

INSTA GROUP GENERAL TERMS AND CONDITIONS OF SUPPLY (COMMERCIAL)

1. DEFINITIONS

1.1 In these Terms and Conditions and any Agreement, the following definitions shall apply:

"Agreement" means these Terms and Conditions (including the Additional Conditions applicable to InstaCoustic Limited Agreements, which shall take priority in the event of a conflict with these general Terms and Conditions) together with the Company's quotation, the Company's order acknowledgement, the Specification Sheet and the Customer's order form (in the event of conflict, in the order of priority in which listed).

"Company" means, as applicable, Insta Foam and Fibre Limited (Co. No. 1500228), InstaCoustic Limited (Co. No. 2194536) or Insta Roofing Service Limited (Co. No. 1868867) the registered office of which is at Insta House, Ivanhoe Road, Hogwood Business Park, Finchampstead, Wokingham, Berkshire, RG40 4PZ; and

"Customer" means any person who accepts a quotation of the Company for the provision of Services or the sale of the Products or whose order for Services and/or Products is accepted by the Company.

"Intellectual Property Rights" means any copyright, trademark, patent or other intellectual property right.

"Personnel" mean the persons (whether employees of or contractors to the Company, or any combination) providing any Services under the Agreement.

"Products" means any goods (including instalments) to be provided by the Company in accordance with these Terms and Conditions and which are described in the Specification Sheet.

"Services" means the services to be provided by the Company in accordance with these Terms and Conditions of such type, at such times and at such locations as described in the Specification Sheet.

"Specification Sheet" means the specification sheet to which these Terms and Conditions are appended, containing details of Services and Products to be provided, planned commencement date, period of services and other details, as relevant in the Agreement.

"Terms and Conditions" means these terms and conditions of supply.

1.2 In these Terms and Conditions the singular includes the plural, person includes a firm, company or organisation and vice versa.

1.3 Clause headings are for convenience only and shall not affect interpretation.

2. INTERPRETATION AND BASIS OF CONTRACT

2.1 These Terms and Conditions shall be read in conjunction with any other documents supplied by the Company and stated in writing by the Company to form part of the Agreement. In the event of any conflict between these Terms and Conditions and the provisions of such other documents the provisions of such other documents shall prevail.

2.2 The Company's employees or agents are not authorised to make any representations concerning the Products or Services unless confirmed by the Company in writing. In entering into the Agreement the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms and Conditions affects the liability of either party for fraudulent misrepresentation.

2.3 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees as to the storage, application or use of the Products which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. ORDERS AND ACCEPTANCE

3.1 The Customer is deemed to accept the Terms and Conditions of the Agreement by placing an order for Services and/or Products with the Company, or by conduct in booking or accepting the first provision of Services or the first delivery of Products.

3.2 The Customer shall be responsible for ensuring the accuracy of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information about the Services and Products to enable the Company to perform the Agreement in accordance with its terms. All recommended quantities of Products are proposed in good faith, but no responsibility or liability will be accepted for excess or shortages of Products ordered.

3.3 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative, unless the Company actually provides Products or Services pursuant to that order.

3.4 Unless otherwise agreed in writing, any Agreement for the supply of Services and/or Products shall be subject to the Terms and Conditions which shall govern the Agreement to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Customer.

4. SERVICES AND PRODUCTS

4.1 The Customer shall provide Personnel with the accommodation and facilities specified in any Specification Sheet and make available the appropriate personnel of the Customer to liaise with the Company in relation to the provision of Services. The Customer shall take the same precautions to ensure the health and safety of Personnel while on the Customer's premises as the Customer does for its own employees and shall secure and keep safe any of the Company's property whilst on the Customer's premises.

4.2 The Company shall provide the Services set out in the Specification Sheet applicable to the Agreement.

4.3 The Company may at any time make any changes to the Services and/or Products and/or their specifications which are necessary as a result of obsolescence or unavailability or so as to comply with any applicable legal requirements or which will not materially affect the purpose behind the Services or the performance of the Products, as appropriate. The Company will use all reasonable endeavours to give the Customer prior notice of such change, but does not commit to do so.

4.4 Where the Company has agreed to effect delivery, delivery of the Products shall be made by the Company delivering the Products to the Customer's premises (as identified in writing by the Company). Where the Products are to be delivered ex works, delivery shall take place when the Company makes the Products available for collection by the Customer.

