

## TERMS AND CONDITIONS

**1) APPLICATION.** These Terms and Conditions of Sale issued on January 31<sup>st</sup>. 2007 shall apply to all future sales of goods without exception, and supersede any previous issue. These are also the "Terms And Conditions" and/or "Standard Trading Conditions" referred to on Diamond Direct Supplies invoices and literature. It is a condition precedent to each and every sale, supply etc. that in the event of a conflict with a purported term in any purchase order or the like, these Terms and Conditions of Sale shall prevail.

**2) PRICE VARIATION.** The price applicable to the sale shall be the published price ruling at the time of dispatch. MSD Construction Ltd Trading As Diamond Direct Supplies (hereinafter referred to as "The Company") therefore reserves the right to amend prices quoted verbally at the date of the placing of an order by the customer.

**3) CARRIAGE.** The Company reserves the right as part of a contract of sale to impose such carriage charges as shall be laid down by The Company's policy and published from time to time

**4) DESPATCH.** Dispatch times quoted without arrangement, although every endeavor will be made to adhere to the times quoted. Under no circumstances shall The Company be liable for any loss arising from delay in dispatch howsoever caused. Time shall not be of the essence of any contract of sale.

**5) DAMAGE/LOSS IN TRANSIT** (1) The Company accepts no liability for any damage to goods in transit unless notified to The Company and the carrier concerned in writing within 5 working days after delivery. (2) In cases of non-delivery The Company accepts no liability of any sort unless written notice is given to The Company immediately upon receipt of the related invoice, which is sent under separate cover. (3) The Company's liability for damage or loss in transit notified to it in accordance with the above, shall in any event be limited solely to replacement of the goods by standard delivery within a reasonable time, whether non delivery or damage is due to The Company's negligence or otherwise. Absolutely no claim will be entertained for alleged damage, lateness or non delivery of goods to a third party made at the request of the customer.

**6) CLAIMS.** Subject to the provisions laid out in condition 5 above, all claims for goods alleged to be defective must be made in writing to The Company within 30 days of such defect becoming apparent. When notification is so received The Company may require return of the goods, or for the goods to be made available for inspection by The Company. Should The Company be satisfied as to the defects, then it retains the option to either replace the defective goods within a reasonable time, or credit the customer with the contract price at The Company's discretion. An apportionment will be made for normal wear and tear occasioned before any defect arose, to be reasonably assessed by The Company's quality control officer. All defective goods so returned become the property of The Company. No liability will be entertained whatsoever with regard to goods manufactured or supplied to the Customer's specification or drawings. Except as provided above, **other than any statutory liability in respect of death or personal injury**, The Company shall have no liability whatsoever arising out of any agreement to sell, or sale of goods including claims for direct, consequential or other loss, damage or expense, whether arising or alleged to arise under any warranty statement, conditional term expressed or implied, statutory or otherwise, or in negligence on the part of The Company or otherwise. In no circumstances therefore, shall The Company be liable for loss or damage in excess of the net contract sale price. **The Company accepts no liability in respect of damage to, or failure of delivered goods occasioned by misuse, storage in adverse conditions etc. Where goods are supplied for use in construction or the like, in the event of a dispute or difference of any kind, Section 105(2)(d) of the Housing Grants Construction & Regeneration Act 1996 applies. All the costs of adjudication shall be borne by the customer in any event.**

**7) RESERVATION OF TITLE, PROPERTY.** For the purposes of this clause, the following definitions apply:- "The Goods" means goods supplied by The Company to its customer's order/instruction/request. "Full payment" means the receipt by The Company of payment in full for all goods sold at any time by The Company to the customer. "Delivery" means the delivery of the goods to the customer or other person to whom The Company has been authorised by the customer to deliver the goods whether expressly or by implication: a) Until full payment, title in the goods shall remain in The Company which reserves the right to dispose of the goods until full payment is made for the goods in question and all other goods agreed to be sold by the seller to the buyer for which payment is then due. b) If full payment has not been made by the commencement of an act or proceeding in which the customer's solvency or the solvency of any member of a group of companies to which a customer belongs is involved, The Company may (without prejudice to any of its other rights) recover or resell the goods or any part of the goods and may enter upon the customer's premises or the premises of a liquidator, receiver or administrator by its servants or agents using minimum reasonable force for that purpose. c) It is not commercially viable to identify each item sold with a serial or other mark. Therefore until full payment, the customer shall not mix or store the goods with any other goods in his possession and shall take all reasonable steps to ensure that the goods remain readily identifiable as the property of The Company. Where the property of The Company is not kept separately and in the case of a

