



# Comyn Ching & Co (Solray) Limited

## Standard Terms and Conditions

All quotations and orders arising between Comyn Ching & Co. (Solray) Limited ("the Seller") and the Buyer shall be governed by the following Terms and Conditions to the exclusion of any other terms and conditions and the acceptance of the contract by the Buyer shall be deemed to be an acceptance of these Terms and Conditions. **No other terms and conditions except those implied by law shall be of any effect unless the same are expressly agreed in writing by both the Seller and the Buyer.**

'Goods' shall mean the products supplied by the Seller to the Buyer, and 'Services' where relevant shall mean services provided by the Seller to the Buyer in respect of installing the Goods.

### 1. PRICE

- 1.1 The Goods shall be invoiced at the price prevailing at the date of the despatch of Goods and the Seller may increase the price at any time prior to delivery of the Goods to reflect increases in the Seller's costs.
- 1.2 The Seller reserves the right to invoice the Services separately from the Goods and at the price prevailing at the date of the delivery of the Services.
- 1.3 The price stated is exclusive of value added tax and any other impositions whatsoever which if applicable shall be paid in addition to the price by the Buyer.
- 1.4 All quotations remain open to acceptance by the Buyer within 60 calendar days only of their date of issue.

### 2. ACCOUNT FACILITIES AND PAYMENT

- 2.1 Save where the Buyer has an approved account facility with the Seller, the contract price shall be payable on a pro forma basis in sterling at the Seller's place of business at least seven days prior to delivery of the Goods.
- 2.2 The Seller will only permit account facilities to continue to be made available to the Buyer where payment of all invoices or applications is made within 30 days without deductions save where clause 12.5 applies.
- 2.3 If account facilities are unused for 36 months the Seller reserves the right to close the account facility and to require payment on a pro forma basis payable seven days before delivery on any subsequent transactions until such time as new account facilities may be agreed.
- 2.4 All overdue accounts shall be charged on a daily basis with interest at 4% over HSBC base rate both before and after any court judgement.
- 2.5 Full payment of invoices or applications must reach the Seller within 30 days of the date of the invoice or application unless otherwise specified in the Seller's quotation or order acknowledgement.
- 2.6 The Buyer shall have no right of offset unless otherwise agreed in writing in advance by a Director of the Seller.
- 2.7 The Seller shall attribute payments received from the Buyer to the oldest invoice outstanding.
- 2.8 The Buyer may not make any deduction from the invoiced price unless in accordance with 12.5 below.

### 3. DELIVERY

- 3.1 Delivery shall not include off loading, un-wrapping, un-packing, storage or site work attendance unless otherwise agreed in writing between the Buyer and the Seller.
- 3.2 The Seller will use its reasonable endeavours to comply with estimated despatch or delivery dates but in no circumstances will the Seller be liable for any delay in delivery or loss arising therefrom. Time shall not be of the essence of the contract but as a guidance only.
- 3.3 If payment is to be made on a pro forma basis delivery will not be made until seven days after receipt of the contract price.
- 3.4 If owing to non-availability of Goods, materials or for any other reason the Seller is unable to effect delivery the Seller shall be at liberty by notice in writing to determine the contract or part thereof without thereby incurring any liability to the Buyer.
- 3.5 It is agreed that the Seller may deliver the Goods by instalments and each delivery shall be treated as a separate contract and the contract price or an appointed part shall be due and payable.
- 3.6 Where delivery is delayed by late payment of the pro forma the cost of storage or warehousing shall be paid by the Buyer to the Seller in addition to the contract price before the Seller shall be required to make delivery.
- 3.7 Where Goods are offered for delivery to site, the Seller shall deliver as close to site as hard road permits. The Buyer shall be responsible for checking the Goods for any transport damage before unloading and shall record any such damage with the haulier.
- 3.8 The Seller will accept no liability for damage to Goods occurring in transit unless notified in writing by the Buyer (by email with photographic evidence) on the day of delivery and provided only that the Goods have been signed for by the Buyer as 'damaged' on the haulier's delivery note. For the avoidance of doubt, the Seller will not accept liability for damaged goods that have been signed for but not signed for as 'damaged'.

