

VELFAC DIRECT GENERAL CONDITIONS OF SALE

These terms and conditions (Conditions) set out the basis on which VELFAC Limited, registered in England and Wales with company number 02332292 whose registered office address is The Old Livery, Hildersham, Cambridge, Cambridgeshire, CB21 6DR (VELFAC), shall supply its Products to the Buyer.

1. Interpretation

1.1. Definitions

In these Conditions, the following words shall have the following meanings:

- (a) **Acceptance of Order form:** Form to be signed and returned to VELFAC, where no purchase order can be provided. The signed Acceptance of Order form will finalise the Buyer's Order for the Products;
- (b) **Brexit:** the withdrawal of the United Kingdom from the European Union;
- (c) **Buyer:** the person or company who purchases Products from VELFAC;
- (d) **Confirmation of Order:** the confirmation of the final quotation for the Order;
- (e) **Confirmation of Delivery:** the confirmation of fixed delivery dates for the Order; please note that the Order is no longer subject to change once this has been issued
- (f) **Contract:** the binding contract between VELFAC and the Buyer for the sale and purchase of the Products in accordance with, and which incorporates, these Conditions;
- (g) **Ingenium:** Designing quotation software
- (h) **DDP:** Delivered Duty Paid, as defined in Incoterms 2020;
- (i) **Order:** the Buyer's order for the Products, as set out in the Buyer's letter of intent, purchase Order or Acceptance of Order form;
- (j) **Order Confirmation/Schedule:** an itemised schedule of the Order as per the Confirmation of Order and Confirmation of Delivery documents issued by VELFAC in accordance with, and which incorporates, these Conditions;
- (k) **Products:** the goods (or any part of them) set out or referred to in the Order Confirmation/Schedule;
- (l) **Recognition of Order:** VELFAC's acknowledgement of any instruction to proceed from the Buyer; this seeks to clarify design, scope, price and programme

2. Basis of Contract

- 2.1. The Order constitutes an offer by the Buyer to purchase the Products in accordance with these Conditions. The Buyer is responsible for ensuring that any applicable specification submitted by the Buyer are complete and accurate.
- 2.2. The Order shall only be deemed to be accepted when VELFAC issues a Confirmation of Delivery, or a signed Acceptance of Order form has been received, whichever is soonest, at which point the Contract shall come into existence.
- 2.3. Any samples, drawings, descriptive matter or advertising produced by VELFAC and any descriptions or illustrations contained in VELFAC's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.

3. Budget Prices, Quotations and Contract Price

- 3.1. If budget prices are given by VELFAC they are a general indication of the cost of the Products, are not binding on VELFAC and are subject to change by VELFAC.
- 3.2. Quotations are:
 - (a) given on the basis that no Contract will come into existence until VELFAC has issued its Confirmation of Delivery, or a signed Acceptance of Order form has been received, whichever is earliest, at which point the Contract shall come into existence;
 - (b) valid for 60 days from the date of issue (unless withdrawn before) and are based on the Buyer's requirements as made known to VELFAC and/or as specified by VELFAC in its quotation; and
 - (c) given on the assumption that delivery of Products will be made within six months of the date of the quotation.
- 3.3. The Contract Price is subject to change as a consequence of any variation of the Buyer's requirements from those specified in the quotation which is accepted by VELFAC, including following the detailed design of the Products. VELFAC shall not be liable for any delay in the manufacturing and delivery of the Products until such change in the Contract Price (if any) has been agreed by the Buyer as set out in clause 5 and 6 of these Conditions.
- 3.4. If, in the event of Brexit and arising out of Brexit, there is an increased amount of customs handling and/or other border control requirements to fulfil which may in turn cause a delay to VELFAC's performance under the Contract, then VELFAC reserves the right to extend the time for performance of the Contract by an identical number of calendar days without incurring any liability. Additionally, if, as a result of Brexit, VELFAC incurs any increased costs (such as customs duties, import VAT and other charges or duties) in regard to VELFAC's performance of the Contract, then VELFAC shall have the right to increase the Contract Price by an amount equal to such substantiated increased costs. VELFAC shall inform the Buyer as soon as it becomes aware of the likelihood of any threatened delay or increased costs. The Buyer agrees that VELFAC shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performance or increased costs due to Brexit.

4. Buyer's Responsibilities

- 4.1. The Buyer is responsible for, and acknowledges that VELFAC has no obligations and will not be subject to any liabilities in relation to:
 - (a) acceptance of, and the successful integration of, the VELFAC Design and/or the Buyer's specification, with the designs, specification and proposals of others and of other parts of the project for which the Products are intended; and
 - (b) ensuring that the Products are appropriate for any particular application, and comply with relevant local and national legislation, standards, codes of practice and other statutory requirements; and
 - (c) ensuring VELFAC has the correct information including, but not limited to, drawings, specifications, quantities and dimensions of the Products required.
- 4.2. The Buyer acknowledges that any delays or failure by the Buyer to comply with the Design Programme/Direct timeline requirements, to provide details of its requirements and/or specifications for Products, or to promptly provide VELFAC with all information and assistance requested from time to time to facilitate the proper and timely performance of the Contract may result in the Products missing their allotted or estimated manufacturing time.
- 4.3. VELFAC shall not be liable for any failure (by whatever margin) on its part to meet an agreed delivery date arising out of any delay or failure of the Buyer as referred to in clause 4.2 of these Conditions. The Buyer shall ensure the correctness of information provided, and that its requirements and specifications are sufficient for the Buyer's purposes.

