



EXALL GROUP – TERMS & CONDITIONS OF SALE

1. Definitions and interpretation

In these Terms and Conditions unless the context otherwise requires:

- 1.1 'Proposal' means a statement of work, quotation or other similar document describing the Services and/or the Products.
- 1.2 'Services' means the services as described in the Proposal and includes any materials required to complete the work.
- 1.3 'Products' means any products supplied by Exall Group to The Client.
- 1.4 'Terms and Conditions' means the terms and conditions of supply of Services and/or Products set out in this document and any subsequent terms and conditions agreed in writing by Exall Group.
- 1.5 'Order' means the formal acceptance by The Client of the Proposal.
- 1.6 'Agreement' means the contract between Exall Group and The Client for the provision of the Services and/or Products incorporating these Terms and Conditions.
- 1.7 References to clauses and schedules are to clauses and schedules of these Terms and Conditions.
- 1.8 The headings are inserted for convenience only and shall not affect the construction of these Terms and Conditions.
- 1.9 'Site' means the full project address to which the works will be carried out.

2. General

- 2.1. These Terms and Conditions shall apply to the agreement for the supply of Services and/or Products by Exall Group to The Client and shall supersede any other documentation, understanding or communication between Exall Group and The Client.
- 2.2. Any variation to these Terms and Conditions must be agreed in writing by Exall Group.
- 2.3. Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which Exall Group may be entitled in relation to the Services and/or Products, by virtue of any statute, law or regulation.

3. Proposal

- 3.1. The Proposal for Services and/or Products relates to these Terms and Conditions.
- 3.2. The Proposal for Services and/or Products shall remain valid for a period of sixty days.
- 3.3. The Proposal must be accepted by The Client in its entirety.
- 3.4. The Client shall be deemed to have accepted the Proposal by placing an Order with Exall Group.
- 3.5. The Agreement between Exall Group and The Client, incorporating these Terms and Conditions, shall only come into force when Exall Group confirms an Order in writing to The Client. Prior to any confirmation Exall Group has the right to refuse any Order.

4. Services, products and delivery

- 4.1. The Services and/or Products are as described in the Proposal.
- 4.2. Any variation to the Services and/or Products must be agreed by Exall Group in writing.
- 4.3. Any drawings, descriptions or specifications contained in advertising material, brochures or catalogues issued by Exall Group are for the sole purpose of giving an approximate idea of the Products and/or Services and will not form part of any agreement unless otherwise agreed in writing by Exall Group.

- 4.4. The Services and/or Products will be delivered between the hours of 7:30am and 5.30pm between Monday to Friday, excluding Bank Holidays. Exall Group may vary these times by setting out in writing details of the change to The Client.
- 4.5. Dates given for the delivery of Services and/or Products are estimates only and not guaranteed. Any time stated for delivery shall not be of the essence of the agreement and Exall Group shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery.

5. Price and payment

- 5.1. The price for Services and/or Products is stated in the Proposal and is inclusive of VAT and any other charges as outlined in the Proposal.
- 5.2. The terms for payment are as specified by Exall Group and The Client shall pay such instalments to Exall Group within 7 days of such milestones with the final balance due within 7 days of Exall Group's final invoice issued following the achievement of the final milestone.
- 5.3. Exall Group shall be entitled to suspend all services pending receipt of any instalments due to it from The Client until such time as such instalment/s have been paid but without prejudice to its right to the remainder of all sums owing under these Terms and Conditions.
- 5.4. The Client will pay interest on all late instalments and all late payments at a rate of 5% per annum above the base lending rate of Barclays Bank PLC.
- 5.5. Exall Group shall also be entitled to recover all reasonable expenses, including legal costs and fees, incurred in obtaining payment from The Client where any payment due to Exall Group is late.
- 5.6. The Client is not entitled to withhold or set off any monies due to Exall Group, whether by reason of any disagreement or dispute or otherwise.
- 5.7. Exall Group is entitled to vary the price to take account of:

- 5.7.1. any additional Services and/or Products requested by The Client which were not included in the Proposal;
- 5.7.2. any increase in the cost of materials;
- 5.7.3. any additional work required to complete the Services which was not anticipated at the time of the Proposal;
- 5.8. Any such variation shall be set out in writing to The Client by Exall Group.

6. Customer's obligations

- 6.1. The Client shall provide access to Exall Group at the times specified in these Terms and Conditions and shall cooperate with all reasonable requests by Exall Group.
- 6.2. The Client shall provide electricity, water and toilet facilities to Exall Group for the purpose of completing the Services.
- 6.3. The Client shall apply for, obtain and meet the cost of all necessary approvals and permissions (for example building regulations consent, planning permission, etc.) required to complete the Services prior to the commencement of the work.
- 6.4. The Client shall take all reasonable steps to ensure that Exall Group does not sustain any damage or loss to any equipment stored on site.
- 6.5. The Client shall be liable for any expenses incurred by Exall Group as a result of The Client's failure to comply with the obligations set out in these Terms and Conditions.

