

**Terms and Conditions of Sale / Supply of Goods**

These terms are incorporated into the agreement between:

- (i) Alimax Limited, of Newbank Court, Sandleheath Industrial Estate, Fordingbridge, Hampshire, SP6 1FG, trading as Alimax (“the Company”); and
- (ii) the person or persons who buy or agree to buy the Goods or Services from Alimax (“the Buyer”);

- 1. Definitions**  
In this agreement, the following words shall have the following meanings:
- 1.1 ‘Buyer’s Requirements’ means the specifications, standards and other stipulations (if any) sent by the Buyer to Alimax, which are either specified in the Contract Document, or for which Alimax has agreed in writing to assume liability under this agreement;
  - 1.2 ‘Contract Document’ means Alimax’s quotation(s) or estimate(s) that give rise to this agreement, except to the extent that those have been modified or superseded by Alimax’s order confirmation(s) (in which case the latter shall, to that extent, take precedence);
  - 1.3 ‘Delivery Date’ means the estimated date specified in the Contract Document for the delivery of the Goods and/or for performance of the Services (note clause 6.4); and, where no date is so specified, Alimax shall deliver the Goods and/or perform the Services within a reasonable time;
  - 1.4 ‘Goods’ means the goods specified in the Contract Document;
  - 1.5 A party becomes ‘Insolvent’ when any of the following occurs:
    - 1.5.1 it suspends, or threatens to suspend, payment of its debts or admits inability to pay its debts;
    - 1.5.2 it is unable to pay its debts as they fall due, or is deemed unable to pay its debts within the meaning of sections 123 or 268 of the Insolvency Act 1986;
    - 1.5.3 if a partnership, that party has any partner to whom any of the above applies;
  - 1.5.4 it commences negotiations with, or makes a proposal to, all or some of any class of its creditors for, or in relation to, compromising, rearranging or rescheduling any of its debts;
  - 1.5.5 a petition or application is filed, a notice is given, a resolution is passed, or an order is made for, or in relation to, the winding up of that party or the appointment of an administrator over it;
  - 1.5.6 the holder of a floating charge over the assets of that party appoints, or becomes entitled to appoint, an administrative receiver;
  - 1.5.7 a receiver is appointed over the assets of that party, or any person becomes entitled to appoint such a receiver;
  - 1.5.8 any creditor of that party or the holder of any security over the assets of that party takes lawful possession of, attaches or charges any of that party’s assets by way of distress or execution, or pursuant to that security or otherwise for the purpose of enforcing any judgment, debt or liability owed by that party;
  - 1.5.9 any action, step, claim or proceeding is taken against that party under foreign law or in any other jurisdiction which is analogous to any of the above actions, steps, claims or proceedings.
  - 1.6 ‘Linked Obligation’ means any outstanding obligation of Alimax towards the Buyer (whether to deliver goods, perform services, pay money, or of any sort whatsoever) that Alimax is obliged to

perform under any agreement other than the present agreement:

1.6.1 to which Alimax and the Buyer are parties; or

1.6.2 under which the Buyer is entitled to the exclusive benefit of that obligation;

and for the purposes of this definition that other agreement need not have any other association with, or dependence on, this agreement.

1.7 'Price' means the price that the Buyer shall pay for the Goods and Services as stated in the Contract Document and, unless expressly stated in the Contract Document or otherwise agreed:

1.7.2 excludes charges for carriage or delivery; and

1.7.3 excludes VAT and any other applicable taxes or levies, which shall be charged in addition at the rate in force at the date any payment is required from the Buyer.

1.8 'Services' means any services, including delivery and installation of the Goods, that Alimax has agreed to perform and that are specified in the Contract Document.

## 2. When these Conditions apply

2.1 These conditions shall apply to all contracts for the sale of goods and/or the supply of services by Alimax to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.

2.2 All orders shall be deemed to be an offer by the Buyer to purchase goods and/or services pursuant to these conditions.

2.3 Alimax shall have accepted that offer only when it has indicated in writing to the Buyer that it has accepted that offer.

2.4 Acceptance of delivery of the goods shall be deemed conclusive evidence of the Buyer's acceptance of these conditions.