4.5 While the Company will endeavour to meet any agreed performance or delivery date, time of performance or delivery shall not be of the essence and shall not be binding on the Company. In no event will the Company be liable for any delay in delivery howsoever caused or for any direct or indirect or consequential loss or damage arising therefrom.

4.6 All Products must be called off within 12 months of order date, unless otherwise agreed by the Company in writing.

4.7 Risk in the Products shall pass to the Customer at the time of delivery of the Products to the Customer's premises and the Customer is advised to insure accordingly.

5. RESERVATION OF TITLE

5.1 Notwithstanding delivery and the passing of risk in the Products, the property in the Products (but not the Intellectual Property Rights in Products) supplied by the Company will not pass to the Customer until the Company has received in cash or cleared funds in full the price of the Products and all other goods the subject of any other Agreement between the Company and the Customer which have been delivered but not paid for.

5.2 Until full payment has been received by the Company, the Customer shall hold the Products in a fiduciary capacity for the Company in a manner which enables them to be identified as the goods of the Company and the Customer shall immediately return the Products to the Company should the Company's authorised representative so request. All normal rights and obligations associated with a fiduciary relationship shall apply.

5.3 The Customer grants to the Company an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing any Products, the property in which remains with the Company.

5.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products.

6. PRICES & PAYMENT

6.1 In respect of Products and Services, the prices and charges shall be the Company's quoted price, or where no price has been quoted or is no longer valid (quoted prices only being valid for 30 days from issue) the Company's list prices and charges, from time to time applicable. (All charges are stated exclusive of VAT). In the case of Services, the Customer shall pay any additional sums which are agreed between the Company and the Customer for the provision of additional Services or which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions.

6.2 In relation to Products, unless otherwise stated by the Company in writing, all prices and charges of the Company are stated on an ex works basis and if the Company agrees to deliver other than at the Company's premises, the Customer shall be liable to pay the Company's fees and charges for transport, packaging and insurance.

6.3 The Company reserves the right to increase the price of the Services or Products to reflect any increase in the cost to the Company which is due to a factor beyond the Company's control, any change in performance or delivery dates, quantities or specifications for the Services or Products or any delay caused by any instructions of the Customer, by giving notice to the Customer at any time before performance or delivery.

6.4 The Company shall be entitled to invoice the Customer, in the case of Services, following the end of each month in which any Services are provided, or at other times agreed with the Customer and, in the case of Products, on or at any time after delivery.

6.5 Unless an earlier payment date is specified by the Company and subject to clause 6.6 below, the Company's prices and charges for the Products and/or Services shall be payable by the Customer together with value added tax and any applicable import and export duties or taxes and without deduction, retention or set off, not later than the last day of the month immediately following the month in which the Company's invoice was issued. This provision shall apply irrespective of any requirement to have the Services approved by any third party.

6.6 If the Customer is a new account, the Company will require trade references before any order for Products or Services is accepted and payment in full in cleared funds with the order.

6.7 In the event that any sum which is due from the Customer is not received by the due date, then without prejudice to any other rights of the Company and in addition to the loss of any discount, the Company reserves the right to charge interest at the rate of 5% per annum above the base lending rate of the Royal Bank of Scotland Plc from time to time in force from the due date until payment in full. In the event of late payment of the Company reserves the right to suspend further deliveries of the Products or performance of the Services (in the Company's absolute discretion) pending payment or, in its discretion, to terminate any or all Agreements.

7. DELIVERY

7.1 Delivery of the Products shall be made by the Customer collecting the Products at the Company's premises at any time after the Company has notified the Customer that the Products are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Products to that place (without unloading). The Customer shall be responsible for the proper unloading of the Products and shall indemnify the Company for any loss or damage caused during or as a consequence of unloading.

7.2 Any dates quoted for delivery or installation of the Products or the provision of Services are approximate only and the Company shall not be liable for any delay in delivery or installation of the Products or the provision of any Services, however caused. Time for delivery shall not be of the essence of the Agreement unless previously agreed by the Company in writing. The Products may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Customer.

7.3 Where delivery of the Products is to be made by the Company in bulk, the Company reserves the right to deliver up to five per cent more or five per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

7.4 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms and Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Customer to treat the Agreement as a whole as repudiated.

7.5 If the Company fails to deliver the Products (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Products.

7.6 If the Customer fails to take delivery of the Products or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Company may (a) store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or (b) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Agreement or charge the Customer for any shortfall below the price under the Agreement.

