



Capital Office Partitioning
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Capital Office Partitioning
is a trading division of Capital Build Ltd

Capital Office Partitioning Sales Terms

If you are a consumer (as defined by the Consumer Transactions (restrictions on Statements) Order 1976) we recognise that you may have additional rights under statute and confirm your statutory rights are not affected by these terms.

1. Definitions and Interpretations

- 1.1. In these terms "we" or "us" means the member company of Capital Office Partitioning specified in the contract for sale of goods and/or services to you; "you" means the person firm or company who purchases the goods and/or services from us; and "our and "your" shall be construed accordingly and "contract" means any order which has been accepted by us.
- 1.2. References to any statutory provision shall include (I) any subordinate legislation made under it (II) any provision which it has modified or re-

2. Application of Terms

- 2.1 These terms apply to all sales of goods and/or services by us to the exclusion of all other terms (including any which you purport to apply) unless
- 2.2 Each order or acceptance of a quotation for our goods and/or services by you shall be deemed as an offer by you to buy goods and/or services subject to these terms. No order or acceptance of a quotation by you shall be deemed to be accepted by us until written confirmation of order is issued by us or (if earlier) we begin to process your order. We shall be entitled to withdraw any quotation at any time (whether or not already accepted by you).
- 2.3 You acknowledge that you have not relied on any statement or representation made or given on our behalf. Any estimates or quantities needed; advice as to the suitability of any goods for a particular purpose and any plan or measurement given by us is given for guidance only (based on your information) and without liability on our part. No allowance is made by us for additional materials wastage or installation. You must satisfy yourself that all goods and/or services ordered are correct.
- 2.4 Any typographical error or clerical omission in any sales literature, quotation, price list or any other document issued by us may be corrected without liability on our part.

3. Description of Goods

- 3.1 The quantity and description of the goods are set out in our quotation or confirmation of order. We may supply goods in either metric or imperial sizes in the nearest equivalent measure and goods may be charged in metric allowing for conversion.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising are issued or published for the sole purpose of giving an approximate idea of the described goods. They shall not form part of the contract and this is not a sale by sample. Each order shall be considered a separate order and we are unable to guarantee that further orders for the same goods will match the previous order.
- 3.3 Where fine or special tolerances are required in the goods supplied beyond those generally accepted within the building trade, no liability shall attach to us, unless such tolerances are notified in writing to us at the time of order and we have acknowledged in writing that we are prepared to accept such order.

4. Delivery of Goods and/or Services

- 4.1 Unless otherwise agreed by us, delivery of the goods and/or services shall take place at the address named on our quotation. Delivery shall occur when you take possession of the goods and/or services at the aforementioned address or (where we agree to deliver) when the goods and/or services are ready to be unloaded at the designated address.
- 4.2 Any dates or times we specify for the delivery of goods and/or services are an estimate. We shall not be liable to you if we do not deliver on or at any particular date or time. Time for delivery shall not be made of the essence by notice.
because you have not provided appropriate instructions, documents or consents, we shall be entitled to full payment and risk in the goods and/or services passes to you. We may store such goods and/or services until delivery and you shall be liable for all related costs and expenses arising from such non delivery including transport and storage costs. If you fail to accept delivery of the goods and/or services within six months of the date of contract we may sell or dispose of those goods and/or services (whether or not you have paid for them). Storage or disposal costs shall be recoverable from you. Any net proceeds from any sale shall be held on trust for you.
- 4.4 When we deliver to site there must be a suitable road to the point where delivery is requested. If no such road exists, delivery will be made to the nearest point at which, in the delivery driver's opinion, the vehicle can safely and lawfully unload. Except when we use a vehicle mounted crane/fork truck you shall be responsible for safely and lawfully unloading the goods and shall provide all necessary labour and equipment. We may charge you an additional fee if you delay in taking delivery of the goods and/or services when tendered. If any goods and/or services packaging or container has been delivered and deposited whether on the public highway or elsewhere, you shall be responsible for all steps that need to be taken for the protection of persons or property in relation to such goods and/or services, packaging or containers and shall indemnify us in respect of all or any costs, claims, losses or expenses which we may incur as a result of such delivery.
- 4.5 We shall not be liable for any shortages in quantity delivered unless you give written notice to us of such shortages within two working days of delivery. In any event our liability shall be limited to making good the shortfall or (at our option) issuing a credit note or refund at the pro rata contract against any invoice raised for such goods.
- 4.6 We may deliver the goods and/or services by separate instalments. Each Instalment shall be a separate contract and cancellation or termination of one instalment shall not entitle you to cancel any other instalment.