## 3. Order

3.1 The Buyer orders the Goods and Services, and Alimax agrees to sell the Goods and to supply the Services to the Buyer, at the Price, for delivery by the Delivery Date.

3.2 Alimax reserves the right to alter the specification, standards or stipulations of the Goods in the Contract Document without prior notice provided that such alterations result from an improvement in the relevant specifications and the Buyer is not prejudiced thereby.

3.3 Any specification of the Goods shall be subject to a tolerance of  $\pm 2\text{mm}$  in all directions.

## 4. No cancellation

4.1 The Buyer shall not be entitled to cancel the order after Alimax accepts it.

4.2 The Buyer acknowledges that the Goods will be personalised or made to the Buyer's specifications (as set out in the Buyer's Requirements) and that, by reason of their bespoke nature, cannot be returned.

## 5. Deposit and payment

5.1 The Buyer shall pay the Price, which shall become due in the absence of any contrary agreement on the earliest of:

5.1.1 where a dated invoice is sent to the Buyer (and irrespective of its receipt by the Buyer), on the last working day of the calendar month in which the 30<sup>th</sup> day after the invoice date falls; or

5.1.2 in all other cases payment on the date of delivery pursuant to clause 6.

5.2 The Buyer shall not be entitled to withhold payment of the Price, or any part of it, in particular on the grounds of non-payment of the Buyer by any third party. The Buyer shall make all payments without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Alimax to the Buyer.

5.3 Alimax shall be entitled:

5.3.1 to demand payment by the Buyer of part of the Price, in advance of it becoming due under clause 5.1, by way of deposit (and unless Alimax exercises its right under clause 5.5, the deposit paid under this sub-clause shall be applied towards the discharge of the Price when it falls due); and/or

5.3.2 except where credit terms or other forms of payment have been expressly agreed, to demand payment in clear funds.

5.4 If payment is not received by the due date, Alimax in its exclusive discretion shall be entitled:

- 5.4.1 to charge interest on the outstanding amount at the rate of 4% per annum above the base lending rate of HSBC Bank plc (Salisbury branch), accruing daily;
- 5.4.2 to require that the Buyer make a payment in advance of any delivery;
- 5.3.3 not to make any delivery;
- 5.3.4 to withhold performance of any Linked Obligation; and/or
- 5.3.5 to invoke clause 5.5.
- 5.5 Where this clause applies, Alimax shall be entitled in its absolute discretion to appropriate any payment made to it by the Buyer or on its behalf, towards the discharge of any debt or other sum due to Alimax from the Buyer ("the Liability"), as Alimax may decide appropriate. The Liability may arise under this agreement or otherwise, and any such appropriation shall override any appropriation made by or on behalf of the Buyer.
- 5.6 Clause 5.5 shall not limit any right of appropriation that Alimax may have at common law.
- 6. Delivery and carriage/collection**
- 6.1 Alimax shall deliver the Goods ex works.
- 6.2 Except where the Services include installation of the Goods or their carriage to site (in which case clause 6.3 shall apply) the Buyer shall collect the Goods on the Delivery Date. Collection shall be from Alimax's place of business at Unit 1 Newbank Court, Sandheath Industrial Estate, Fordingbridge, Hampshire, SP6 1PA, unless otherwise specified in the Contract Document.
- 6.3 Where the Services include installation of the Goods or their carriage to site, and unless otherwise stated in the Contract Document:
- 6.3.1 the Delivery Date specified in the Contract Document shall be taken to mean the date of delivery of the Goods under clause 6.1 and not the date by which carriage or installation of the Goods is to take place;
- 6.3.2 Carriage of the Goods and/or their installation shall be performed by such date as may be agreed by the parties or (absent agreement) within a reasonable time; and
- 6.3.3 Alimax shall arrange the carriage (at the Buyer's cost).
- 6.4 For the avoidance of doubt, the Delivery Date is no more than an estimate, and Alimax's conformity with that date is not, and shall not in any event or circumstance be or become, of the essence of this agreement.
- 7. Acceptance, inspection and notification of damage**
- 7.1 Except where the Buyer deals as a consumer in entering into this agreement, acceptance of the Goods shall occur and be conclusively deemed to occur immediately upon the Buyer (or his authorised agent) signing Alimax's standard delivery note.
- 7.2 The Buyer shall inspect the Goods:
- 7.2.1 where their packaging and condition reasonably permits, immediately upon delivery under clause 6.1 above; and
- 7.2.2 at the first reasonable opportunity, which shall mean (except where the Buyer deals as a consumer in entering into this agreement) no later than 48 hours after the date of delivery.
- 7.3 Any claim by the Buyer in respect of damage, non-conformity or other breach of this agreement arising out of the condition or quality of the Goods, shall be notified by the Buyer to Alimax:
- 7.3.1 where the Buyer deals as a consumer in entering into this agreement, within a reasonable time from their delivery; and
- 7.3.2 in all other cases, within 2 working days of inspection under clause 7.2.2 (or, if no such inspection is undertaken, from the last date on which it ought to have been).
- In each case the Buyer's notification shall provide Alimax with such full particulars of the complaint as he is reasonably able to.
- 7.4 Upon notifying Alimax under clause 7.3 above, the Buyer shall permit Alimax access to the Goods for the purposes of inspecting and sampling the Goods, and recording their condition.
- 7.5 Unless the Buyer complies with clauses 7.2, 7.3 and 7.4 (in respect of which time shall be of the essence), the description in Alimax's delivery note of the Goods, their condition and quality, shall be conclusive of those matters, as at the date of the delivery note, in any claim against Alimax.
- 8. Description, quality and fitness for purpose**
- 8.1 Alimax does not usually visit the site where the Goods are to be installed or used. Clause 8.3 applies in those instances where, exceptionally, Alimax does visit site.

