  - (b) reject the Goods (in whole or in part) and return them to the Seller at the Seller's own risk and expense;
  - (c) to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid);
  - (d) to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
  - (e) to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods from a third party; and
  - (f) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Purchase Contract.
- 7.2 The Seller upon receiving notice from the Buyer shall at the Buyer's sole discretion repair or replace immediately free of charge Goods damaged or not in accordance with the Purchase Contract. If it is necessary to open up or dismantle any other works or assemblies to permit such a repair or replacement then the Seller shall bear all liabilities arising from or in connection with such opening up or dismantling and of reassembly and making good after repairs. Delivery of the Goods shall not be deemed to have taken place until delivery of such replacement or repaired Goods to the Buyer and completion of unloading. The Buyer reserves the right to hold such damaged Goods at the Seller's risk (and to use defective Goods without waiver of its rights where, in the Buyer's reasonable opinion, such use would mitigate its losses arising from the Seller's breach which led to the rejection) or to return them at the risk and expense of the Seller.
- 7.3 Where delivery of a quantity of the Goods is less than the quantity specified in the Purchase Contract and the Buyer has not exercised its rights of termination under clause 7.1(a) of the Purchase Contract, the Buyer may accept the Goods and recover any loss, damage or expense (including loss of profit) from the Seller arising from the Seller's breach in respect of the failure to deliver the remainder of the Goods.
- 7.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 7.5 The Buyer's rights and remedies under the Purchase Contract are in addition to its rights and remedies implied by statute and common law.
- 7.6 The Seller shall indemnify the Buyer 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with:
  - (a) any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Seller;
  - (b) any death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Seller;
  - (c) any death, personal injury or damage to property arising out of or in connection with any ancillary services performed by the Seller, to the extent that the ancillary services are attributable to the acts or omissions of the Seller; and
  - (d) any claim made against the Buyer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Purchase Contract by the Seller.
- 7.7 The Buyer shall be entitled to request, and the Seller shall provide, such performance security as may be required by the Buyer and in such form as may be agreed by the parties, acting reasonably.

Such performance security may include, but without limitation, a performance bond, a parent company guarantee and manufacturers' guarantees.

**8. FORCE MAJEURE**

Neither party shall be in breach of the Purchase Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for one month or more, the party not affected may terminate the Purchase Contract by giving 7 days' written notice to the affected party.

**9. ASSIGNMENT AND SUBCONTRACTING**

The Seller shall not assign, subcontract, license or otherwise dispose of any part of its rights or obligations under the Purchase Contract, including any debt or part of it arising from the Purchase Contract, without the prior written consent of the Buyer and in any event the Seller shall remain directly liable to the Buyer for the satisfaction of all of the obligations on the Seller under the Purchase Contract.

**10. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES**

In performing its obligations under the Purchase Contract, the Seller shall:

- (a) comply with all applicable laws (including the Construction (Design and Management) Regulations 2015, the Equality Act 2010, the Bribery Act 2010 and the Modern Slavery Act 2015) statutes, regulations and codes from time to time in force; and
- (b) the Buyer's Anti-Bribery Policy from time to time in force.

**11. TERMINATION**

The Buyer may terminate the Purchase Contract in whole or in part at any time before delivery of the Goods with immediate effect by giving the Seller written notice, whereupon the Seller shall discontinue all work on the Purchase Contract. The Buyer shall pay the Seller fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

**12. DRAWINGS AND INFORMATION, COPYRIGHT, PATENTS AND INTELLECTUAL PROPERTY**

- 12.1 The Seller acknowledges that all materials, equipment and tools, drawings, specifications, and data supplied by the Buyer to the Seller (**Buyer Materials**) and all rights in the Buyer Materials are and shall remain the exclusive property of the Buyer. The Seller shall keep the Buyer Materials in safe custody at its own risk, maintain them in good condition until returned to the Buyer and not dispose or use the same other than to perform the Seller's obligations under the Purchase Contract, in accordance with the Buyer's written instructions or authorisation. The Seller shall return any Buyer Materials to the Buyer on the Buyer's demand.
- 12.2 The Seller at its own expense shall prepare and submit for approval such drawings as may be required by the Buyer (**Copyright Materials**). Approval of the Copyright Materials by the Buyer, its servants or agents or any third party shall in no sense relieve the Seller from any of its obligations under the Purchase Contract. No Copyright Materials shall be varied or modified after such approval in any respect without prior written approval from the Buyer which if necessary shall be promptly applied for in good time with full supporting explanation and particulars.
- 12.3 Copyright in any Copyright Material shall remain vested in the Seller, but the Seller hereby grants to the Buyer a perpetual, irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the Copyright Material for any and all purposes relating to the use of the Goods and such other purposes as may be reasonably foreseeable in connection with the use of the Goods. This licence shall include the right to grant sub-licences in the terms of the licence granted under this clause and shall be transferable to third parties without the Seller's consent.
- 12.4 The Seller will at any time provide to the Buyer on request copies (in hard copy, CAD (Revit software) format, electronic format or such other format as reasonably required) of the Copyright Material and any other information, correspondence and documentation the Seller has prepared in connection with the Purchase Contract and the Seller agrees not to exercise any lien for any reason which the Seller might otherwise be entitled to exercise over the Copyright Material.
- 12.5 The Seller hereby waives and agrees not to assert any moral rights in the Copyright Material granted pursuant to the Copyright Designs and Patents Act 1988.