8. CANCELLATION

8.1 Subject as hereinafter provided the Customer shall have no right to cancel any Services or Products. The Company may, in its absolute discretion, permit total or partial cancellation, following receipt of a notice in writing received by the Company at least 30 days before any date for delivery of the Products or the performance of the Services (as appropriate). If the Company agrees to cancellation, it shall give notice to the Customer, but the Customer shall be liable to pay the Company's charges for all work which has been carried out by the Company up to the date that the cancellation notice is received and all the Company's costs and expenses arising out of the cancellation (including but not limited to unavoidable third party commitments).

8.2 Upon cancellation the Company shall be entitled to invoice the Customer for all such work, costs and expenses referred to in Clause 8.1 in respect of which the Company's invoice shall be conclusive and payment shall be made within 30 days of the invoice date. The provisions of Clause 6 above shall apply to the invoiced sum.

8.3 The Company reserves the right to cancel any Agreement and re-negotiate terms in the event that the Customer fails to accept performance of the Services and/or to take delivery of the Products for any reason, within four weeks of the date of order confirmation from the Company.

9. CARE AND SECURITY OF THE PRODUCTS AND TITLE

9.1 Until the Products are installed or otherwise used by the Company ("Used"), the Customer shall at its own expense prepare and provide all proper storage and facilities including proper environmental conditions for the Products.

9.2 From the point of loading (if delivery is ex works) or otherwise immediately prior to unloading, the Products shall be at the risk of the Customer until Used and thereafter and the Customer shall insure the Products against theft, loss, destruction, damage and all usual commercial risks, to their full replacement value.

9.3 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms and Conditions, the property in the Products shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Products and all other Services and products agreed to be sold by the Seller to the Buyer for which payment is then due.

9.4 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as the Company's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer may resell or use the Products in the ordinary course of its business.

9.5 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), the Company may at any time require the Customer to deliver up the Products to the Company and, if the Customer fails to do so immediately, enter on any premises or vehicles of the Customer or any third party where the Products are stored or loaded and repossess them.

9.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Company, but if the Customer does so all moneys owed by the Customer to the Company shall (without limiting any other right or remedy of the Company) become due and payable immediately.

10. COMPLIANCE WITH STATUTORY REQUIREMENTS

10.1 Customer shall ensure that the use to which the Products are put and the storage of the Products and any old or replaced materials to be removed or removed from the site via any public highway do not contravene any local or national laws, bye-laws, regulations or planning consents for the time being in force and will indemnify the Company for all loss, damage, costs, expense and liability arising from or in consequence of any contravention of this provision.

11. TERMS SPECIFIC TO SERVICES

11.1 The following attendances and services will be provided by the Customer without charge to the Company, unless expressly agreed otherwise by the Company:-

- facilities and plant and materials to be sited on hard standing adjacent and convenient to the work site and hard road access to such site;
- provision and erection of all necessary scaffolding, ladders, hoisting facilities, staging, protective measures to roof openings and edges and welfare facilities, as required under or by virtue of the provisions of any law or statutory regulations;
- all necessary builders and other preparatory work required to enable the Company to supply the Products and/provide the Services;
- the provision of 110 volt electric power supply, artificial light and ventilation as necessary and a protective storage area for the liquid gas containers, in conformity with the current Building Construction Regulations covering safety, health and welfare requirements;
- proper protection from loss or damage by whatever cause and theft of all Products supplied by the Company both before and after installation.

11.2 Subject to the provisions of clause 18, the Customer accepts that the Company's liability for installation defects (if any) is limited to those of its own workmanship, which will be made good free of charge and the Customer acknowledges that no liability is accepted by the Company for hidden site defects.

11.3 Subject to the provisions of clause 18, the Customer shall indemnify the Company and its employees and its contractors from and against any loss, damage, cost, expense, injury, claim or liability suffered by the Company and/or its employees and/or its contractors arising out of any accident howsoever occurring on the site; or claims in respect of injury to persons; or loss of or damage to property; any accidents detrimental to the user of the site or premises and any cause of action for which the Company is not responsible or liable.