- 8.2 This clause 8.2 applies in all cases (whether or not Alimax visits site). The Buyer acknowledges and agrees that:
- 8.2.1 Alimax is entitled to rely on the accuracy of the Buyer's Requirements;
- 8.2.2 the Buyer has not made known to Alimax any particular purpose for which the Goods are being bought, unless that purpose is expressly set out in the Contract Document (a "Specified Purpose");
- 8.2.3 except in relation to any Specified Purpose, the Buyer does not rely on the skill or judgment of Alimax as to the fitness of the Goods for any particular purpose to which they are intended to be put;
- 8.2.4 any description which is given or applied to the Goods is solely for purposes of reference and does not constitute or afford the basis for any express or implied undertaking that the Goods correspond with or conform to that reference; and
- 8.2.5 any description which is given or applied to the Goods shall not make this agreement a sale by description, and is not and has not been relied on by the Buyer when entering into it.
- 8.3 The Buyer acknowledges and agrees that, unless expressly agreed by Alimax in writing in advance of any visit to the site where the Goods are intended to be installed or ultimately used:
- 8.3.1 Alimax shall not be responsible for undertaking site surveys or measurements; and
- 8.3.2 Alimax shall be entitled to rely wholly on the Buyer's Requirements, to the exclusion of any other matter that might have been reasonably discoverable at that site visit.
- 8.4 Alimax warrants that the Goods supplied under this agreement:
- 8.4.1 will, subject to clauses 3.2 and 3.3 above, conform with the Buyer's Requirements; and
- 8.4.2 subject to clause 8.4.1, will (i) be of satisfactory quality; (ii) be free from defects, manifest or latent, in materials and workmanship; and (iii) be free from design defects.
- 8.5 Where the Buyer's Requirements would result in the design or manufacture of the Goods failing to comply with good industry practice, British Standards, or other similar statutory or other requirements or provisions:
- 8.5.1 the Buyer shall be liable, to the exclusion of Alimax, for the performance and safety of the Goods to the extent that they arise from that non-compliance; and
- 8.5.2 the Buyer agrees to indemnify Alimax and hold it harmless against any liability, loss or claim arising (whether directly or indirectly) out of the manufacture, sale or supply of the Goods, to the extent that it arises from that non-compliance.
- 9. Defects**
- 9.1 Alimax may at its exclusive and unqualified discretion make good either by repair or by the provision of a replacement, any defect or non-conformity (within the meaning of section 48F of the Sale of Goods Act 1979) in the Goods, which exists at the time of delivery.
- 9.2 Subject to clause 9.3, repaired or replacement Goods, and the re-performance of any Services in consequence, shall be subject in all respects to the provisions of this agreement, with only such changes being made as are necessary to render the contract workable.
- 9.3 Alimax shall not be liable to pay for the cost of any installation or delivery of the Goods, or of the performance of any other service, except where that service forms one of the Services.
- 10. Risk**
- The risk in the Goods shall pass to the Buyer on delivery under clause 6.1.
- 11. Property**
- 11.1 Property in the Goods shall not pass to the Buyer until Alimax has received the full amount of the Price and any other sums that are owed to Alimax by the Buyer, and the Buyer shall until such time be a mere bailee of the Goods.
- 11.2 Notwithstanding that the Goods (or any of them) remain the property of Alimax, the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of Alimax. Any such sale or dealing shall be a sale or use of Alimax's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from Alimax:
- 11.2.1 the entire proceeds of sale or otherwise of the Goods; or

