

DPM Contractors (UK) Limited Standard Terms and Conditions

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 The **'Company'** means DPM Contractors (UK) LTD (Company Registration Number 09226915).
- 1.2 The **'Customer'** means the party named on the Company's quote and/or Invoice and any other relevant document, which could assist in further identifying the party, where and when relevant.
- 1.3 The **'Contract'** means the contract for the sale and purchase of goods and/or the supply of services by the Company to the Customer.
- 1.4 **'Delivery Point'** means the place or location where the supply and delivery of the Goods and/or Services will be delivered.
- 1.5 The **'Goods'** mean any goods stated within the Company's quote and/or Invoice and any other relevant document, which could assist in (further identifying the party, where and when relevant).
- 1.6 The **'Services'** means the services and/or labour that the Company has agreed to provide stated within the Company's quote and/or Invoice and any other relevant document, which could assist in further identifying the party, where and when relevant.
- 1.7 These **'Conditions'** means these standard terms and conditions together with any other relevant conditions referred to in the Company's quote. If any of the conditions appear to conflict, then these standard conditions shall prevail.
- 1.8 The headings are for convenience of reference only and shall not affect their interpretation.
- 1.9 Words in the singular include words the plural and in the plural include the singular. Similarly and in addition and where applicable, reference to one gender includes reference to the other gender too.
- 1.10 Where the word 'condition/s' is used it shall mean these standard terms and conditions.
- 1.11 These conditions are subject to amendment by the Company from time to time.

2 APPLICATION OF TERMS

- 2.1 Subject to any variation under these conditions, the Contract shall be on these conditions and to the express exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or any other document). For the avoidance of doubt, these conditions shall prevail in any and all event.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or any other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The relevant person is most likely to be a Director.
- 2.4 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company, which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.5 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.
- 2.6 No order placed by the Customer shall be deemed to be accepted by the Company only and until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer. For the purposes of this condition, written acknowledgment is deemed to include without limitation, telex, fax and/or e-mail communications.
- 2.7 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate. It is on this basis that the Company will place reliance and perform its services accordingly.
- 2.8 Any quotation is given on the basis that it is an invitation to treat and that no Contract shall come into existence until the Company communicates an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it. For the avoidance of doubt, if 30 days have passed, the quotation will be automatically withdrawn and is incapable of being the subject of an offer from the Customer, unless the Company give written confirmation of such. The Company fully reserves the right to amend or vary the quotation and in any event the previous quotation shall be deemed to have been withdrawn.
- 2.9 Verbal communications do not constitute as a quotation. Such must be set out in writing.

3 DESCRIPTION (OF GOODS)

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation and/or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3 The Customer acknowledges that the goods that the Company will provide such natural stone such, for example, as granite, limestone, marble, quartz, porcelain, mosaic, stone cladding, vanity tops, kitchens tops are natural material/s and subject to variations of colour/appearance due to its very nature. One piece is not going to be of the same exact appearance due to the very nature of the material in question.
- 3.4 The Customer acknowledges any sample provided of natural stone such, for example, as granite, limestone, marble, quartz, porcelain, mosaic, stone cladding, vanity tops, kitchens tops are for the sole purpose of giving an approximate idea only and is not a sale by sample.
- 3.5 Furthermore, the Company shall seek to ensure that the natural stone such, for example, as granite, limestone, marble, quartz, porcelain, mosaic, stone cladding, vanity tops, kitchens tops it provides will be of the highest quality and also in consistency and will seek to advise where and when such is relevant.