retention of title claim against a receiver or liquidator, The Company shall not be required to prove that an item of merchandise still evident is directly attributable to a particular unpaid sales invoice, but merely establish that, by virtue of F.I.F.O. stock rotation, any goods in evidence of the type which is unpaid for, may be reasonably stated to be those goods which are unpaid for, and thus to be said to be the property of The Company. d), Liability in the goods passes to the customer on dispatch and the customer shall be liable for the safety of the goods thereafter and accordingly the customer shall indemnify The Company for any loss or damage to the goods howsoever caused until full payment and shall insure the goods against such risks as may be commercially prudent. e). The Company's rights under this clause shall not be affected by any terms agreed in any contract or otherwise howsoever whereby the customer is granted credit with regard to the payment of the price of the goods or is permitted by The Company to defer payment beyond the time granted for doing so, namely 30 days after the date of the invoice. f). In the event that The Company's goods are sold or provided to a third party by way of trade or otherwise, The Company reserves the right to garnish sequester or otherwise hold security over any funds payable by the third party in respect of those goods. The customer shall allow full access to any books and records which shall help establish the identity of such third party, and the means for securing and identifying such payments as relate to The Company's goods.

**8) OBLIGATIONS OF CUSTOMER'S DIRECTORS & PRINCIPLES.** The Director(s) or principals of any customer which is a Limited Liability Company or Limited Liability Partnership which is unable to meet its debts as and when they fall due, or which is involved in any act or proceeding in insolvency, will be held personally liable jointly and severally to guarantee and make good debts owed by the Customer to The Company whether wrongful trading be proven or not. Goods supplied for which payment has not been made are deemed therefore to have been personally ordered by and supplied to the Directors and/or Principals of such Company/Partnership irrespective of the solvency of the Company/Partnership and they shall be required to make good any due and payable indebtedness notwithstanding any insolvency proceedings, liquidation or dissolution.

**9) PAYMENT.** Non account customers are required to pay invoices in full providing cleared funds before dispatch. The Company may, upon the provision of satisfactory credit checks and/or references (e.g. trade/bank/personal references) grant the customer the facility of a credit account. In this case payment is due and shall be paid at the end of the month following the month of issue of the invoice. Where a payment has not been made by the customer to The Company within the time specified above, The Company reserves the right to charge Statutory Interest at 5% above Bank Of England Base Rate from the date on which the invoice was issued until receipt of the monies outstanding, and debt recovery compensation; pursuant to the provisions of The Late Payment Of Commercial Debts (Interest) Act 1998 as amended by the Late Payment Of Commercial Debts Regulations 2002. Any invoice becoming overdue shall automatically and immediately render payable any and all invoice(s) for which full payment has not been made together with the purchase price (including VAT) of any goods supplied and not already invoiced. The Company reserves the right to look to the customer for full reimbursement of any legal, bank or court fees reasonably incurred in obtaining full payment for goods or in employing another party to obtain such payment. The customer unconditionally grants to The Company the right to exchange, discuss and disseminate credit information about the customer and/or its officers without their knowledge and without obligation to seek their express consent on any particular occasion.

**10) RETURNS** The Company may at its sole discretion and upon provision of related invoices, accept returns of goods supplied subject to full payment of all carriage charges incurred on delivery outwards and inwards, and subject to a 10% handling charge to cover the cost of restocking the goods. No return of specially ordered, manufactured, or non-standard goods will be accepted under any circumstances. Goods so accepted for return will be credited at the invoiced price, or the prevailing price, whichever is the lower. The Company will not recognise or otherwise entertain any debit note or other document unilaterally raised by a customer in respect of any goods supplied, or carriage charges thereon. Not being a legitimate VAT input or output document, no such document will be recognised or taken into consideration when a payment is accepted for goods supplied; only The Company's own credit note being acceptable for that purpose.

**11) ADVICE etc.** For the avoidance of doubt neither The Company nor its servants give or are qualified to give any design/installation advice or warranty (whether express or implied); passing on only the manufacturer's specification, COSHH assessments, etc. where applicable.

**12) INTERPRETATION & JURISDICTION** - Any agreement between The Company and the purchaser shall be subject to and governed by English Law. All sums due are payable in Pounds Sterling at The Company's trading address.

**Diamond Direct Supplies  
Terms and Conditions  
Effective from 31.01.07**