4.7 Any query about delivery shall be made as soon as possible, and in any event within twenty eight days of the date when the goods and/or services would in the ordinary course of events have been delivered, else the goods and/or services shall be deemed to have been delivered in accordance with the contract.

4.8 We shall not be responsible for taking back any non chargeable packaging/pallets.

4.9 The cost of any testing of the goods and/or services that we deem is necessary, whether or not in your presence, will be charged to you, unless prior written agreement has been obtained from us. If you or your representative delay in attending such tests, after seven days notice of the place and time of such tests, the tests will proceed in your absence and shall be deemed to have been carried out in your presence.

5. Risk and Ownership of Goods

5.1 The goods are at your risk from the time of delivery or deemed delivery.

5.2 Ownership of the goods shall not pass to you until we have received in full (in cleared funds) all sums due to us in respect of the goods and all other sums which are or become due to us from you on any account.

5.3 Until ownership of the goods has passed to you, you shall hold the goods on a fiduciary basis as our bailee and store/protect the goods (at no cost to us) in satisfactory condition and in such a way that they remain readily identifiable as our property and you shall tell us immediately where the goods are situated.

5.4 Subject to 5.5 you may sell the goods before ownership has passed to you provided that any sale shall be effected in the ordinary course of your business at full market value and you shall deal as principle; you shall hold all proceeds of the sale on trust for us and assign to us all rights and claims which you may have against your customer arising from such sales until full payment is made

5.5 Your right of possession of, and authority to sell the goods shall terminate immediately (and you shall immediately deliver to us at your cost and risk) if we notify you to such effect or on the happening of any event set out in 10.3 (a) – (I) (whichever is earlier) and you shall immediately notify us in writing upon the happening of any such event.

5.6 You grant to us and our agents an irrevocable licence at any time to enter any premises (with and without vehicles) where the goods are or may be stored in order to inspect them or, where your right of possession has been terminated, to recover them.

5.7 Where we are unable to determine whether any goods are the goods in respect of which your right to possession has terminated you shall be determined to have sold all goods of the kind sold by us to you in the order of which they were invoiced to you.

6. Provision of Services

6.1 Where the goods supplied include services by us, our agents or sub contractors, you shall (where necessary) allow us safe and reasonable access to the

6.2 The price quoted for such services assumes that:

- (a) The site is ready and suitable for services to commence at the agreed time
- (b) The services are to be carried out within our normal working hours
- (c) Suitable site access is available at all times: and
- (d) Adequate mechanical lifting equipment is provided by you in the event that the services are to be carried out above ground level

If any of the assumptions proves incorrect, we shall be entitled to vary the price

6.3 You shall provide a safe environment and all necessary consents, information and resources for us, our agents and sub contractors to carry out the services

6.4 In relation to any installation services, you are responsible for insuring the goods (whether before or after installation) and shall notify your insurers that we shall be carrying out such services on site. You must protect carpets, furniture and all other items.

6.5 Any dates and times we specify for commencement and completion of the services are an estimate. We shall not be liable if we do not carry out the services on or at any particular date or time. Time for performance shall not be made of the essence by notice.

6.6 If we provide design services, all copyright and other intellectual property rights created, developed or used shall remain the sole property of us or our licensors

7. Price and Additional Charges

7.1 Unless we otherwise agree in writing that the price payable for the good and/or services shall be the price applicable on the date of delivery or deemed delivery for goods and the date the services are carried out for services

7.2 The price for any goods and/or services shall be exclusive of any value added tax which shall be payable by you at the rate applicable at the tax point

7.3 We may at any time after the acceptance of an order, but prior to delivery, revise the price payable for the goods and/or services to take account of increase in costs including, without limitation, costs of any goods or materials, carriage, labour and overheads, the increase or imposition of any tax duty or other levy and variation in exchange rate.