5. Confirmation of Order

- 5.1. At the stage in which VELFAC has completed the design phase; VELFAC will provide a Confirmation of Order to confirm details of:
 - (a) the proposed programme for delivery dates
 - (b) the final design of the Products;
 - (c) the Contract Price and any changes to the Price.
- 5.2. The Buyer must provide written acknowledgement including any required revisions, in the form of a signed Acceptance of Order form within five (5) Working Days of receiving the Confirmation of Order. Without this confirmation, VELFAC shall have no obligations or liability in regard to the manufacture and delivery of the Products.
- 5.3. Following the Buyer's acknowledgement; any changes or amendments to the Order will be subject to VELFAC's written acceptance only. The Buyer shall be liable for any consequential delay due to any requested changes or amendments.

6. Confirmation of Delivery

- 6.1. At the stage in which VELFAC has committed to the manufacture of the Products, VELFAC will provide the Buyer with a Confirmation of Delivery to confirm details of:
 - (a) the Products;
 - (b) the dates for delivery of the Products; and
 - (c) the Contract Price and any changes to the Contract Price.
- 6.2. The Buyer agrees that Products placed into manufacture can not be revised. In the event of any urgent amendment to the Order; the Buyer shall be liable for the price of the original Products in addition to any additional Product(s), consequential delay due to any requested changes or amendments and shall indemnify VELFAC in full against any and all costs (including costs of all labour and materials lost), loss (including loss of profit), damages, charges and expenses suffered or incurred by VELFAC as a result of the change.
- 6.3. In the event of any cancellation of the Contract by the Buyer, including as provided for under this clause, the Buyer shall be liable for the full price of the goods including any applicable storage fees.

7. Delivery and Transfer of Risk

- 7.1. Dates for delivery of the Products shall remain estimates until the fixed delivery dates are issued as per the Confirmation of Delivery.
- 7.2. Delivery of the Products is subject to full payment of the Products.

- 7.3. Unless otherwise agreed in writing between the parties, the Products shall be Delivered Duty Paid to the Buyer's designated place of delivery in the United Kingdom or Eire and shall include offloading to kerbside. If the Buyer is undertaking self-offloading; at the point of delivery (which does not include off-loading) the responsibility and risk of the Products shall pass to the Buyer.
- 7.4. The Buyer shall inspect the Products on delivery and will mark the carrier's receipt note with details of any shortage or visible damage in transit. In addition, Buyer shall notify VELFAC in writing within three (3) calendar days of any shortage or damage in transit. The Products shall be at the Buyer's risk from the time that they are delivered, and as such any damage caused during self off-loading shall be the Buyer's responsibility.

8. Prices and Terms of Payment

- 8.1. The Buyer is responsible for full payment of the Contract Price, including any changes to the Contract Price as provided for under these Conditions. The Buyer shall also pay VAT and any applicable import and other duties, taxes and expenses. Quoted prices include carriage and insurance to the point of delivery unless otherwise stipulated in the Order Confirmation/Schedule.
- 8.2. VELFAC shall request a VELFAC a non-refundable deposit of 25% of the Contract Price (or such other percentage as VELFAC in its sole discretion deems appropriate) payable by the Buyer prior to commencement of manufacture of the Products. VELFAC shall issue a further invoice for the balance of the Contract Price payable by the Buyer prior to despatch of the Products. The final date for payment shall be as per the due date stipulated on the invoice.
- 8.3. If an invoice is not paid in full by the final date for payment, without prejudice to any other rights or remedies VELFAC may have, VELFAC may at its option and without incurring any liability, suspend performance of its obligations under the Contract until payment is made in full in cleared funds.

9. Retention of Title

- 9.1. Legal and beneficial title to the Products shall not pass to the Buyer until the earlier of:
 - (a) VELFAC receives payment in full (in cash or cleared funds) for the Products and any other goods that VELFAC has supplied to the Buyer in respect of which payment has become due (including all interest payable on overdue amounts), in which case title to the Products shall pass at the time of payment of all such sums; or