### 4. TITLE AND RISK

- 4.1 The Seller and the Buyer agree that legal and equitable title to the Goods shall remain with the Seller and that the Seller has the sole and unencumbered right to dispose of the Goods until payment in respect of the Goods has been made in full to the Seller.
- 4.2 The Seller may (without prejudice to any other rights) recover or resell the Goods or any portion of them and the Buyer hereby agrees that the Seller or its servants or agents may enter upon the Buyer's premises for that purpose.
- 4.3 The risk of damage or loss of the Goods shall pass from the Seller to the Buyer when the Goods are delivered to the Buyer or, where the Buyer elects to collect the Goods, when the Seller notifies the Buyer that the Goods are ready for collection.
- 4.4 Whilst the Goods are upon the Buyer's premises or site of works, the Buyer shall ensure that they are stored undamaged and free of charge in such a way that they are shown to be the property of the Seller and marked accordingly.
- 4.5 Until payment has been made in full the Buyer has no legal or equitable title to the Goods or authority (unless otherwise confirmed in writing by the Seller) to sell mortgage charge or lease any of the Goods.

### 5. GUARANTEE

- 5.1 All completely assembled Goods are tested by the Seller at their works to a minimum of 7 bar by air under water. To that extent all Goods sold are guaranteed for five years from delivery against faulty workmanship (the 'Goods Guarantee Period'). Should a defect occur the Buyer is required to return at its expense the faulty equipment for inspection, and the guarantee extends only to repair or replacement of the Goods or the repayment of the value of the Goods at the option of the Seller.
- 5.2 All components and the installation (but not secondary work or materials supplied or fitted by others) fitted by the Seller or by its approved installers are (subject to the Buyer maintaining the system and panels in accordance with operating instructions given and good custom and practice) guaranteed for a period of five years from practical completion against faulty workmanship (the 'Goods and Services Guarantee Period').
- 5.3 All claims under either of the guarantees above must be made promptly in writing to the Seller prior to the expiry of the relevant Guarantee Period. The Buyer will provide to the Seller all necessary facilities to inspect the alleged defect. If any component or the installation is found to be faulty the Seller will at its election repair or replace the defective part. If there are no defective parts repairable under the guarantee then the Buyer undertakes to pay the Seller £250 out of pocket expenses.
- 5.4 At any time before the expiration of the relevant Guarantee Period the Seller will at the written request of the Buyer and subject to the payment of a single premium of 5.5% of the final agreed contract value to the Seller agree to issue an extended guarantee on the same basis as above but for an additional period of 20 years commencing upon the expiry of the original Guarantee Period.
- 5.5 The guarantee shall be personal to the Buyer but subject to receiving written notice of assignment of the guarantee within 60 days of the date of assignment the Seller will recognise the assignee as having the benefit of the guarantee for the remainder of the guarantee period on the terms set out herein.

### 6. CONTRACT VARIATIONS OR CANCELLATIONS

- 6.1 Variations and/or cancellations will only be acceptable if requested to the Seller in writing.
- 6.2 The Seller shall at its sole discretion entertain variations relating to materials and fittings only if received prior to manufacture of the Goods.
- 6.3 Cancellation of an order by the Buyer must be in writing and the Buyer shall forthwith pay to the Seller by way of compensation a cancellation charge of 20% of the order value or the total amount of the actual loss to the Seller whichever shall be the higher.

### 7. DEFAULT IN PAYMENT AND INSOLVENCY

- 7.1 In the event that the Buyer becomes unable to pay its debts as and when they fall due, goes into liquidation, makes any composition with its creditors or if a Receiver of Manager is appointed, the Seller may withhold deliveries, cancel or suspend outstanding orders and recover Goods delivered unless payment is made in full to the Seller for the Goods.

### 8. INDEMNITY

- 8.1 The Buyer shall be solely responsible for and shall keep the Seller indemnified against any and all losses, damages, liability, costs (including legal fees) and expenses which the Seller may suffer or incur directly or indirectly from the Buyer's breach of any of its obligations under the Contract and not excluding the liability in relation to the use of the Goods other than in strict accordance with the Seller's detailed drawings.
- 8.2 The Buyer recognises that any breach or threatened breach of the Contract may cause the Seller irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Seller, the Buyer acknowledges and agrees that the Seller is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

### 9. RETURNED GOODS

- 9.1 The Seller will not accept returned Goods for credit or rectification unless such return has been authorised in writing by the Seller and the Goods are returned back to the Seller's place of business at the expense of the Buyer in stock condition within ten days of delivery.
- 9.2 The Seller retains the sole discretion as to whether to accept return of Goods or whether to rectify or replace the Goods.

