

INSTAFOAM AND FIBRE LIMITED - TERMS OF SALE (CONSUMERS)

Please read carefully all the Conditions before signing the Contract. The Seller intends that all terms of the Contract between the Customer and the Seller are contained in writing in this document. If there are any qualifications, or variations to these Conditions or any other applicable terms or special requirements, for the avoidance of doubt, please include them in the space provided overleaf.

These terms are in addition to any terms, conditions and qualifications of any operator of an insulation scheme or grant system.

Please retain a copy of these terms for future reference.

1. Interpretation

1.1 In these Conditions:

"Seller" means InstaFoam and Fibre Limited (Co. No. 1500228), the registered office of which is at Insta House, Ivanhoe Road, Hogwood Business Park, Finchampstead, Wokingham, Berkshire, RG40 4PZ

"Customer" means the person who accepts an offer from the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;

"Goods" mean any goods to be supplied by the Seller to the Customer under this Contract, together with the related fitting or installation services, where applicable;

"Conditions" means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any terms and conditions agreed in writing between the Customer and the Seller and included below;

"Contract" means the contract for the purchase and sale of the Goods between the Customer and the Seller; "writing" includes facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as changed subsequently.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 The copyright and all other intellectual property rights in any specification or other diagram, drawing or document ("Document") included in the contract and any Document or work created during or for the purpose of installation of the Goods shall remain the property of the Seller.

2. Basis of the sale

2.1 These Conditions form the basis of the Contract between the Seller and the Customer.

2.2 Any incorrect spelling, calculation or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction by the Seller, provided that the correction does not materially affect the Contract.

3. Orders and specifications

3.1 No order submitted by the Customer shall be regarded as accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Contract.

3.3 The Seller may make minor technical changes to the specification of the Goods, which will not be to the detriment of their function and will not affect the price.

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable UK statutory or European law requirements.

4. Cancellation

4.1 The Customer shall be entitled to cancel the Contract, without liability, if the period of 28 days delay in delivery provided for in clause 7.2 is exceeded, other than where this is due to an event of force majeure (Clause 10 deals with events of force majeure).

4.2 The Customer shall also be entitled to cancel the Contract, without liability to the Seller, if such cancellation is notified by the Customer to the Seller in writing within 10 days of the date on which the Contract was made.

4.3 If without a legally valid reason the Customer cancels an order which has been accepted by the Seller, the Customer will be liable for damages for breach of contract. However, the Seller may agree in writing to the Contract being cancelled in such circumstances by mutual agreement. The Seller may make it a condition of agreement to such a cancellation that the Customer pays some or all of the Seller's costs, losses and expenses caused by the cancellation and shall be entitled to use all or any part of any deposit paid by the Customer to set against such costs, losses and expenses. A Customer wishing to cancel should notify the Seller as soon as possible, so that efforts can be made to find an alternative buyer.

4.4 The Seller also has a right to cancel in the event of force majeure under Clause 10.

4.5 The Seller may cancel the Contract for an objectively justified reason. If the Seller so cancels, the Customer shall be entitled to the refund of any deposit paid.

4.6 If the Seller cancels the Contract without any objectively justified reason, the Customer shall be entitled to compensation equivalent to any deposit previously paid by the Customer for the Goods (together with the refund of such deposit).

5. Price and Price Increases

5.1 The price of the Goods shall be the sum shown overleaf or attached. This is stated inclusive of VAT.

5.2 It is the Seller's intention, where practical, to honour the price given for the supply and installation of Goods. If the relevant energy efficiency scheme should run out of funds (meaning that the Customer's Contract can no longer be subsidised) or if the cost to the Seller of supplying the Goods is subsequently increased by reason of increases in the cost of materials and/or labour and/or any other factor outside the control of the Seller, then the Seller shall notify the Customer before undertaking any work to which the increase will apply and the Customer may require the Seller to discontinue the work and shall pay the Seller only for the work already carried out.

5.3 The quoted price does not include the cost of removing any dangerous waste material, such as asbestos, which could not have been reasonably foreseen when the Seller gave the original quotation and which the Seller became aware of only later. Such work will be at extra cost, the amount of which the Seller will agree with the Customer in advance.

6. Terms of payment

6.1 The Seller will invoice the Customer for the price or the balance of the price of the Goods immediately when or at any time after the Seller has fitted or installed the Goods.

6.2 The Customer shall pay the price of the Goods on the date on which fitting or installation of the Goods is completed, in cleared funds (whether by debit or credit card or another means of payment approved by the Seller). The time of payment of the price shall be of the essence of the Contract (meaning that the Seller can by notice terminate the Contract if the price is not paid on the due date and sue the Customer for damages.)

6.3 If the Goods are to be paid for in whole or in part by any form of finance agreement then, provided the Customer's application for a loan is accepted by the finance company unconditionally, the Customer will sign the finance company's completion note immediately on completion of installation of the Goods. If the finance company rejects the Customer's application for whatever reason, then this Contract shall become immediately null and void, unless, on notification of the rejection, the Customer chooses to pay by other means, which are acceptable to the Seller.