- 11.4 The Customer acknowledges that the Company is not acting in an advisory capacity and therefore accepts no responsibility for any structural matters. Accordingly-
- (a) Neither the Company, nor its employees nor its contractors shall be responsible for evaluating the significance of any woodworm or rot which may be present in any relevant roof or other structure. It shall be the sole responsibility of the Customer to have such structure professionally surveyed and the Customer shall be responsible for rectifying any defect and for the consequences of any failure to do so.
- (b) The Customer accepts responsibility for any remedial work found to be necessary on removal of existing materials, which could not reasonably be observed at the time of quotation and which is required before the Products can be installed or the Services can be provided or continued with and for ensuring adequate protection against the elements whilst such remedial work is carried out and for any delay or other consequences arising therefrom and for the consequences of failure to carry out such work. The Company shall not be bound to undertake any such work, but in the event that it does so, the Company shall be liable for the Company's charges for doing so, at the Company's then applicable rates.
- (c) In any case where the Agreement requires the Company to remove existing material and to replace with new Products, the Customer shall at its own expense-
- i) accept that, in the absence of negligence by the Company, its employees or contractors, the Company is not responsible for any damage to the internal or external fabric of the building, to decorations or to the contents of the building howsoever caused or for any indirect or consequential loss or damage arising therefrom;
- ii) be responsible for removing any old materials from the site and for the clearing of the site;
- iii) be responsible for any structural or remedial works found to be necessary on the removal of existing materials, which could not be reasonably foreseen at the time of quotation and for the consequences of any failure to carry out such work.
- 11.5 It is the Customer's responsibility to perform to the satisfaction of the Company all necessary preparatory work in accordance with and to the standards specified by any relevant BSI Code of Practice, agrément certificate or manufacturers recommendations.
- 12 **PROPRIETARY RIGHTS**
- 12.1 The Customer acknowledges and accepts that the copyright and all other Intellectual Property Rights in the Products, and other materials produced for, created during (other than Works) or used for the purposes of a Contract ("Core Materials") are and shall remain the property of the Company (or its suppliers) and the Customer only has a limited non-exclusive licence during the Agreement to possess and use the Core Materials for the purposes of assisting in the provision of Services pursuant to an Agreement, in conjunction with the Company, but for no other purpose and with no other party. The Customer shall safeguard the Core Materials, so as to prevent the unauthorised copying or use of the Core Materials and will bring any actual or suspected unauthorised copying or use of Core Materials to the attention of the Company as soon as practicable.
- 12.2 All copyright and other Intellectual Property Rights in any document or work produced by or on behalf of the Company and specifically generated as part of the installation of Products or the performance of the Services ("Works") shall belong to and vest in the Company, but the Customer shall have a royalty free, non-exclusive, perpetual licence to use the Works for the purposes contemplated by the Agreement.
- 12.3 The Customer warrants that any specifications, materials, works or instructions that it may provide to the Company or require the Company to use in or for the purposes of the Services or any Products will not infringe the Intellectual Property Rights of any third party, and the Customer shall indemnify the Company against any loss, damage, damages, costs, expenses, claims and all liabilities arising as a result of or in connection with any claim of or proceedings by any third party relating to the infringement of any copyright or other Intellectual Property Rights of any such third party by the performance by the Company of its obligations to the Customer under the Agreement or any instruction given by the Customer, including but not limited to the copying or use of information, documents or other works supplied by or on behalf of the Customer.
- 12.4 The Customer acknowledges and accepts that the Company may include the name of the Customer in its customer lists and may refer to the Customer by name in presentations to prospective customers.
- 13 **NON SOLICITATION**
- 13.1 Customer shall not directly or indirectly solicit, employ, contract with or receive services from the Company's Personnel, employees or associates or introduce any such person to another contractor or prospective contractor to the Customer during the period of the Agreement and for the period of 12 months thereafter except to the extent that the Company may agree otherwise in writing, which will be subject to such terms and payments as the Company may require.
- 14 **CONFIDENTIALITY**
- 14.1 Both the Company and the Customer undertake that each party and its employees agents and sub contractors will keep confidential and not disclose to any third party without the prior consent in writing of the other party any data, software, drawings, designs, processes, specifications, works, methodologies or other information (whether electronic or otherwise and whether commercial, financial or technical in nature) relating to the business or affairs of the other and which are acquired from the other party in connection with the Products or Services supplied or otherwise under the Agreement, provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Agreement, which was already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which a party is required by law to disclose. The foregoing obligations as to confidentiality shall survive any termination of the Agreement.
- 15 **TERMINATION**
- 15.1 The Agreement may be terminated:
- 15.1.1 by the Company upon giving not less than 30 days prior written notice to the Customer;
- 15.1.2 immediately by the Company if the Customer fails to pay any sum due under the Terms and Conditions on the due date;
- 15.1.3 immediately by either party if the other commits any material breach of any term of this Agreement (other than one falling within Clause 15.1.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
- 15.1.4 immediately by either party if the other party enters into liquidation whether compulsory or voluntary (otherwise than for the purpose of amalgamation or reconstruction) or makes any voluntary arrangement with or compounds with its creditors or becomes subject to an administration order or has a receiver appointed over all or any part of its assets or takes or suffers any similar action in consequence of debt or ceases to carry on business.
- 15.2 Any termination of this Agreement pursuant to this clause shall be without prejudice to any rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 15.3 Where the Customer or the Company does so terminate the Agreement the Customer shall pay the Company the amounts due under the Agreement in respect of all Services performed and Products supplied or due to be performed or supplied up to the date of termination, without any deduction or set off.
- 16 **FORCE MAJEURE**
- 16.1 Neither party shall be liable for any delay in performing any of its obligations hereunder (other than the payment of the Company's charges in accordance with Clause 6, if such delay is caused by circumstances beyond the reasonable control of the party so delaying ("Event of Force Majeure") and such party shall be entitled to a reasonable extension of time for the performance of such obligations provided always that if the Event of Force Majeure continues for a period in excess of two months, the Company shall be entitled to terminate the Agreement to which these Terms and Conditions apply by notice in writing with immediate effect, in which event neither party shall be liable to the other by reason of such termination, save for payment for Products already supplied and Services already performed.
- 17 **WARRANTY**
- 17.1 The Company warrants that:
- 17.1.1 the Services will be performed with reasonable care and skill;
- 17.1.2 the Products will be free from defects in material and workmanship at the point of delivery; and