10. Warranty and Liability

- 10.1. Subject to full payment for the Products being made by the Buyer, and to the qualifications set out below, VELFAC warrants that the Products shall correspond with the Order Confirmation/Schedule and will be free from defects in materials and workmanship for a period of 12 years in the case of windows and patio and balcony doors; 5 years in the case of entrance doors; and 1 year in the case of electrical components, from the date of delivery, PROVIDED that:
 - (a) the Products have been installed, transported, maintained and used in accordance with any instructions, recommendations or specifications of VELFAC, whether oral or in writing or best industry practice;
 - (b) the Buyer has notified VELFAC of any defect in writing within seven (7) calendar days of the date of delivery or, (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect;
 - (c) the defect was not caused by fair wear and tear, neglect, misuse or improper adjustment;
 - (d) the defect does not result from compliance with any drawings or specification supplied to VELFAC by the Buyer; and
 - (e) the Buyer has allowed VELFAC or its appointed agent a reasonable opportunity to inspect the Products and such inspection confirms that the Products are defective.Should VELFAC be responsible for a defect, VELFAC will at its option either refund an appropriate part of the Contract Price, repair the Products or provide replacement Products (or spare parts) free of charge. Where replacement Products (or spare parts) are provided by VELFAC, the Buyer's attention is drawn specifically to clause 10.1(b), as VELFAC accepts no responsibility for any associated costs of removing defective Products and reinstating replacement Products.
- 10.2. Where Products contain glass panes the warranty referred to in clause 10.1 of these Conditions shall only apply if the following requirements have been met:
 - (a) the glass panes must have been fitted in the VELFAC factory or by a VELFAC approved installer or service engineer;
 - (b) the glass panes in the spacer track must have been stamped with the date of production (year/month);
 - (c) the glass panes must not have been damaged by external conditions, i.e. knocks or blows, or by movements of adjoining buildings;
 - (d) the glass panes must not have been damaged by frost, thermal effect or any chemicals;
 - (e) the glass panes must not have been exposed to any processing after delivery, i.e. grinding, sand blasting, etching, painting, sticking on, or any other surface treatment; and
 - (f) the drain path on the window system must not have been blocked, it being agreed by VELFAC that glass panes with 'added/built in features' i.e. lead glass windows, alarm systems, blinds etc, are covered by a 5-year warranty from date of purchase.
- 10.3. Except for the warranties contained in clauses 10.1 and 10.2 of these Conditions, all other warranties, conditions and other terms, whether express or implied by statute, under common law or otherwise in relation to the Products and this Contract (apart from terms implied as to title under the Sale of Goods Act 1979) are expressly excluded. This exclusion includes, but is not limited to, an exclusion of any condition or warranty of fitness for particular purpose, satisfactory quality, usefulness or timeliness.
- 10.4. VELFAC shall be under no liability to the Buyer for any loss of profit, loss of business, loss of revenue, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, depletion of goodwill or any costs, expenses (including legal expenses) or for any indirect or consequential loss or damage whatsoever (howsoever caused) resulting from defective material, faulty workmanship, late delivery, withdrawal of credit approval or otherwise and whether caused or not by the negligence of VELFAC, its employees, contractors or agents, provided always that VELFAC accepts liability for fraud, fraudulent misrepresentation, and death or personal injury caused by its negligence. In no circumstances shall VELFAC's liability to the Buyer for any breach of the Contract exceed the price paid for the Products with respect to which the claim is made.

11. Termination, Suspension and Security

- VELFAC may, without prejudice to any other right or remedy available to VELFAC, immediately terminate the Contract, suspend contractual performance or require any payment in advance or satisfactory security for further deliveries under the Contract by written notice to the Buyer in the event that the Buyer: (a) defaults in making any payment due to VELFAC under the Contract; (b) remains in breach of its obligations to VELFAC under the Contract or under any other contract with VELFAC having been given 14 calendar days' notice of the breach in writing (including for non-compliance with Design Programme/Direct timeline obligations). Without prejudice to any other rights or remedies available, VELFAC may demand immediate payment of outstanding amounts which shall then become due and payable.

12. Governing Law and Jurisdiction

- The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales. If any dispute arises out of or in relation to the Contract, the parties will use their reasonable endeavours to resolve that dispute amicably by discussion.

13. Intellectual Property Rights

- All Intellectual Property Rights in and to the Products, and in a VELFAC Design or any drawings, technical data, reports, documents, designs and information whatsoever which VELFAC submits to the Buyer in connection with the Contract, shall belong to VELFAC and must not be copied or shown to any third party without the prior written consent of VELFAC.

14. Confidentiality

- 14.1. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15. Force Majeure

- Without prejudice to any other provision of these Conditions, VELFAC shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performance or any failure to perform any of the obligations of VELFAC under the Contract due to circumstances beyond its reasonable control, including without limitation, war, governmental restrictions, fire, flood or storm, explosion, accident, civil disturbance, shortage or unavailability of stock or manpower, industrial action and transportation delays.

16. Severability

- If any of the terms and conditions of the Contract (or part thereof) or these Conditions shall be found to be illegal, invalid or unenforceable, all other terms and conditions of the Contract or these Conditions not affected by the same shall remain in full force and effect.

17. Contracts (Rights of Third Parties) Act 1999.

- The parties hereby confirm that no term of the Contract and these Conditions is intended to confer on any third party any right or benefit and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.

18. Entire Agreement

- The Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.