7. Exall Group's obligations

- 7.1. Exall Group shall supply the Services and/or Products as specified in the Proposal. Representations, whether written or oral, that are not set out in The Proposal shall neither create any legal obligations nor form part of the contract between the parties.
- 7.2. Exall Group shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice.
- 7.3. Exall Group shall comply with all relevant health and safety regulations.

- 7.4. Exall Group shall ensure that all necessary licences and permissions required to provide the Services and/or Products are current.
- 7.5. Exall Group shall be responsible for all waste management and disposal required in the course of providing the Services and/or Products, unless otherwise specified in The Proposal.
- 7.6. Exall Group shall hold a policy of public liability insurance in accordance with the Third Schedule hereof.
- 7.7. Exall Group shall use its reasonable endeavours to meet the Estimated Completion Dates.

8. Cancellation

The Client may cancel an Order for Services and/or Products by notifying Exall Group in writing under the following conditions:

- 8.1. Where cancellation is made within 24 hours of placing the Order, any monies paid by The Client will be refunded in full subject to the deduction of an administration charge of £300.00 +VAT;
- 8.2. Where cancellation is made after 24 hours of placing the Order but before the Services commence, The Client shall be liable to Exall Group for the full cost of all material and plant ordered by Exall Group relating to the Services;
- 8.3. Where cancellation is made at the time or after the Services commence, The Client shall be liable to Exall Group for all of the materials used that are stated in the Proposal plus the labour cost as it stands at the time of such cancellation plus VAT;
- 8.4. All deposits paid by The Client are non-refundable.

9. Guarantee

- 9.1. In addition to The Client's statutory rights, Exall Group guarantees that the Services and/or Products will be free from defects in materials and/or workmanship for the period specified in The Proposal hereof.
- 9.2. If the Services and/or Products are found to be defective in accordance with these Terms and Conditions then Exall Group shall, at their sole discretion, repair, re-perform or replace the

Services and/or Products or refund any monies paid for the defective Services and/or Products.

- 9.3. Where the Services and/or Products are defective or do not comply with the Agreement The Client must notify Exall Group in writing within 7 days from the date of delivery.
- 9.4. If The Client has not paid for the Services and/or Products in full by the date the defect in Services and/or Products is notified to Exall Group then Exall Group has no obligation to remedy the defect in terms of this Clause 9.
- 9.5. In the event of any conflict of inconsistency between the Terms of Guarantee in this Clause 9 and the Terms of Warranty document referred to in Clause 12.2, the Terms of Warranty document shall prevail.

10. Property and risk

- 10.1. Risk in the Products or in any property or materials used to provide the Services shall pass from Exall Group to The Client upon delivery of the Products or property or materials to Site.
- 10.2. Title or ownership of any property or materials belonging to Exall Group remains vested in Exall Group until payment is received from The Client in full.
- 10.3. The Client must store any property or materials belonging to Exall Group separately from any other property or materials belonging to The Client or any third party.

11. Default

- 11.1. The Agreement shall continue until the Services and/or Products have been provided in terms of the Proposal or any subsequent date as mutually agreed in writing by both parties or until terminated by either party in accordance with these Terms and Conditions.
- 11.2. The Client may terminate the Agreement if Exall Group fails to comply with any fundamental condition of these Terms and Conditions and this failure continues for a period of 8 weeks after written notification of non-compliance is provided.

- 11.3. Exall Group may terminate this Agreement if The Client has failed to make any payment due within 14 days of the sum being requested, but without prejudice to any claim Exall Group may have as a result of such failure.
- 11.4. Either party may terminate the Agreement by notice in writing to the other if:
 - 11.4.1. the other party commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
 - 11.4.2. the other party commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances; or
 - 11.4.3. the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
 - 11.4.4. the other party ceases to carry on its business or substantially the whole of its business; or
 - 11.4.5. the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 11.5. In the event of termination The Client must make over to Exall Group any payment for work done and expenses incurred up to the date of termination.
- 11.6. Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.

12. Warranties

- 12.1. Exall Group hereby provides all warranties contained in the Third Schedule hereof.

12.2. Exall Group shall issue the warranty document (in the form set out in the Third Schedule) within 7 days of payment of Exall Group's final invoice.

13. Limitation of liability

13.1. Nothing in these Terms and Conditions shall exclude or limit the liability of Exall Group for death or personal injury, however Exall Group shall not be liable for any direct loss or damage suffered by The Client howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the price of the Service and/or the Products.

14. Indemnity

Each party shall indemnify the other against all claims, costs and expenses, which the other may incur and which arise directly or indirectly from a breach of any condition under these Terms and Conditions.

15. Force majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

16. Assignment

The Client shall not be entitled to assign its rights or obligations or delegate its duties under these Terms and Conditions without the prior written consent of Exall Group, save as provided for herein.

17. Severability

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

18. Waiver

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them

or of the right at any time subsequently to enforce all Terms and Conditions.