4 DELIVERY (OF GOODS AND/OR SERVICES)

- 4.1 Unless otherwise agreed in writing by the Company, delivery as to the supply of the Goods and/or Services shall take place at the Customer's Delivery Point, in other words its nominated location.
- 4.2 The Customer shall take delivery of the Goods and/or Services within 3 days of the Company giving it notice that the Goods and/or services are ready for delivery or such later date as agreed in writing with a Director of the Company.
- 4.3 Any dates specified by the Company for delivery of the Goods and/or Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract.
- 4.5 If for any reason the Customer fails to accept delivery of any of the Goods and/or Services when they are ready for delivery, or the Company is unable to deliver the Goods and/or Services on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
 - 4.5.1 risk in the Goods and/or Services shall pass to the Customer (including for loss and/or damage allegedly caused by the Company's negligence);
 - 4.5.2 the Goods and/or Services shall be deemed to have been delivered; and
 - 4.5.3 the Company may store the Goods and/or Services until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance costs at an agreed liquidated rate of £100 per square foot of storage space per day until the Goods and/or Services are removed by the Customer).
- 4.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods and/or Services.
- 4.7 If the Company delivers to the Customer a quantity of Goods and/or Services of up to 5% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods and/or Services at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods and/or Services by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.9 Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Customer to repudiate or cancel any other Contract or installment.

5 NON-DELIVERY (OF GOODS AND/OR SERVICES)

- 5.1 The quantity of any consignment of Goods and/or Services as recorded by the Company on dispatch from the Company's place of business/s and/or any other location engaged by the Company shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide

conclusive evidence proving the contrary. The burden shall rest on the Customer to which if successfully shifted, the Company will respond, where and when relevant.

- 5.2 The Company shall not be liable for any alleged non-delivery of Goods and/or Services (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods and/or Services would, in the ordinary course of events, have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods and/or Services shall be limited to replacing the Goods and/or Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods and/or Services. The decision taken by the Company shall be at its discretion and subject to no appeal.

6 RISK/TITLE

- 6.1 Without prejudice to clause 4.5, the Goods and/or Services are at the risk of the Customer from the time of delivery.
- 6.2 Ownership of the Goods and/or Services shall not pass to the Customer until the Company has received in full (in cash and/or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods and/or Services; and
- 6.2.2 all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Goods and/or Services has successfully passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods and/or Services on a fiduciary basis as the Company's bailee;
- 6.3.2 store the Goods and/or Services (at no cost to the Company) separately from all other goods of the Customer and/or any third party in such a way that they remain readily identifiable as the Company's property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and/or Services. Where possible and to the fullest extent, the Customer shall leave the packaging untouched; and
- 6.3.4 maintain the Goods and/or Services in a satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company immediately.
- 6.4 The Customer may resell the Goods and/or Services before ownership has passed to it solely on the following conditions:
- 6.4.1 any sale/s shall be effected in the ordinary course of the Customer's business at full market value; and
- 6.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal for the Company when making such a sale/s.
- 6.5 The Customer's right to possession of the Goods and/or Services shall terminate immediately if:
- 6.5.1 the Customer has a bankruptcy order made against it/him or makes an arrangement or composition with his creditor/s, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 6.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 6.5.3 the Customer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods and/or Services has not passed from the Company.
- 6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in

order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

- 6.8 Where the Company is unable to determine whether any Goods and/or Services are the Goods and/or Services in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all Goods and/or Services of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price set out in the Company's quotation and such will be in Pounds Sterling.
- 7.2 The price for the Goods and/or Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods and/or Services.

8. PAYMENT

SUPPLY OF GOODS AND/OR SERVICES

- 8.1 A deposit payment for the supply of Goods and/or Services of 50% is payable on acknowledgement of order immediately or in any event within 7 days of invoice, unless there is another arrangement in place between the parties and in any event such agreement must be in writing from the Company or where it is expressly agreed by the Company, again in writing, that credit facility terms will be made available to the Customer.
- 8.2 The balance of the remaining 50% is due within 30 days of the relevant/s invoice as and when the relevant service/s is being provided and invoiced for, for example, the relevant Good/s being delivered and/or fixed at the relevant Delivery Point, and invoiced accordingly until 100% of payment has been achieved in cleared funds. This may also be known as monthly variation, where several or multiple Goods and/or Services within a contract are to be provided and invoiced for.

