



## **SHADES OF COMFORT LTD**

### **TERMS & CONDITIONS OF SALE & INSTALLATION**

#### **GENERAL TERMS**

##### **1. Interpretation**

1.1 In these Conditions:

“Customer” means the person who accepts a quotation of Shades of Comfort for the sale of the Goods and/or supply of Services or whose order for the Goods and/or Services is accepted by Shades of Comfort.

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Shades of Comfort.

“Contract” means the contract for the purchase and sale of the Goods.

“Goods” means the goods (including any installation of the goods or any parts or accessories for them) which Shades of Comfort is to supply in accordance with these Conditions.

Shades of Comfort (registered in England and Wales under Company No. 05455105)

“Services” mean the design, specifying, project management, installation or other services, as specified by Shades of Comfort in writing, which Shades of Comfort is to supply in accordance with these Conditions. Services include commissioning Goods and training given at that time. Additional training will be subject to extra charge by Shades of Comfort.

“Specification” means the specification for the Goods and Services as stated or acknowledged by Shades of Comfort in writing.

“Writing” includes facsimile and comparable means of communication.

1.2 In these Conditions, the headings are for convenience only and shall not affect their interpretation and the singular includes the plural and vice versa.

##### **2. Basis of the sale/supply**

2.1 Shades of Comfort shall sell and the Customer shall purchase the Goods and Services in accordance with any quotation of Shades of Comfort which is accepted by the Customer (whether in writing or by placing an order for, accepting or paying for any Goods or Services or by other conduct), or any order of the Customer which is accepted by Shades of Comfort (whether in writing or by appropriating Goods to the Contract or by other conduct), subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.



2.2 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Shades of Comfort.

2.3 Shades of Comfort's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Shades of Comfort in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by Shades of Comfort or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods and any representation that the Goods are suitable for a particular purpose, which is not confirmed in writing by Shades of Comfort is followed or acted upon entirely at the Customer's own risk, and accordingly, Shades of Comfort shall not be liable for any such advice, recommendation or representation which is not so confirmed.

2.5 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 Shades of Comfort shall be subject to correction without any liability on the part of Shades of Comfort.

2.6 While Shades of Comfort will take all reasonable care to comply with legal requirements in its drawings, the Customer is responsible for obtaining any necessary local authority, fire authority or other consents or permissions. Specifically, it shall be the Customer's responsibility for obtaining any necessary planning permissions or building regulations approvals for the Goods and Services in good time prior to the due dates for delivery and performance.

2.7 Where relevant the Customer is responsible for arranging and having executed all building and joinery works necessary for the Contract in good time prior to due delivery and performance dates. Shades of Comfort's price does not include for any such works, making good, the provision of any plant, scaffolding, trestles, skips, building materials etc, unless otherwise agreed in writing by Shades of Comfort. The customer is responsible for ensuring clear access to the site for delivery of the Goods and performance of the Services. Any time wasted by Shades of Comfort on site or spent on site providing additional services due to the Customer's breach of this clause will be chargeable by Shades of Comfort.

2.8 Where relevant the Customer shall ensure that all services are provided unless otherwise agreed in writing. The Customer shall be responsible for providing correct, live, isolated services and for ensuring that the site has sufficient incoming services for gas and/or electrical requirements for the Goods and all other equipment on site. All services must be live and connected at the due date for supply of the Services and installation of the Goods, to facilitate testing and commissioning. If Shades of Comfort is required to return at a later date for such purpose, Shades of Comfort may charge the customer.



2.10 In these Conditions, wherever there is a reference to Shades of Comfort charging the Customer, such charging shall be in accordance with Shades of Comfort's scale of charges applicable at that time.

### **3. Orders specifications and descriptions**

3.1 Unless otherwise agreed in writing in advance, no order submitted by the Customer shall be deemed to be accepted by Shades of Comfort unless and until confirmed in writing by Shades of Comfort's authorised representative.

3.2 The Customer shall be responsible to Shades of Comfort for ensuring the accuracy of the terms of any order, the Specification and for giving Shades of Comfort any necessary information relating to the Goods within a sufficient time to enable Shades of Comfort to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods & Services shall be those recorded by Shades of Comfort (whether in the Specification or elsewhere).

3.4 Shades of Comfort reserves the right, on giving reasonable prior notice to the Customer, to make any changes in the Specification of the Goods and Services which are required to conform with any applicable statutory or regulatory requirements.

3.5 No order which has been accepted by Shades of Comfort may be cancelled by the Customer except with the agreement in writing of Shades of Comfort and on terms that the Customer shall indemnify Shades of Comfort in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges (including cancellation charges of suppliers) and expenses incurred by Shades of Comfort as a result of cancellation, including any cancellation costs of any related sub-contract.