- 17.1.3 were the Company performs Services and installs/uses the Product, the Products will be free from defects in material and workmanship for a period of three months from delivery, provided they are installed in accordance with manufacturer's recommendations and used under normal and reasonable conditions.
- 17.2 Any claim by the Customer which is based on a defect in the quality of the Services and/or the Products shall be notified to the Company within 7 days of the date of performance or delivery, except in the case of a latent defect, in which event the 7 day period will only run from when the defect was (or ought reasonably to have been) discovered.
- 17.3 Where any valid claim in respect of any Services or Products which is based on any defect in quality is notified to the Company in accordance with these Terms and Conditions the Company shall at its option either re-perform the Services or replace the Products which prove to be defective free of charge or, at the Company's sole discretion, refund to the Customer the price of the Services or Products (or a proportionate part of the price), but the Company shall have no further liability to the Customer.
- 17.4 The Company shall be under no liability with regard to the warranty given in Clause 15.1.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence, or with regard to Products which have been modified without the Company's approval or on which the original identification marks have been removed or altered.
- 17.5 The Company does not give any warranty that the Services or Products are fit for any particular purpose, other than one confirmed in writing by the Company.
- 17.6 The foregoing states the entire liability of the Company to the Customer in respect of breach of warranty and the Customer shall have no other remedy whether in contract or tort or otherwise.
- 17.7 The express terms of this Clause are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise all of which are excluded to the fullest permitted by law.
- 18 **LIABILITY AND INDEMNITY**
- 18.1 The Company does not limit or exclude its liability for any personal injury to or death of any person arising from its negligence or the negligence of its officers or employees, acting in the course of their employment.
- 18.2 The Company accepts liability for direct loss or damage or loss of or damage to the tangible property of the Customer arising from the negligence of the Company or the Company's breach of an Agreement subject to these Terms and Conditions subject to a limit of £250,000 per claim or series of connected claims and subject to an aggregate limit in any 12 month rolling period of £1,000,000.
- 18.3 Save as expressly provided in Clauses 18.1 and 18.2, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law or under the express terms of this Agreement for any loss of profit, business, goodwill, contracts, any economic loss or any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees, agents, contractors or otherwise) which arise out of or in connection with the supply or use of any Services or Products or with any Agreement subject to these Terms and Conditions.
- 18.4 The Customer shall indemnify the Company, its officers and employees against any claims, costs, expenses, loss, damage and liabilities (including loss of or damage to physical property, other direct or indirect loss or damage and death or personal injury) caused by or resulting from the negligence of the Customer or its employees, agents or representatives.
- 18.5 The Customer shall take out and maintain adequate insurance cover, with a reputable insurer, in respect of its liabilities under this Agreement and, on request, shall produce to the Company a copy of the relevant insurance policy and relevant renewal receipts.
- 19 **SUPPLY OF SPECIFIED MATERIAL AND SUB-CONTRACTORS**
- 19.1 If the Customer specifies the use of branded, named or patented products or materials or products or materials from a nominated supplier ("Specified Materials"), no warranty (express or implied, statutory or otherwise) is given by the Company as regards the description, quality or suitability for purpose of any such Specified Materials.
- 19.2 Where Specified Materials are to be supplied or the Customer's nominated contractors are to be used, the Company will assume no greater liability to the Customer for them than the liability accepted by the supplier of Specified Materials or nominated contractor towards the Company.
- 20 **CONTRA CHARGES**
- 20.1 Where the Company owes any sum to the Customer (including but not limited to where services have been supplied by the Customer), the Company shall be entitled to set off or contra charge against such sum, any amount which the Customer owes to the Company under this Agreement and shall only be liable for the net balance due, if any.
- 21 **MISCELLANEOUS**
- 21.1 The waiver by either party of a breach or default in respect of any of the provisions of an Agreement subject to these Terms and Conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party of the same or any other provision of these Terms and Conditions.
- 21.2 These Terms and Conditions supersede all prior agreements, arrangements and understandings between the parties and, subject to clause 2.1, constitute the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made in writing signed by duly authorised representatives of the parties. This provision shall not apply in the case of fraud.
- 21.3 The Customer shall not assign sub-license or otherwise transfer any Agreement or any of its rights and obligations under an Agreement whether in whole or in part without the prior written consent of the Company. For the avoidance of doubt, the provisions of this clause shall not apply to the Company.
- 21.4 If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, it shall be deemed deleted from the Agreement and the invalidity or unenforceability of such provision shall not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 21.5 All notices which are required to be given under these Terms and Conditions shall be in writing and delivered or sent to the address of the Company or the Customer or such other address as the recipient may designate by notice in writing given in accordance with the provisions of this clause. Any such notice may be delivered by hand or by first class prepaid letter or fax and shall be deemed to have been served immediately if delivered by hand, if by first class post 48 hours after posting and if by fax when despatched to the correct number (provided that a transmission report for the complete notice to a then current number of the recipient can be produced).
- 21.6 The relationship between the Company and the Customer and, where the Personnel are self employed, such Personnel, shall be and remain that of independent contractors and there shall be no employment relationship between any of them.
- 21.7 The Company and the Customer shall each comply with the provisions of the Data Protection Act 1998 in relation to personal data processed.
- 22 **THIRD PARTY RIGHTS**
- 22.1 No person who is not a party to an Agreement which is subject to these Terms and Conditions ("third party") has or shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms and Conditions and no consent of any third party shall be required under the Act to any cancellations or variations of these Terms and Conditions.
- 23 **INSOLVENCY**
- 23.1 This clause applies if:
- (a) the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or (c) the Customer ceases, or threatens to cease, to carry on business; or (d) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 23.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Agreement or suspend any further deliveries under the Agreement without any liability to the Customer and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 24 **JURISDICTION**
- 24.1 Any Agreement subject to these Terms and Conditions shall be governed by and construed in accordance with English Law and, subject to clause 24.2, any dispute which may arise between the parties concerning the Terms and Conditions shall be subject to the jurisdiction of the English Courts.
- 24.2 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to these Terms and Conditions or any Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through Alternative Dispute Resolution ("ADR"). If the matter has not been resolved by an ADR procedure within 30 days of the initiation of such procedure (or such other period as the parties may agree), or if either party will not or ceases to participate in an ADR procedure, the dispute shall be referred as provided in clause 24.1.