6.4 If the Customer fails to make any payment on the due date then, in addition to any other right or remedy available to the Seller, the Seller shall be entitled to charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above the Royal Bank of Scotland PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). This means that the Customer will continue to be liable for this interest on any sums the Customer has not paid even if a court orders payment of any judgment sum to be by instalments.

7. Delivery and Installation

7.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the place stated in the Contract. The Seller's price includes delivery and insurance of the Goods during delivery.

7.2 Any dates quoted for installation of the Goods are approximate only. If installation does not occur within 6 weeks of the date agreed by the Seller, then subject to clause 7.3, the Customer may claim £5.00 per day for each subsequent day on which the Goods are not made available for delivery from the Seller, up to a maximum of £150.00, based on a further 30 days' delay, provided the delay is due to the fault of the Seller, its employees, agents or sub-contractors.

7.3 As soon as the Seller has delivered the Goods, the Customer will be responsible for them. If the Customer delays a delivery or installation, the Seller's responsibility for everything other than damage due to its negligence will end on the date it agreed to deliver or install them, as set out in this Contract.

7.4 If for any reason the Customer is not satisfied with the Goods, the Goods should either be rejected on delivery, or if a fault is found within a reasonable time subsequent to delivery, the Seller will (subject to confirmation of the fault) exchange the Goods or refund the Customer in full. The Customer must notify the Seller of any such fault or damage as soon as reasonably possible

7.5 The Seller shall make all reasonable efforts to fit or install the Goods in accordance with the estimated date(s) stated in the Contract, but the Seller shall not be liable to the Customer for delay in fitting or installation.

8. Risk and property

8.1 Risk of damage to or loss of the Goods shall pass to the Customer (and the Customer should insure accordingly) at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Seller has presented the Goods for delivery.

8.2 Despite delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in and ownership of the Goods shall not pass to the Customer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.

8.3 Until such time as the property in and ownership of the Goods passes to the Customer, the Customer shall hold the Goods as the Seller's fiduciary agent and bailee (essentially, on behalf of the Seller and in a position of trust), and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Seller's property.