### **4. Price of the Goods**

4.1 The price of the Goods and Services shall be Shades of Comfort's quoted price or, where no price has been quoted (or a quoted price is no longer valid having been given 14 days or more previously), Shades of Comfort's price for the relevant Goods and Services current at the date for performance of the Services or delivery of the Goods, as appropriate.

4.2 Shades of Comfort reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to Shades of Comfort which is due to any factor beyond the reasonable control of Shades of Comfort (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties or customs charges, increase in the costs of labour, materials or other costs of production, including quality control), any change in delivery dates for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Shades of Comfort adequate information or instructions. Shades of Comfort shall be entitled to increase the price in the event that



Shades of Comfort or its employee or agent made an error or omission when quoting a price for the Goods or Services.

4.3 The price is exclusive of any applicable VAT, which the Customer shall be additionally liable to pay to Shades of Comfort.

## **5. Terms of payment**

5.1 Shades of Comfort shall be entitled to invoice the Customer for the price of the Goods and Services on or at any time after delivery of the Goods, being the point of unloading at the Customer's site (or the due date for delivery, if delivery cannot be effected for any reason).

5.2 Unless otherwise specified by Shades of Comfort at the time of order acceptance or in a special condition or where the Customer is an Account Holder within its credit limit, the Customer shall pay the price of the Goods and Services (without any deduction or set off), within 7 days of Shades of Comfort's invoice being issued and Shades of Comfort shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. A Customer having an authorised credit account with Shades of Comfort (an "Account Holder") shall be entitled to a credit period of 30 days for payment from the date of invoice, provided such Customer remains within its credit limit. If it does not do so, normal payment terms will apply until the Customer is re-authorised by Shades of Comfort.

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Shades of Comfort, the full price of all Goods delivered to and Services performed for the Customer under any contract with Shades of Comfort but not paid for shall become immediately due and payable (notwithstanding any previously agreed credit terms) and Shades of Comfort shall be entitled to do all or any of the following:

5.3.1 by notice terminate the Contract and recover from the Customer the contract price of the Goods and Services and all losses, expenses and costs suffered or incurred by Shades of Comfort.

5.3.2 suspend or withhold any further performance of Services or deliveries of Goods to the Customer without liability to the Customer;

5.3.3 appropriate any payment made by the Customer to such of the Goods or Services (or the goods or services supplied under any other contract between the Customer and Shades of Comfort) as Shades of Comfort may think fit (notwithstanding any purported appropriation by the Customer); and 5.3.4 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of five per cent per annum above 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).



## **6. Delivery**

6.1 Any dates quoted for performance of the Services and delivery of the Goods are approximate only and Shades of Comfort shall not be liable for any delay in performance of the Services or delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract. The Goods may be delivered by Shades of Comfort in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6.2 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Shades of Comfort to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.3 If the Customer fails to take delivery of the Goods or fails to give Shades of Comfort adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's control or by reason of Shades of Comfort's fault) then, without prejudice to any other right or remedy available to Shades of Comfort, Shades of Comfort may:

6.3.1 recover the expense of the carrier's standing time at the point of delivery;

6.3.2 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage: or

6.3.3 sell the Goods 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 Contract or charge the Customer for any shortfall below the price under the Contract.

6.4 Unless within 7 days of installation of the Goods Shades of Comfort is notified to the contrary, all Goods and Services supplied shall be deemed to have been received complete and in good condition and accepted by the Customer as being in accordance with the Specification and this Contract. Notice of any damage, non-compliance with Specification, shortage or non-arrival must be given by the Customer to Shades of Comfort within such 7 day period.

## **7. Risk & property**

7.1 Risk of damage to or loss of the Goods shall pass to the Customer on delivery and the Customer is advised to insure accordingly.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until Shades of Comfort has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Shades of Comfort to the Customer for which payment is then due.



7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Shades of Comfort's fiduciary agent and bailee, and shall keep the Goods in good condition and appropriate environmental and other conditions to maintain the quality of the Goods, separate from those of the Customer and third parties and properly stored, protected and insured and identified as Shades of Comfort's property.

7.4 Until such time as the property in the Goods passes to the Customer, Shades of Comfort shall be entitled at any time to require the Customer to deliver up the Goods to Shades of Comfort and, if the Customer fails to do so immediately, Shades of Comfort is hereby granted an irrevocable licence to enter on or in any premises or vehicles of the Customer or any third party where the Goods are loaded, stored or being processed and repossess the Goods. (The Customer shall procure such rights for Shades of Comfort from any such third party).

7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Shades of Comfort, but if the Customer does so all sums owed by the Customer to Shades of Comfort shall (without prejudice to any other right or remedy of Shades of Comfort) immediately become due and payable.