INSTACOUSTIC LIMITED ADDITIONAL CONDITIONS

GENERAL

1. All recommended quantities are offered in good faith. No responsibility will be accepted for excess or shortages of materials ordered.
2. It is the responsibility of the Customer to provide working datum levels. Should the Company be required to work from its' own datums, then the Company will not accept responsibility for the finished floor height.
3. The Company can undertake a Level Survey at its' then applicable rate per day. However, should a Laser Survey not be conducted and any system quoted and subsequently ordered found to be unsuitable due to sub floor levels being outside the specified tolerances of the Product allowed for within any Contract, the Customer will be responsible for all additional cost/s associated in rectifying the problem caused by the floor level discrepancies. Any delays caused by sub floors out of tolerance will be charged at day work /day rates.
4. All materials must be called off within 12 months of order date, unless otherwise agreed.
5. The Contract may be subject to a site visit before acceptance of same.
6. The company reserves the right to alter or change any specification without prior notification.
7. Any delay in the availability of Products required from the Company's manufacturers for the commencement or completion of works will not be deemed as a delay by the Company.
8. Any recommendations within the Contract as to the specification and suitability of the product will reflect the instructions of the Customer. The Customer must clearly state the specification required in its' order. Any deviation from the recommendations and specification stated within the Contract proposed by the Customer must be agreed by the Company in writing.
9. All materials supplied remain the property of the Company until paid for in full.
10. To enable materials to be delivered to site, the Company will require a minimum vehicle access width of 4.0m, a minimum access height of 4.0m and a minimum depth of 10.0m. Access will also be required to within 5.0m of the offload area.
11. The free use of a working hoist lift (or crane) to all levels for the duration of the contract, must be provided as and when required,
12. with a minimum height of 2.4m and a payload in excess of 1.5 tonnes.
13. Access to site is to be provided, as and when required, to unload materials to a secure dry location, with a minimum volume of 60.0m³, a minimum width of 3.0m and a minimum height of 2.0m.
14. This contract is based on all areas being completed without requiring a second visit.