### 10. SELLER'S LIABILITY TO BUYER

- 10.1 The Seller shall under no circumstances be liable to the Buyer whether in contract, tort, breach of statutory duty or otherwise for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract between them.
- 10.2 The Seller's liability to the Buyer for any default or breach whatsoever and howsoever arising shall in no case exceed the invoice value of the Goods.
- 10.3 This clause 10 shall survive termination of the contract.

### 11. PLANS AND COPYRIGHT

- 11.1 The Seller will provide within the contract price up to six copies of detailed drawings. Thereafter Seller shall have the right to levy a suitable charge for further copies which shall be payable by the Buyer in addition to the contract price.
- 11.2 All plans drawings, specifications and details prepared by the Seller are the copyright of the Seller and the Buyer shall not reproduce or otherwise use the plans in any manner which would constitute a breach of that copyright.

### 12. INSTALLATION SERVICES

- 12.1 Unless the quotation specifically states otherwise, the Buyer at his sole expense shall be responsible for the timely procurement of (i) the site conditions being suitable for the carrying out of the Seller's works (ii) timber grounds (iii) offloading of Goods and positioning Goods appropriately for installation, (iv) storage and protection of the Seller's materials and Goods while on site, (v) a suitable safe working platform and the ability to move it as required by the Seller (vi) power and lighting, (vii) site testing and site painting, and (viii) the clearance of rubbish.
- 12.2 The quotation is prepared on the assumption that free access to the site is continuously available to the Seller throughout the week between the hours of Monday to Friday between 8.00a.m to 6.00p.m and on Saturday and Sunday between 8.00a.m to 4.30p.m.
- 12.3 In the event that the Seller is unable to carry out its contract by reason of the site not being ready or available during the above hours the Buyer will pay a disruption charge in addition to the contract price for all standing time which shall be chargeable at the Seller's normal day work rates from the time of notification in writing to the Buyer that the Seller's work has had to cease until the time that the Seller's work is able to be resumed.
- 12.4 Pursuant to 12.3 above, the Seller may at his absolute discretion withdraw from site until the site is in a condition where work may be re-commenced whereupon the Buyer will pay the Seller's standard extra visit charge forthwith or on demand.
- 12.5 Subject to express prior agreement in writing between the Seller and Buyer retentions may be permitted as follows: Interim payment applications – 5%; Final payment application – 2.5%; Pro forma applications – Nil.
- 12.6 Where supply and/or installation is delayed through no fault of the Seller the Buyer shall re-imburse the Seller for all direct expense and associated overheads howsoever incurred and relevant to this contract.

### 13. FORCE MAJEURE

- 13.1 In the event that the Seller is unable to perform its obligations to the Buyer (or only able to perform them at unreasonable cost) because of circumstances beyond the Seller's control, the Seller may cancel or suspend any of its obligations to the Buyer without liability.

### 14. GENERALLY

- 14.1 All descriptions and samples are approximate only and intended to be a guide. The Seller accepts no liability for their accuracy. The Seller may alter Goods to introduce improvements and no such variation shall entitle the Buyer to rescind the contract or shall be the subject of any claim against the Seller.
- 14.2 If any of these Terms and Conditions shall be found to be unlawful it shall not vary or affect the validity or enforceability of the remainder of the terms and conditions.
- 14.3 No waiver by the Seller of any breach of these terms and conditions by the Buyer shall constitute a waiver of any subsequent breach of the same or other condition.
- 14.4 A person who is not a party to the contract between the Buyer and the Seller shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 14.5 The contract is entered into between the Seller and the Buyer as principals and the Buyer shall not be entitled to assign the benefit or burden of it without the prior written consent of the Seller. The Seller shall be entitled to sub-contract the whole or part of its obligations under the contract and to assign its interest in the contract.
- 14.6 Nothing in this contract shall establish a partnership or agency between the Seller and the Buyer. The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 14.7 This contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law.

### 15. Dispute resolution

- 15.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 15.
- 15.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
  - 15.3.1 Within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
  - 15.3.2 If the dispute has not been resolved within 7 days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.
- 15.4 The specific format for the resolution of the dispute under clause 15.3.1 and, if necessary, clause 15.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 15.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 15.3.2 then the matter may be referred to mediation.