

## Terms & Conditions of Sale ACCESS 360

The Customer's attention is drawn in particular to the provisions of Clause 8.

### 1. Interpretation

a. In these Conditions:

**Supplier** means any or all of (1) Bilco UK Limited (BR001024) and (2) Bilco Access Solutions Limited (08855261), which trades as "Howe Green" or "Profab Access", and which together trade as "Access 360".

**Customer** means the person(s) whose order for the supply of Products is accepted by the Supplier and if more than one person any obligations of the Customer shall be joint and several.

**Products or Items** means the Products (including any instalment of the Products), which the Supplier is to supply in accordance with these Conditions.

**Bilco Products** means Products supplied by or through Bilco UK Limited.

**Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions** means the terms and conditions of sale in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Supplier and the Customer.

**Contract** means the contract formed for the purchase and sale of the Products upon these Conditions, which shall override any inconsistent terms implied trade custom or practice or previous dealings or any contrary or additional terms contained or referred to in the Customer's order form.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**Writing** means all hard copy and electronic forms of communication.

b. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2. Basis of Sale

a. The Supplier shall sell and the Customer shall purchase the Products upon these Conditions in accordance with any order of the Customer that is accepted by the Supplier in writing and each accepted order shall constitute an individual legally-binding Contract.

b. Where an order is placed by a Customer, no Contract shall be formed until such order has been accepted in writing by the Supplier and in particular:

(i) No quotation by the Supplier constitutes an offer and any acceptance of a quotation by a Customer does not constitute a Contract until it is accepted by the Supplier in writing, and all quotations will be deemed to be withdrawn after thirty (30) days from the date of quotation.

(ii) Where an order is placed by telephone or email, unless agreed and acknowledged by the Supplier in writing, an official purchase order must be obtained and quoted.

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

c. Except where otherwise expressly accepted in writing by the Supplier, the quantity, quality and description of and any specification for the Items shall be those set out in Supplier's quotation.

d. The Supplier reserves the right to amend the specification of the Products if required by any applicable statutory or regulatory requirements.

e. These Conditions shall apply to any repaired or replacement Products supplied by the Supplier.

f. The accompanying confirmation of acceptance and these Conditions comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Conditions prevail over any of the Customer's general terms and conditions of purchase regardless whether or when the Customer has submitted its purchase order or such terms. Fulfilment of the Customer's order

does not constitute acceptance of any of the Customer's terms and conditions and does not service to modify or amend these Conditions.

g. No variation to these Conditions will be accepted by the Supplier unless agreed in writing and signed by an authorised representative of the Supplier.

### 3. Price

a. The price of the Products shall be the Supplier's quoted price at the time of its receipt of the Customer's order and payment will be denominated in Sterling unless otherwise agreed in writing by authorised representatives of the Supplier and Customer.

b. The Supplier reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Products to reflect any increase in the cost to the Supplier due to currency fluctuation or material increases in the costs of transportation or production, or any change in delivery dates, quantities or specifications for the Products requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

c. Except as otherwise stated under the terms of any quotation by the Supplier or unless otherwise agreed in writing, all prices quoted to the Customer do not include delivery.

d. The price is exclusive of any applicable VAT, taxes or import duties, which the Customer shall be additionally liable to pay to the Supplier.

e. Should the Customer defer any previously agreed delivery date (whether to full or part deliveries), the Supplier shall be entitled to invoice the Customer as if the goods had been delivered and payment shall be due according to the normal terms of payment. The Supplier may also charge the Customer storage costs for the period of deferment.

### 4. Terms of Payment

Subject to any special terms agreed in writing between the Supplier and the Customer:

a. The Supplier may invoice the Customer for the price of the Products on or at any time after delivery of the Products unless the Products are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Products, in which event the Supplier may invoice the Customer for the price at or any time after the Supplier has notified the Customer that the Products are ready for collection (as the case may be) the Supplier has tendered delivery of the Products.

b. The Customer shall pay the price of the Products without any deduction within thirty (30) days of the date of the Supplier's invoice date unless the Supplier has provided its written consent to different arrangements. The Supplier may recover the price, notwithstanding that delivery may not have taken place and the property in the Products has not been passed to the Customer. Time shall be of the essence in respect of payment by the Customer.

c. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

(i) suspend all or any other deliveries to be made under the Contract or any other contract with the Customer, in which event the Customer shall not be released from any of its obligations under the Contract or any other contract and the Supplier shall not be responsible for resultant delay in delivery;

(ii) cancel the Contract or any other contract with the Customer and claim damages from the Customer for breach of contract; and/or

(iii) charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of 2% above the bank base rate of National Westminster bank plc for the time being per calendar month or part of a month until payment in full has been made to the Supplier's nominated bank account and such funds are cleared and freely-transferable, such interest to be calculated from the date of the invoice.

d. The Buyer shall have no right of set-off against any sums due to the Supplier.