7.6 The copyright and all other intellectual property rights in any software, design, drawing, specification, work, invention or improvement made or created or used by Shades of Comfort in the course of or for the purposes of providing the Services and/or installing the Goods shall remain the sole property of Shades of Comfort. If Shades of Comfort provides drawings to the Customer (which it may do subject to payment of its then applicable charges), the copyright in such drawings shall remain with Shades of Comfort, but provided the Customer enters a Contract with Shades of Comfort and pays for all Goods and Services supplied in full, the Customer shall have a non-exclusive licence to use them solely for the purposes specified by Shades of Comfort. All such drawings and copies must be returned to Shades of Comfort on request.

7.7 Shades of Comfort accepts no responsibility for any Customer equipment or tools on site or for the security of the site. This provision applies from the date of delivery of the first Goods, during the installation period and prior to hand over to the Customer. The risk of and cost of remedying all loss and damage caused in these circumstances shall be the responsibility of the Customer.

## **8. Warranties**

8.1 Product is guaranteed to be free from defects in workmanship and parts for a period of 12 months from the date of purchase. Defects that occur within the warranty period, under normal use and care will be repaired or replaced at our discretion, solely at our option with no charge for parts or labour.



8.2 Shades of Comfort reserves the right to replace the Product or relevant part with the same or equivalent Product or part, rather than repair it. Where a replacement is provided the Product or part replaced becomes the property of Shades of Comfort. Shades of Comfort may replace parts with refurbished parts. Replacement of the Product or a part does not extend or restart the Warranty period.

8.3 The benefits conferred by this warranty are in addition to all rights and remedies in respect of the product that the consumer has under the Trade Practices Act and a similar state and territory laws.

8.4 This warranty is limited to defects in workmanship or parts. All defective products or parts will be repaired or replaced.

8.5 This warranty does not cover any consumable item.

8.6 This warranty does not cover any defect caused by an accident, misuse, abuse, use in inappropriate conditions, lack of reasonable care, unauthorised modification, loss of parts, tampering or attempted repair by a person not authorised.

8.7 The warranty will not apply if damage, malfunction or failure results from alterations, accident, misuse, abuse, vandalism, fire, liquid spillage, power surges and dips, thunderstorm activity, acts of God, voltage supply problems, tampering or unauthorised repairs by any persons.

8.8 This warranty does not cover normal wear and tear of the Product or parts.

8.9 Shades of Comfort excludes all other warranties, conditions, terms, representations and undertakings, whether express or implied.

## **9. Liability**

9.1 Shades of Comfort will not be liable for any loss or damage arising from loss of use, loss of profits or revenue, or for any resulting indirect or consequential loss or damage.

9.2 Shades of Comfort's aggregate liability in respect of all claims under the Warranty shall not exceed the original purchase price of the Product or, at Shades of Comfort's option, the cost of replacing the Product.

9.3 Except in respect of death or personal injury caused by Shades of Comfort's negligence (in respect of which Shades of Comfort's liability shall be £10,000,000), Shades of Comfort shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit, economic loss or any indirect, special or consequential loss of damage (whether the loss of profit, goodwill, reputation, contracts or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Shades of Comfort, its employees or agents or otherwise howsoever and whether or not reasonably foreseeable) which arise out of or in connection with the



production or supply of the Goods or their use or resale by the Customer or the provision of or reliance upon the Services or any other services provided by Shades of Comfort.

9.4 Shades of Comfort 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 Shades of Comfort's obligations to the Goods or Services, if the delay or failure was due to any cause beyond Shades of Comfort's reasonable control ("force majeure"). At any time while a force majeure exists, Shades of Comfort may, on giving notice to the customer, cancel the Contract in so far as it remains to be performed, without liability to the Customer, without prejudice to Shades of Comfort's right to payment for all Goods delivered and Services performed prior to such cancellation.

9.5 The Customer hereby indemnifies Shades of Comfort in relation to any claim, including but not limited to any intellectual property infringement claim, or liability, including but not limited to any liability for damages, interest, legal or other costs and expenses, (whether of Shades of Comfort or any third party), arising from the use by Shades of Comfort of any specification, design, drawing or diagram provided by or on behalf of the Customer.

## **10. Insolvency of Customer**

10.1 This clause applies if the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession of, or a receiver (or administrator) is appointed over any of the property or assets of the Customer; or anything analogous to any of the foregoing occurs in relation to the Customer in any jurisdiction; or the Customer ceases, or threatens to cease, to carry on business; or Shades of Comfort reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to Shades of Comfort, Shades of Comfort shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the services have been performed or the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **11. General**

11.1 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 registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Hand delivered and facsimile notices shall take effect on receipt (provided that facsimile notices are served on a day if received during business hours in the country of receipt on that day, or at 9.00 am on the next business day, if not). Postal



notices shall be deemed served two working days after posting if the sender and recipient are in the same country and seven days after posting, if not).

11.2 No waiver by Shades of Comfort of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any court or 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.

11.4 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract 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 an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution, London. 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 may be agreed) or if either party will not or ceases to participate in an ADR procedure, the dispute shall be referred to the English Courts.

11.5 The contract shall be governed by the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.

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