SUPPLY & FIX CONTRACTS

15. The Company requires from the Customer a minimum of 3 week's written notice from receipt of contract prior to commencement on site.
16. Any cancellation or postponement of works to any designated area must be received in writing, giving a minimum of two working day's notice.
17. The cancellation and/or postponement of any works will be deemed to be cancelled until such time as a written or faxed instruction is received to recommence work with the appropriate notice.
18. The Contract is based upon access to an agreed work area enabling the Company's installation team/s to complete a full working days installation. Any interruption to the installation not caused by the Company will be charged accordingly at day-work rates.
19. In the event of the Company's personnel or the Company's delivery being turned away from site for work areas as previously confirmed, a fee of £95.00 per man and any contra-charges from the material supplier to the Company will be charged at cost to the Customer plus a 5% administration fee.
20. Any additional work outside the scope of the Contract will be required to be specified in writing, confirming the value and areas of these works. Alternatively these works will be undertaken at day work rates or day rates as stated, provided that a site instruction is first issued to the Company and appropriately signed by the Customer's site representative.
21. Any out of sequence work will be charged at the Company's day-work/day rates, applicable at the relevant time.
22. Should the Customer require further site visits by the Company, the Company will require a minimum of 7 working day's written notice prior to returning to site.
23. Day rates (at then current rates) will be charged should the Company be required to attend site for any reasons beyond the original contract.
24. The Customer will be notified by the Company of any remedial works to enable a satisfactory fitting of the Product together with any additional cost implications, prior to the commencement of the remedial measures.
25. All rubbish belonging to the Company will be to be taken to a central point in each designated area by the Company's personnel. Rubbish bins and skips are to be supplied by the Customer.
26. On completion of a designated area, the Company will require the Customer's site representative to sign a 'Satisfactory Work and Completion Certificate' to confirm that the products have been laid satisfactorily. Thereafter, the Company will accept no responsibility for any damage to the floor in the designated area. The Company will not proceed with any further work until the Completion Certificate has been appropriately signed.
27. Free uninterrupted access and clear work areas are required for completion of the Company's products/services.

TECHNICAL

28. Comprehensive laying instructions are available from the Company detailing correct installation and site preparation procedures. All systems must be installed as per the appropriate laying instruction.
29. A datum point must be provided for each designated work area, to coincide with the minimum and maximum finished floor heights of the specified Product in this contract. Finished floor heights above and below the Product specified may require additional materials, the cost of which will be advised to the Customer accordingly.
30. The building must be weather tight before the commencement of the Company's services and/or products.
31. The removal and replacement of furniture, lifting and relaying of carpet, redecoration, relocation of electrical services, removal and replacement of kitchen units and appliances, raising of work surfaces, raising of bathroom and sanitary ware, removal and replacement of skirting boards, trimming and replacement of doors is the responsibility of the Customer.
32. Any adaptation or alteration to the Products after satisfactory completion should be undertaken by the Company. The Company will not accept responsibility for any defects if any work is undertaken by others.
33. All wet trades must be completed and dry prior to the commencement of any acoustic floor, wall or ceiling installation or sports floor.
34. All internal partitions should be constructed prior to the installation of any acoustic floor or ceiling system, unless otherwise agreed with the Company.
35. The Company recommends that all internal stud partitioning is isolated using the Company's Isolating Strip Product.
36. The Product should not be stored or used on site when the moisture content exceeds 18%. Materials should be stored on site in accordance with BS5268: Part 2: 1996.
37. Due to the possible effect of flanking noise transmission, the Company cannot guarantee the performance of any Product supplied.