7.4 Unless we otherwise agree in writing, we may charge you the cost of delivering the goods to you.

7.5 We may charge for any special packaging to cover the cost of labour and materials. We will charge for pallets, crates and cases but these charges will be credited in full if such items are returned to us carriage paid and in good condition within seven days of delivery. Where we agree to collect such pallets, crates and cases, you shall make such items available for collection on request.

8. Payment and Interest

8.1 Payment for goods and/or services supplied on a credit account shall be due not later than the last day of the month following the month of delivery or deemed delivery of the goods and/or services. If you default in making payment the entire balance of your account shall be payable immediately and we may charge interest together with costs and expenses in accordance with 8.4

8.2 For non account purchases, payment shall be made with the order, or at our discretion, or on delivery or deemed delivery

8.3 time for payment shall be of the essence. You shall make all payments in Pounds Sterling, and in full without any deduction

8.4 If you fail to pay us any sum due (and whether or not any part of your account is subject to query) we may in addition to our rights at 10.3 appropriate any payment made by you to such as of the goods and/or services (or such goods or services supplied under any other contract between you and us) as we may think fit, and you shall be liable to pay us interest on such sum at the annual rate of 4% above the base lending rate from time to time of the HSBC Plc accruing on a daily basis, or at our option; interest in accordance with the Late Payments of Commercial Debt Interest Act 1998 (as amended and supplemented by the Late Payment of Commercial Debt regulations 2002) from the due date of payment until payment is made in full whether before or after any judgement together with all costs and expenses incurred by us recovering sums due or exercising our rights under this provision, including our debt recovery fees at 6% of the total amount outstanding

8.5 Credit accounts may only be opened at our discretion and are subject to satisfactory references. We may set a maximum amount of credit allowable upon each account and may withdraw credit facilities without explanation. You agree that we may obtain, retain and provide to third parties, references as to your financial standing. Any change in the constitution of your organisation must be notified to our head office Credit Services Department prior to it occurring in order that credit facilities to the reconstituted organisation may be put in place, subject always to our discretion and our confirmation in writing. Until new credit facilities are agreed, the existing entity and the new entity shall be jointly and severally liable for any debt due to us.

9. Liability

9.1 If any goods or services are defective due to defective workmanship or material, we shall (at our option) repair or replace such goods (or the defective part) or rectify the defective service or refund the price of such defective goods or services at the pro rata contract rate provided that;

(a) You give us written notice of the defect within seven days of the date of delivery or completion of the services, or in the case of a defect which is not discoverable upon reasonable examination, within seven days of the time when you discover or ought to have discovered the defect and in any event within twelve months from the date of delivery or completion of services.

(b) We are given a reasonable opportunity after receiving such notice to examine such goods and/or services and (if asked to do so by us) you

© You do not make any further use of such goods after giving such notice

(d) The defect is not due to wilful damage, negligence (other than ours) fair wear and tear, alteration or repair of such goods without our prior

(e) The defect is not due to any act or omission of you, your agents or contractors

9.2 Our entire liability for defective goods and services is set out in 9.1 and in particular we shall not be responsible for either the cost of removing the goods from any place where they are installed or fixed (or making good the place after removal) or for the cost of installing or fixing any repaired or replacement goods unless due to our defective service.

9.3 On request we will provide information about any manufacturers guarantee offered and available to you in respect of the goods, we will provide information about any manufacturers guarantee offered and available to you in respect of the goods but we are not legally responsible for any obligation under manufacturers guarantees where the goods contain a warranty or guarantee offered by us please refer to the special conditions applicable from our head office upon request

9.4 Save as expressly set out in these terms all warranties and other terms implied by statute or common law (save as the term implied as the title) are to the fullest extent permitted by law excluded by the contract.

9.5 Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with performance or contemplated performance of the contract shall be limited to the contract price

9.6 We shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential or any other indirect losses whatsoever and howsoever caused.