### 5. Delivery

a. Although the Supplier will endeavour to meet agreed delivery dates, such delivery dates are not guaranteed, and the Supplier accepts no liability for any delay in delivery of the Products. Time shall not be of the essence with respect to delivery by the Supplier.

b. The Products may be delivered by the Supplier in advance of any quoted delivery date by agreement with the Customer.

c. Where the Products are to be delivered in instalments, each delivery will constitute a separate Contract and failure by the Supplier to deliver any one or more of the instalments or defect in an instalment, or any claim by the Customer in respect of any instalment shall not entitle the Customer to treat the Contract as whole as repudiated or cancel any instalment. Due to the nature of the Products, the Supplier may deliver quantities subject to a deviation agreed with the Customer.

d. If upon delivery the Products are found to be missing or damaged, the Supplier shall not be liable unless the Customer notifies the Supplier in writing within three (3) Business Days of a short or damaged delivery.

f. If delivery is postponed by the Customer from the agreed delivery date and the Customer fails to accept delivery of the Products within ten (10) Business Days of the Supplier notifying the Customer that the Products are ready for delivery, then, unless such postponement or failure is caused by a Force Majeure event under Clause 9 or the Supplier's failure to comply with its obligations under the Contract, delivery of the Products shall be deemed to have been completed by the Supplier at 12.00 pm (local time) on the 10<sup>th</sup> Business Day after the day on which the Supplier notified the Customer that the Products were ready and the Supplier may charge the Customer for all costs and expenses (including, without limitation, insurance) related to storage of such Items. If the circumstances preventing delivery continue one (1) month after the original agreed delivery date, at the discretion of the Supplier, the Customer will be required to arrange an alternative delivery date and location and to take delivery of the Products.

### 6. Risk, Property, Title

a. Risk of damage to or loss of the Products shall pass to the Customer at the time of delivery (or if the Customer wrongfully fails to take delivery of the Products the time when the Supplier has tendered delivery).

b. The Products shall remain the property of the Supplier and title shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Products (and any relevant additional charges).

c. 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 Supplier shall be entitled at any time to require the Customer to deliver up the Products to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.

### 7. Returns and cancellations

a. The return of goods is strictly determined by the Supplier and restricted to twenty-eight (28) days from date of invoice. Returns outside this deadline are at the Supplier's sole and absolute discretion.

b. Only Stock Items can be returned, and such Item must comply with the conditions set out in 7c for a credit to be raised minus a 15% restocking charge. The classification of a "Stock Item" is strictly at the discretion of the seller and it is the Customer's responsibility to ensure if the items they are acquiring are "Stock" or not at point of purchase.

c. Conditions of returning "Stock Items" are as follows:

(i) It is the Customer's responsibility to ensure that the goods are returned to the Supplier's premises with the packaging intact.

(ii) Only "Stock Items" can be returned Without prejudice to its other rights and remedies at law, the Supplier may:

(i) refuse a purported cancellation of the Contract by the Customer; and/or

(ii) make such charge as it considers reasonable in respect of any purported cancellation of the whole or part of any order by the Customer.

e. Any cancellation accepted by the Supplier will render the Customer liable for the value of

Products manufactured or partially manufactured (including but not limited to the cost of all raw materials purchased) by the Supplier whether or not despatched to the Customer prior to receiving purported notice of cancellation and may result in an adjustment of the price for the quantity of Products actually despatched to the Customer. No cancellation will be agreed where Products are to be supplied to meet special requirements of the Customer.

## 8. Warranties & Liabilities

- a. Subject to the conditions set out below, the Supplier warrants that the Products (except for Bilco Products) will be free from defects in material and workmanship for a period of five (5) years from date of delivery, subject to the conditions set out below and under normal use. The following warranty periods shall apply to the specific Bilco Products below under normal use:

Bilco Product	Warranty Period
Roof access hatches	10 years
Smoke ventilators	10 years
Electrical components	2 years
Drainage doors	10 years
Non-drainage doors	10 years
Fire rated doors	10 years
Ladders and walkways	1 year

- b. The warranty set out in Clause 8a is given by the Supplier subject to the following conditions:

- (i) Any claim which is based upon any defect in the quality or condition of the Products or their failure to correspond with specification shall be notified in writing to the Supplier promptly and no later than within five (5) Business Days from the date of delivery (or sooner), or where the defect or failure was not or apparent on reasonable inspection within a reasonable time after discovery of the defect or failure and where any such valid claim is notified to the Supplier, the Supplier shall be required to replace the Products free of charge, or at the Supplier's discretion, refund to the Customer the price of the Products or a proportionate part of the price, and the Supplier shall have no further liability to the Customer.
- (ii) The Buyer is under a duty to inspect the Products on delivery or on collection and where the Products cannot be examined the carriers' note, or such other note as appropriate, shall be marked by the Buyer "Not Examined". The Supplier accepts no liability if the Products are not inspected and any defect or apparent failure on reasonable inspection is not promptly notified to the Supplier prior to installation.
- (iii) The Supplier shall be under no liability and the Customer will indemnify the Supplier against all actions, claims, expenses, damages, liabilities, costs, proceedings and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the specification or Products to the extent that the Products are to be manufactured in accordance with a specification supplied by the Customer. This Clause shall survive termination of the Contract.
- (iv) The Supplier gives no warranty as to the fitness for any particular product in respect of any defect in the Products arising from:
- (1) any drawing, design, specification or free issue material supplied by the Customer;
  - (2) incorrect installation, wear and tear, normal deterioration in chemical products, wilful damage or negligence (other than by the Supplier), abnormal working conditions, failure to follow the Supplier's

- (3) instructions, or misuse or alteration of the Products; any defects in material or workmanship of any other default of a sub-contractor nominated by the Customer.

- c. The restrictions on liability in this Clause 8 apply to every liability arising under or in connection with the Contract, including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- d. The conditions in Clause 8b do not exclude any liability arising from any express fire resistance given by the Supplier in writing in relation to the Products, save that the Supplier shall not be liable:
- (i) if a Product's specification or dimensions has or have been changed, modified, or otherwise altered in any way at the Customer's request, insofar as such modification alteration or addition is relevant to or could affect the fire rating of the Product.
  - (ii) If the Product is modified altered or added to in any way by the Customer or any third party after delivery.
  - (iii) If the Product is incorrectly installed or any guidelines of the Supplier for the installation use and/or maintenance of the Product are not followed.
- e. Subject to Clause 8f, the following types of loss are wholly excluded:
- (i) loss of profits;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of use or corruption of software, data or information;
  - (vi) loss of or damage to goodwill; and
  - (vii) indirect or consequential loss.
- f. Nothing in the Conditions limits any liability that cannot legally be limited, including liability for:
- (i) death or personal injury caused by negligence;
  - (ii) fraud or fraudulent misrepresentation;
  - (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (iv) defective products under the Consumer Protection Act 1987.
- g. Except as provided in this Clause 8, the Supplier shall have no liability to the Customer in respect of any Product's failure to comply with the warranty set out in Clause 8a and the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- h. This Clause 8 shall survive termination of the Contract.

## 9. Force Majeure

Neither party shall be liable to the other for any failure to perform or delay in performance of the Contract due to any direct or indirect cause beyond such party's reasonable control. During the periods of time when either party is unable to perform, the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

## 10. Insolvency of the Customer

Without limiting its other rights or remedies under law, the Supplier may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer (and if Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary) in any of the following circumstances:

- a. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy such breach within ten (10) Business Days of being notified to do so;
- b. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- c. a creditor takes possession of, or a receiver is appointed over any of the property or assets of the Customer;

- d. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- e. the Supplier reasonably apprehends that any of the events may occur.

## 11. General

- a. If any provision of these conditions is held by any competent authority to be invalid or enforceable 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 thereby.
- b. If the Customer requires testing and inspection of the Products, these shall take place at the Supplier's premises or a place to be fixed by the Supplier, and the Customer shall be responsible for all fees incurred in connection with such testing and inspection.
- c. Any drawings submitted by the Supplier are the property of the Supplier and may not be used or copied for any other purpose save with the Supplier's approval in writing.
- d. The Customer acknowledges the Supplier's (or its licensors') intellectual property rights subsisting in the Products and other materials provided to it and in particular agrees that supply of the Products shall in no way be deemed to constitute a licence for the Customer or end user to copy the Products or otherwise infringe the Supplier's (or its licensors') intellectual property rights. Therefore, the Customer:
- (i) shall not reverse engineer or make or have made any Products based on Products provided by the Supplier; and
  - (ii) not copy or otherwise use any drawings or other materials provided by the Supplier except in relation to the reasonable installation, maintenance and use of those Products, unless the Supplier gives its prior written consent.

## 12. Export Sales

The following provisions shall apply to any Contract for the supply of Products outside of the United Kingdom:

- a. the Customer shall be solely responsible for all import duties, charges and assessments and the obtaining of any necessary export or import licences in respect of the Products; and
- b. the Uniform Law on International Sales Act 1967 shall not apply.

## 13. Notices

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify the other in writing and shall be deemed to have been served, if sent by post, two (2) working days after posting

## 14. Assignment

Neither the Supplier nor the Customer shall assign or transfer or purport to assign or transfer the Contract or the benefit thereof to any other person without the prior written consent of the other save that the Supplier shall be entitled to subcontract the manufacture of the Products and their despatch to the Buyer.

## 15. Third Party Rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## 16. Governing Law and Jurisdiction

- a. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with English law.
- b. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

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