Floor Systems

- a. It is recommended that the Company's Perimeter Seal/Resilient Flanking Strip is fixed to the perimeter of all floor areas as an acoustic seal/flanking strip.
- b. InstaCoustic Perimeter Seal/Resilient Flanking Strip will require trimming by others prior to the installation of the skirting boards.
- c. The decoration, taping of joints and final plasterboard skim is the responsibility of the Customer.
- d. The floor should be level within the tolerances of the system height adjustment as specified in this contract. Floor heights above and below these specified will incur additional costs.
- e. For safety reasons, if floor levels are increased then the height of stairs should be raised by the same amount.
- f. Any new or existing adjoining floors or stairs to the Product must be at the same intended finished floor height as the Company's specified Product.
- g. Cradle Packers (2mm & 5mm) for height adjustment are a standard component of each flooring Product. Finished floor heights in excess of the maximum system tolerance may be achieved by the use of the Company's Cradle Base Packers or deeper Timber Battens. Prices for both Cradle Base Packers and deeper Battens can be provided, if required.
- h. If there is a risk of moisture levels to the sub floor in excess of the minimum recommendations of BS8203: 1996 (i.e. 75% RH), it is recommended that a vapour barrier is laid beneath the Product. All vapour barrier areas should be checked by the Customer prior to the Product being laid.
- i. Where vinyl is to be laid on any of the Product, the surface may require final preparation in order to avoid the mirroring through of board joints. Please refer to the vinyl manufacturer for further assistance.
- j. Ceramic tiles can be laid on to the Company's CK30 System consisting of 18mm WBP Plywood screwed to Timber Battens, with both the Hard Cradles and Battens at 300mm centres. The ceramic tiles should be fixed with Johnson Speed-Flex adhesive and Johnson Wide Joint Grout with flexible adhesive, as tested by Norcross Adhesives Limited.
- k. The Company's insulation Product is recommended where the system is to be laid onto Beam and Block floors or Pre-cast Concrete Planks. The Insulation Product should fill the floor void.
- l. Door frames and all other fixtures must be fixed a minimum of 3mm above the specified finished floor height. The removal and adjustment of any fixed items interfering with the installation of the floor at the specified finished floor height will be the responsibility of the Customer.
- m. New skirting boards should be fitted with a 3mm clearance from the floor and then sealed with InstaCoustic Sealant.
- n. The position of all acoustic plinths and access runs are to be marked out on the floor by the Customer prior to the commencement of our work.
- o. All services running within the floor void must be installed and commissioned prior to the laying of the acoustic floor product.
- p. All services must be a minimum of 150mm from the perimeter of the room and grouped no wider than the available space between each batten run.
- q. Fitting instructions for cradle and batten and batten systems with finished floor heights plus batten and cradle spacings, are available direct from the Company. Services higher than and wider than these tolerances will not enable the Product to be laid as per the specification and will attract additional costs in overcoming this non-conformance.

Wall System

- r. Please note that when installing the Company's Wall Product, the Tapcon Masonry screw is not required when fixing the acoustic bracket to plasterboard or studwork. An alternative suitable fixing should be used.

Ceiling System

- s. To achieve a 1 hour fire protection, all InstaCoustic Ceiling Systems must be installed using 2 x 12.5mm layers of Fireline Board or similar and sealed with InstaCoustic Intumescent Sealant.
- t. The outside diameter of the screw head of the acoustic hanger fixing must be a minimum of 11mm and a 10mm I/D washer must be fitted over the rubber grommet before securing the acoustic hanger.
- u. All acoustic hanger and perimeter fixing anchors must be deemed suitable with regard to their suitability in respect of their performance and application. Please refer to the screw and anchor manufacturers for further assistance.

Sports Floor Systems

- v. Where the short ends of the boards do not join on battens, intermediate battens and sports cradles should be used to support the joint.
- w. The Company's Sportsfloor Perimeter Edge Detail should be trimmed by the Customer prior to the installation of any skirting detail.
- x. The Company's Adhesive Plus is recommended and should be used to glue all edges of tongued and grooved boards.

RETURNS

38. The Customer must notify the Company in writing if materials are to be returned by the Customer to the Company.
39. Return freight arrangements and costs are the responsibility of the Customer. The Company is not liable for this or insurance of the goods whilst in the control of the Customer.
40. A 25% re-stocking fee will be charged to the Customer and will be deducted from the final credit note issued to the Customer.
41. The returned materials will be subject to the Company's quality control inspection. Any shortfall in quantities or damaged/faulty goods will be advised to the Customer and will not be credited.
42. All materials are to be returned in full boxed quantities. Single items that are normally boxed in quantities will not be accepted.