11.2.2 where the Goods are used or sold along with other property or rights, so much of the proceeds of sale or otherwise as would reasonably be apportioned to the Goods;

shall be held in trust for Alimax and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as Alimax's money.

11.3 Until such time as property in the Goods passes from Alimax, the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence, or been sold, to Alimax. If the Buyer fails to do so Alimax may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such a request the rights of the Buyer under clause 11.2 shall cease.

## 12. Acknowledgments

The Buyer acknowledges and agrees:

12.1 that the Buyer has had a reasonable opportunity to inspect the Goods before signing Alimax's delivery note;

12.2 that the Buyer has inspected the Goods before signing Alimax's delivery note; and

12.3 that the Buyer has satisfied itself as to the condition of the Goods before signing Alimax's delivery note.

## 13. Limitations and exclusions

13.1 Except as set out above, and to the fullest extent permitted by law, Alimax gives no representation or undertaking, and shall be bound by no term or other obligation (whether express or implied, and whether imposed or implied by statute, at common law or otherwise) concerning the condition, quality, physical state or attributes, location, origin, fitness or suitability for any purpose, or conformity with description or sample, of the Goods.

13.2 Alimax shall not be liable for any loss or damage caused to or suffered by the Buyer, arising out of or in consequence of any of the following:

13.2.1 inaccuracies in the Buyer's Requirements or in any information supplied by the Buyer to Alimax upon which Alimax relies in the performance of its obligations;

13.2.2 the suitability, state or condition of the site where the Goods are intended to be installed or ultimately used (including, without limiting the scope of this clause, any defect in, or insufficiency in the load-bearing capacity of, its structure); or

13.2.3 any failure by the Buyer to take reasonable care of, and/or to reasonably maintain, the Goods while in his possession or control. Goods should be maintained in accordance with Alimax's care and maintenance policy, available on its website or on request.

13.3 In any claim brought against Alimax in relation to the supply of the Goods and/or the Services, whether framed in contract, tort or otherwise howsoever, Alimax's liability in respect of indirect and consequential loss shall be limited to, and shall not exceed:

13.3.1 the proceeds of any claim that Alimax is entitled to make, and successfully makes, in respect of that loss, under any policy of insurance taken out by it (if any); and

13.3.2 where the Buyer has taken out insurance, a reasonable contribution towards any premium and excess paid by the Buyer in order to pursue an insurance claim under that policy in respect of that loss.

13.4 For the purposes of clause 13.3.2, the reasonableness of the contribution shall be determined having regard, in particular, to: (i) any other causes or losses that form the basis of the insurance claim, and Alimax's responsibility for them; and (ii) any other factors that might reasonably have affected the price of the premium and excess (including previous claims made by the Buyer), making it unreasonable for Alimax to contribute.

## 14. Buyer's failure to accept the Goods

14.1 This clause 14 applies where:

14.1.1 Alimax is ready and willing to deliver the Goods and/or to perform the Services;

14.1.2 Alimax requests the Buyer to take delivery and/or to allow the Services to be performed; and

14.1.3 the Buyer does not within a reasonable time after such request take delivery of the Goods and/or allow the Services to be performed.