**13. CONFIDENTIALITY**

- 13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Purchase Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall 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 Purchase Contract.
- 13.4 The Seller shall not, without the Buyer's prior approval, take or permit to be taken any photographs of the Buyer's site and/or the Buyer's works and/or anything connected to the Buyer's business (including, but without limitation, the identity of any clients of the Buyer and/or any information about any such clients) for use in any publicity or advertising or otherwise.

**14. INSURANCES**

- 14.1 Without prejudice to its obligations under the Purchase Contract the Seller will at its own cost take out and maintain employer's liability insurance, public liability insurance and Products Liability Insurance with reputable insurers within the United Kingdom each with a limit of indemnity of not less than £5,000,000 (or such greater amount as stated in the Order or prescribed by law) for each and every occurrence or series of occurrences arising out of each original cause.
- 14.2 To the extent to which the Seller is responsible for design, the Seller will at its own cost take out and maintain professional indemnity insurance until the date 6 years from the date of delivery of the Goods, with reputable insurers carrying on business in the United Kingdom, with a limit of indemnity of £5,000,000 (or such greater amount as stated in the Order or prescribed by law) for each and every occurrence or series of occurrences arising out of each original cause.

- 14.3 Upon request from the Buyer, the Seller shall provide the Buyer with reasonable evidence that the required policies of insurance are in force.
- 14.4 The Seller shall, to the extent relevant to the provision of the Goods, comply with the conditions of the Buyer's insurances in force from time to time provided that the same have been notified to the Buyer in advance in writing.

**15. SEVERANCE**

Any provision of these Conditions that 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 these Conditions.

**16. THIRD PARTY RIGHTS**

- 16.1 Except as set out in clause 16.2, the Purchase Contract excludes the provisions of the Contracts (Rights of Third Parties) Act 1999. Neither the Buyer nor Seller confer or intend to confer benefits from the Purchase Contract to any third party.
- 16.2 The Purchase Contract is made for the benefit of the Buyer and each of its Affiliates. Each of the Buyer's Affiliates may enforce the provisions of the Purchase Contract directly against the Seller to the fullest extent permitted by law as if the relevant Affiliate was a party to the Purchase Contract.
- 16.3 The rights of the parties to rescind or vary the Purchase Contract are not subject to the consent of any other person.

**17. ENTIRE AGREEMENT**

- 17.1 The Purchase Contract constitutes the entire agreement between the parties.
- 17.2 Each party acknowledges that in entering into the Purchase Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Purchase Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Purchase Contract.

**18. VARIATION**

No variation of these Conditions (including any special terms and conditions purported to be agreed between the parties) shall apply unless agreed in writing between the Buyer and the Seller and signed by an authorised representative of each party.

**19. WAIVER**

- 19.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**20. NOTICES**

- 20.1 Any notice given to a party under or in connection with the Purchase Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or by email to: the Buyer at: procurement@duchyhomes.co.uk and the Seller at: any email address which the Order was sent to, or any email address used by the Seller for any communication relating to the Purchase Contract.
- 20.2 Any notice shall be deemed to have been received:
  - (a) if delivered by hand, at the time the notice is left at the proper address; or
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
  - (c) if sent by email, at the time of transmission.
- 20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**21. APPLICABLE LAW AND JURISDICTION**

- 21.1 The Purchase Contract shall be governed by the laws of England and Wales.
- 21.2 Subject to clause 21.3, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Purchase Contract or its subject matter or formation.
- 21.3 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies, either the Buyer or the Seller may refer any dispute or difference arising under the Purchase Contract to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator shall be as set out in the Model Adjudication Procedures published by the Construction Industry Council current at the date of reference. The nominating body shall be the Technology and Construction Solicitors' Association or any successor organisation.