- 8.4 Where the Goods are loft insulation, until such time as the property in the Goods passes to the Customer, the Seller shall be entitled at any time to require the Customer to return the Goods to the Seller and, if the Customer fails to do so immediately, and if the Seller believes that the Goods may be disposed of by the Customer before property has passed to him and before a Court order preventing such disposal can reasonably be obtained, the Seller shall be entitled to repossess the Goods and may enter on any land or building where the Goods are in order to do so.
- 9. Guarantee and Liability**
- 9.1 The Seller will provide the Goods with the benefit of the guarantee offered by CIGA. Please see clause 14.7 for further details.
- 9.2 In relation to newly built properties, the supply and installation of the Goods shall be with the benefit of the Insta new build guarantee, from time to time applicable. The current version of the Insta new build guarantee is set out in Appendix 1.
- 9.3 So long as the Customer does not buy or purport to buy the Goods in the course of a business, the statutory rights of the Customer under Sections 12 to 15 of the Sale of Goods Act 1979 are not affected by these Conditions. If the Customer has any doubts as to what his statutory rights are, he should contact his local Trading Standards Department or Citizen's Advice Bureau.
- 9.4 The Customer warrants that it will only use the Goods in accordance with any 'instructions for use' or similar documents provided by the Seller and will not use them for a purpose for which they were not designed.
- 9.5 The Seller accepts liability for death or personal injury caused by its negligence, or if it is liable under the Consumer Protection Act 1987, in each case without any limit.
- 9.6 The Seller accepts no liability for any loss or damage caused by any pre-existing structural defects.
- 9.7 The Seller is responsible for losses the Customer suffers as a result of the Seller breaking this Contract if the losses are a foreseeable consequence of the Seller breaking the Contract. Losses are foreseeable where they could be contemplated by the Customer and the Seller at the time the Goods were purchased. The Seller is not responsible for indirect or consequential losses or damage which happen as a side effect of the main loss or damage and which are not foreseeable by the Customer and the Seller (such as loss of profits or loss of opportunity). Where the Seller accepts liability under this clause then, except as provided in clause 9.5, the liability of the Seller shall be limited as follows:
- 9.7.1 in respect of each claim or event (or series of connected claims or events), the limit shall be £10,000; and
- 9.7.2 in respect of the aggregate liability of the Seller for all claims or events, the limit shall be £100,000 in any 12 month rolling period.
- 9.8 The Seller's liability shall not in any event include losses, costs, expenses or liabilities related to any business of the Customer such as lost profits or business interruption.
- 9.9 The Seller will not be liable under this Contract for any loss or damage caused by the Seller or the Seller's employees or agents in circumstances where:
- 9.9.1 There is no breach of a legal duty of care owed to the Customer by the Seller or by any of the Seller's employees or agents;
- 9.9.2 Such loss or damage is not a reasonably foreseeable result of any such breach; or
- 9.9.3 Any increase in loss or damage results from breach by the Customer of any term of this Contract.
- 9.10 The Customer should consider obtaining insurance cover if potential loss and damage which the Customer may suffer is not covered by the Seller in this clause.
- 9.11 In the event of legal action for breach of the obligation to make payment, the Customer will be responsible for all costs allowable by the courts if an award is made in favour of the Seller.
- 10. Force Majeure**
- 10.1 The Seller shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control (termed an event of "force majeure").
- 10.2 Where an event of force majeure occurs, the Seller will keep the Customer informed of all developments and, if the force majeure results in any unreasonable delay in delivery, liaise with the Customer regarding cancellation of the Contract or performing it in some other way.
- 10.3 If the event of force majeure prevails for two consecutive months or more, the Customer may, by notice to the Seller, cancel the Contract. In the event of such cancellation, the Customer shall be entitled to the refund of any deposit paid, less the reasonable costs of the Seller for processing the order and dealing with the Contract (subject to a maximum of 10% of the deposit paid).
- 11. Insolvency of Customer**
- 11.1 This clause applies if the Customer makes any voluntary arrangement with his creditors or becomes bankrupt or if another person legally takes possession or control of any of the property or assets of the Customer or the Seller reasonably believes that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 If this clause applies, then, without prejudice to any other right or remedy available to the Seller, on the Seller giving written notice, payment of any outstanding balance of the price shall be due on the date 7 days from the date of the notice, save that if the Goods have already been delivered but not paid for, payment shall become due immediately on the giving of such notice. Failure to make payment will entitle the Seller to terminate the Contract and claim damages from the Customer.
- 12. General**
- 12.1 Any notice to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its address stated below, or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices may be given by hand (taking effect immediately on delivery) or by first class post (taking effect two working days after posting) or by facsimile (taking effect immediately, provided a transmission report to a number of the intended recipient can be produced).
- 12.2 No waiver or release by the Seller of any breach of the Contract by the Customer shall be considered as a waiver or release of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.4 The Customer has no right to assign or transfer its rights under this Contract, except that the benefits of the Contract are assignable on the change of ownership of the building in which the goods are installed.
- 12.5 No person other than a party to the Contract shall have any rights under it.
- 13. Law**
- 13.1 The Contract shall be governed by the laws of England, and the parties shall submit any dispute to the exclusive jurisdiction of the English courts, provided that, if the Customer is a consumer living outside England and Wales, relevant United Kingdom law will apply to the Contract and the relevant courts of the United Kingdom will have exclusive jurisdiction in relation to the Contract.
- 14. Wall/Loft Insulation Specific Terms**
- 14.1 The Seller reserves the right to cancel the Contract without any liability to the Customer if the representatives of the Seller sent to examine the building/structure or to install the Goods in the building/structure are of the opinion that the building/structure is unsuitable for insulation using the Seller's standard techniques or that safe access to any part of the building/structure cannot be obtained using equipment normally employed by the Seller.
- 14.2 The Customer agrees to allow the Seller to make connections to and have free use of mains water and mains electricity during installation of the Goods.
- 14.3 The Customer must give written notice within 7 days of any damage caused by the Seller's employees or representatives during installation of the Goods.
- 14.4 Occasionally, roof space ventilation is assisted by air movement from wall cavities. The Seller will use reasonable endeavours to establish if this is likely to be the case and to advise if additional roof space ventilation is recommended in conjunction with the installation of cavity wall insulation. However, the Seller accepts no responsibility or liability for subsequent condensation which may occur. The Customer accepts full responsibility for the cost of any necessary additional roof space ventilation.
- 14.5 Where the external wall ends at a lower height than the internal wall, condensation may occur in the area where there is no cavity as a result of this being a potential cold spot. The Customer accepts full responsibility for the cost of providing additional insulation to the external surface of this internal wall (should the need arise).
- 14.6 Where cavity wall insulation is being provided as part of the construction of a new property:
- (a) the external walls must satisfy all the requirements of BS 5628, Part 3: 1985 Code of Practice for use of masonry – Materials and Components, Design and Workmanship and Chapter 6.1 – External Masonry Walls – of the NHBC Standards. Copies of these documents can be inspected at the Seller's head office.
- (b) Mortar used in external wall construction must not be prepared with plasticisers containing surfactants.
- 14.7 The Seller confirms:
- (a) that as the System Designer of the InstaFibre Cavity Wall Insulation System, the Seller is a Founder Member of the Cavity Insulation Guarantee Agency (CIGA); and
- (b) the InstaFibre Cavity Wall insulation material, which is the Goods, shall be supplied and installed with the benefit of the Guarantee Scheme administered by the CIGA.
- (c) The CIGA guarantees that any defect in materials or workmanship in connection with the installation by the installer of the Customer's cavity wall insulation shall be rectified without charge to the Customer, subject to compliance with these conditions and any terms and conditions as stated on the CIGA guarantee certificate. This guarantee is in addition to and not in substitution for the Customer's statutory rights relating to faulty or mis-described Goods.