9.7 Nothing in these terms excludes or limits our liability for (a) Death or personal injury caused by our negligence. (b) Fraud or fraudulent misrepresentation, and © Any other matter which it would be legal for us to exclude

9.8 Where goods are manufactured in compliance with any designs, specifications supplied by you or your customer you shall indemnify us against all proceedings, costs, claims, losses or demands in respect of any infringement or alleged infringement of any intellectual property rights whatsoever of third parties in any part of the world

10. Cancellations and Returns

10.1 We may at our discretion accept or reject the cancellation of any contract or the return of any goods not required. Any such cancellation or return shall be on such terms as we specify and in particular we may charge you a handling fee and all costs incurred on cancelled orders

10.2 Where you are a "consumer" under a "distance contract" (both as defined in the Consumer Protection (Distance Selling) Regulations 2000 you may cancel a contract within seven working days after the date the goods are delivered. You must return the goods to the depot from which they were delivered or request us to collect the goods at your cost. This term shall not apply to any goods specially ordered or made for you or which are liable to deteriorate or expire rapidly.

10.3 We shall be entitled to cancel or suspend a contract if you fail to pay us any sum pursuant to the contract (whether or not any part of your account is subject to query) or any of the following events occurs or we believe is likely to occur

(a) You have a bankruptcy order against you or make an arrangement or composition with your creditors or otherwise take a benefit for the relief

(b) You convene a meeting of creditors or enter into liquidation; or

© You have a receiver and/or manager, administrative appointed over your undertakings or any part of; or

(d) A resolution is passed or a petition presented to any court for your winding up, or for the granting of an administration order in your respect,

(e) You suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you; or

(f) You are unable to pay your debts within the meaning of section 123 of the insolvency act 1986 or you cease to trade; or

(g) Any event similar to the above occurs; or

(h) You fail to observe or perform any of your obligations under the contract or any other contract between us and you; or

(i) You incur or in any way change any of the goods

11. Health & Safety

Certain products supplied by us could, if incorrectly used give rise to risks to health and safety. Information in respect of such goods is available from us. You undertake that you employ compliance by your employees, agents and customers with any instructions given by us or the manufacturer or supplier and will take any other steps or precautions having regard to the nature of the goods as are necessary to preserve the health and safety of any person handling, using or disposing of them.

12. Waste

Unless stated within your quotation as included in costs, you will be responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licences relating to such waste including the appropriate disposal of any goods marked with a crossed out wheeled bin symbol save where you are a consumer and it is our responsibility at law. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this provision.

13. Force Majeure

We may defer the date of delivery, cancel the contract or reduce the volume of the goods and/or services by you (without liability to you) if we are unable to deliver or supply due to any cause beyond our reasonable control (including the acts or omissions of our suppliers and sub contractors)

14 Compliance with Bribery Legislation

You agree that you will not, in connection with the goods and services to be supplied under this contract, bribe or attempt to bribe us or any of our employees, agents or affiliates nor cause us to be in violation of any applicable bribery or anti money laundering laws. We may terminate the contract in the event of your breach of this clause. You shall indemnify us against all liabilities, costs and expenses, damages, claims, demands and losses suffered or incurred by us arising out of or in conjunction with any breach of this clause, whether or not the contract has been terminated.

15. General

15.1 Any notices given to or in relation to shall be in writing and addressed to the party concerned at its principal place of business or last known address. Any notice shall be deemed delivered two days after posting or on the next working day after fax transmission.

15.2 Any provision of the contract found to be invalid or unenforceable shall to such extent be deemed severable and the remaining provisions of the contract shall continue in full force and effect.

15.3 Failure or delay by us in enforcing any contract term shall not be construed as a waiver of any of our rights under the contract

15.4 You shall not be entitled to assign or sub contract any of your rights or obligations under the contract

15.5 Save for any member company of the Capital Office Partitioning who shall be entitled to enforce any provision of the contract, no person who is not party to the contract shall have a right to enforce any term of the contract which expressly or by implication confers a benefit on that person. Any dispute or claim arising in connection with the contract shall be covered by English law and the parties submit to the exclusive jurisdiction of the English Courts, (save that if you are domiciled in Scotland within the Civil Jurisdiction and Judgements Act 1982) then the contract shall be construed in accordance with Scottish Law and shall be subject to the exclusive jurisdiction of the Scottish Courts.