14.2 Subject to clause 14.3, the Buyer is liable to Alimax:

14.2.1 for any loss, damage or impairment suffered or occasioned in respect of the Goods which is occasioned by the Buyer's neglect or refusal to take delivery, or which occurs after the Buyer's neglect or refusal to take delivery;

- 14.2.2 for a reasonable charge in respect of the care and custody of the Goods; and
- 14.2.3 for a reasonable charge in respect of the interruption or prolongation of Alimax's intended work schedule for the performance of the Services.
- 14.3 Nothing in this clause shall affect the rights of Alimax where the neglect or refusal of the Buyer to take delivery amounts to a repudiation of this agreement.
- 15. Termination**
- 15.1 Without prejudice to any other right or remedy to which either Alimax or the Buyer might be entitled, either party may in the events specified in clause 15.2 terminate this agreement at any time by notice in writing to the other party.
- 15.2 The events are:
- 15.2.1 a substantial breach of this agreement by the other party;
- 15.2.2 a breach of this agreement by the other party which is, by its nature, capable of being remedied, and which is not remedied within 7 days of the other party receiving notice specifying the breach and requiring it to be remedied; or
- 15.2.3 the other party becoming insolvent.
- 16. Force majeure**
- 16.1 Alimax shall not owe or incur any liability under or in connection with, or be deemed to be in breach of, this agreement by reason of any delays in, revisions to, or failures in performance of this agreement that result from circumstances beyond its reasonable control.
- 16.2 Alimax shall, if affected by any of the circumstances referred to in clause 16.1, promptly notify the Buyer in writing:
- 16.2.1 when the occurrence of that circumstance causes, or can reasonably be expected to cause or to threaten to cause, a delay, revision or failure in performance; and
- 16.2.2 when any such circumstance ceases to do so.
- 16.3 If such circumstance continues for a continuous period of more than 3 months, either party may terminate this agreement by written notice to the other party.
- 17. Amendments**
- Any variation to these conditions or to the Contract Document (whether purported to have been made before or after the conclusion of this agreement, and including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by Alimax.
- 18. Miscellaneous**
- 18.1 No inaction, omission, failure or delay by Alimax in exercising or securing the enforcement or validity of any right, power, privilege or demand arising under or in connection with this agreement, and no single or partial exercise of any such right, power, privilege or demand shall impair the existence, operation, content, effect and enforcement of the said right, power, privilege or demand, or operate as a waiver of it.
- 18.2 This agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement.
- 18.3 If any provision of this agreement is prohibited by law, or is determined by any court of law or other binding adjudicatory authority or conceded by the parties to be unlawful, void or unenforceable, the provision:
- 18.3.1 shall, to the extent required and as far as possible, be severed from this agreement and rendered ineffective without modifying the remaining provisions of this agreement; and
- 18.3.2 shall not in any way affect any other particular provisions of this agreement or the validity or enforcement of this agreement generally.
- 18.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this agreement is not intended to, and does not, confer on any person who is not a party to this agreement:
- 18.4.1 any right to enforce any of its provisions; or
- 18.4.2 any right to avail itself of any defence expressed in this agreement
- 18.5 This agreement is personal to the Buyer and may only be assigned by him with the prior written consent of Alimax.
- 19. Notices**
- 19.1 Any notice to be given under this agreement shall be in writing and shall be sent by first-class mail or air

mail, or by fax or email (confirmed by first-class mail or air mail), to the address of the relevant party set out in the Contract Document, or to such other address or fax number as that party may from time to time notify to the other party in accordance with this clause 19.

19.2 A notice sent as in clause 19.1 shall be deemed to have been received:

19.2.1 in the case of fax, email, or inland first-class mail, the next working day after the day of posting or transmission; and

19.2.2 in all other cases, within such time as it would in the ordinary course of events have been received in light of the method of transmission.

19.3 In proving the giving of a notice, it shall be sufficient to prove that the notice was left, that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed or acknowledged.

**20. Governing law and jurisdiction**

This agreement shall be governed by the laws of England and Wales, and shall be subject to the exclusive jurisdiction of the English courts, to which the parties submit.

Director

Signature 

Print

Name GINETTE POLYCHRONOPOULOS

Date 01/10/2020