SUPPLY OF GOODS ONLY

- 8.3 A deposit payment for the supply of Goods of 50% is payable on acknowledgement of order immediately or in any event within 7 days, unless there is another arrangement in place between the parties and in any event such agreement must be in writing from the Company or where it is expressly agreed by the Company, again in writing, that credit facility terms will be made available to the Customer.
- 8.4 The balance for the payment for the supply of Goods for the remaining 50% is due immediately and in any event within 7 days of delivery, unless there is another arrangement in place between the parties and in any event such agreement must be in writing from the Company or where it is expressly agreed by the Company, again in writing, that credit facility terms will be made available to the Customer.
- 8.5 Time of payment shall be of the essence. **This is a very important condition.**
- 8.6 No payment shall be deemed to have been received by the Company until the Company has received cleared funds.
- 8.7 The Company reserves the right to charge a relevant fee for processing payment/s by way of debit and/or credit card. The Company will duly inform the Customer the relevant fee in writing.
- 8.8 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision. This is a very important condition.
- 8.9 The Customer shall make all payments due under the Contract in full without any deduction whether by way of any alleged set-off, counterclaim, discount, abatement or otherwise.
- 8.10 If the Customer fails to pay the Company any sum/s due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% accruing on a daily basis until full payment is made.
- 8.11 Additionally, and without prejudice to any other condition, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. This is also known as statutory interest, which is 8% plus an additional .5% plus other relevant legal costs.

9 QUALITY

- 9.1 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods and/or Services shall:

- 9.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 9.1.2 be reasonably fit for any particular purpose for which the Goods and/or Services are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgment of the Company.
- 9.2 The Company shall not be liable for any alleged breach of any of the warranties in condition 9.1 unless:
- 9.2.1 the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 3 days of the time when the Customer discovers or ought to have discovered the defect; and
- 9.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and/or Services and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if:
- 9.3.1 the Customer makes any further use of such Goods and/or Services after giving such notice; or
- 9.3.2 the defect arises because the Customer failed to follow the Company's oral and/or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods and/or Services or (if there are none) good trade practice; or
- 9.3.3 the Customer alters and/or repairs such Goods and/or Services without the written knowledge and/or consent of the Company; or
- 9.3.4 the Customer has fitted the Goods and/or Services prior to giving written notice of any defect to the Company in accordance with condition 9.3.1.
- 9.4 Subject to condition 9.3 and condition 9.4, if any of the Goods and/or Services do not conform with any of the warranties in condition 9.2 the Company shall at its option and complete discretion repair or replace such Goods and/or Services (or the defective part) or provide a credit note up to the price of such Goods and/or Services at the pro-rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods and/or Services or the part of such Goods and/or Services which is defective to the Company within 7 days.
- 9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition in respect of such Goods and/or Services.
- 10. LIMITATION OF LIABILITY**
- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 10.1.1 any alleged breach of these conditions;
- 10.1.2 any use made or resale by the Customer of any of the Goods and/or Services, or of any product incorporating any of the Goods; and
- 10.1.3 any alleged representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- 10.3.1 for death or personal injury caused by the Company's negligence; or
- 10.3.2 under section 2(3), Consumer Protection Act 1987; or
- 10.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 10.3.4 for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- 10.4.1 the Company's alleged total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;
- 10.4.2 the Company shall not be liable to the Customer for any alleged indirect or consequential loss or damage (including loss of profits) which arises out of or in connection with the Contract.
- 11. ASSIGNMENT**
- 11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery and/or to cancel the Contract and/or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation and by no means exhaustive, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 14 days, the Company and/or Customer shall be entitled to give notice in writing to the Company to terminate the Contract with out further liability.

13. NOTICE

- 13.1. All communications between the parties in relation to this Contract shall be in writing and will delivered by either hand or sent by pre-paid first class post or sent by fax or by electronic means such as e-mail;
- 13.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- 13.1.1 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 13.2 Communications shall be deemed to have been received:
- 13.2.1 if sent by pre-paid recorded first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 13.2.2 if delivered by hand, on the day of delivery; or
- 13.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of successful transmission and otherwise on the next working day; or
- 13.2.4 if sent by e-mail on a working day prior to 4.00 pm, at the time of successful sending and otherwise on the next working day.
- 13.3 All communications addressed to the Company shall be marked for the attention of the Director/s in order for it to be capable of being a valid communication.

14. GENERAL

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal and/or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract or not.
- 14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach and/or default and shall in no way affect the other terms of the Contract.

15. THIRD PARTIES

The parties to the Contract agree and expressly intend that no term/s of the Contract shall entitle and/or be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16. JURISDICTION

This Contract and/or any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.