19. Notices

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in The Proposal hereof or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error-free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

20. Entire agreement

These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

21. Governing law

These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

The Third Schedule – The Warranty

1. Exall Group Limited (“EXALL”) warrants to the Customer or any other party to whom the original purchaser transfers ownership, or leases for the whole or part of remaining duration of the warranty, as permitted in this document (a “Permitted Transferee”) that the Exall Group Products and Services to which this warranty applies (i.e. only those EXALL products / services that are sold and purchased in the European Union, collectively referred to in the remainder of this document as the “Products” and “Services”) will be free from manufacturing defects resulting in warping, cracking, splitting, rotting, peeling, flaking and blistering when subject to normal use for a period of twenty (20) years from the date of supply and installation (Installation Date) of the Products to the original purchaser (the “Warranty Period”).
2. This warranty applies to manufacturing defects and installation of the Products, but does not cover:
 - 2.1. fair wear and tear of the Products.
 - 2.2. any defects or failures in the Products or damage to the Products caused by:
 - 2.2.1. any abuse, misuse or neglect of the Products, building regulations;
 - 2.2.2. any cause or event beyond EXALL’s reasonable control, including (but not limited to) fire, earthquake, flood, lightning, hurricane, tornado, hail or any other Act of God; or
 - 2.2.3. EXALL following any drawings, designs or specifications supplied by the original purchaser;
 - 2.3. any differences in the Products from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements from time to time; or
 - 2.4. any discolouration and/or variations in colour or uniformity to the Products caused by
 - 2.4.1. weathering and/or UV exposure;
 - 2.4.2. algae, moss, shading or sap from trees, bushes, plants or ash from chimneys;
 - 2.4.3. proximity of the Products to copper, zinc or any other metal;
 - 2.4.4. exposure to chemicals directly applied to the Products or in the atmosphere;
 - 2.4.5. any other cause or factor beyond EXALL’s reasonable control.
3. In order to make a claim under this warranty, the original purchaser or Permitted Transferee must (within the Warranty Period):

- 3.1. provide evidence of the date of purchase of the purportedly defective Products or Services;
- 3.2. provide evidence of the original cost of the purportedly defective Products or Services;
- 3.3. provide evidence of being either the original purchaser or Permitted Transferee of the purportedly defective Products or Services;
- 3.4. notify EXALL of the purported defect in the Products within 2 months of identifying the purported defect; and
- 3.5. if required by EXALL, supply a sample of the purportedly defective Products or Services to EXALL for laboratory analysis to enable EXALL to:
 - 3.5.1. examine and investigate the Products for the purported defectiveness; and
 - 3.5.2. confirm or otherwise such defectiveness.
- 3.6. Should any manufacturing defect covered by this warranty be confirmed by EXALL (whether by way of any such examination and investigation or otherwise) to have presented itself in any Products during the applicable Warranty Period, EXALL shall at its sole option (within a reasonable amount of time after such confirmation):
 - 3.6.1. replace or repair the defective Products or Services free-of-charge; or
 - 3.6.2. refund the amount paid by the original purchaser for the defective Products or Services in accordance with the Warranty Pro-Ration Specification set out below. Please note that any repaired or replacement Products may have a gloss or colour difference to the original Products due to weathering and, for the avoidance of any doubt, any such difference is not considered a manufacturing defect for the purposes of this warranty.

4. This warranty is in addition to the rights provided pursuant to applicable national law and the terms of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 and does not conflict with or exclude such rights in any way.
5. Nothing in this warranty shall limit or exclude EXALL's liability for:
 - 5.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 5.2. fraud or fraudulent misrepresentation; or
 - 5.3. any other liability that it is unlawful to exclude or limit. Subject to the foregoing liabilities:
- 5.4. EXALL shall under no circumstances whatever be liable to the original purchaser or Permitted Transferee, whether in contract, tort (including

negligence), breach of statutory duty or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this warranty; and EXALL's total liability to the original purchaser or Permitted Transferee in respect of all losses arising under or in connection with this warranty, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed the price the original purchaser paid for the Products.

6. If there is a transfer in ownership or letting of the Products, or of the premises upon which the Products are used are leased out, rented or sub-let, within the duration of this warranty, then this warranty may be transferred, either temporarily or for the remaining duration of the warranty, under the terms and conditions of this warranty to the new owner, lessee, tenant or sub-lessee for the duration of their occupancy, lease, sub-lease or tenancy. The effective date of the warranty will remain the date of supply (Delivery Date) of the Products to the original purchaser. The new owner or occupier shall be responsible for establishing this effective date at the time any claim is made under this warranty to EXALL's reasonable satisfaction. In the event of a qualifying transfer of ownership in the Products, the Permitted Transferee shall be subject to the very same Warranty Pro-Ration Specification as was the original purchaser, i.e. a permitted transfer of ownership in the Products, or occupancy of the premises on which the Products are used, shall not convey greater coverage on the Permitted Transferee than was available to the original purchaser. In any event, coverage provided by this warranty shall in no event be more than an amount equal to the original purchase price of any defective Products, prorated as indicated in the Warranty Pro-Ration Specification set out below to account for usage received. EXALL must be notified in writing of any transfer of this warranty within 60 days of the transfer in ownership of the Products to the new owner or the warranty shall be void.
7. If a dispute arises out of or in connection with this warranty or the performance, validity or possibility of it (a "Dispute"), then the party shall follow the procedures set out in this condition:
 - 7.1. either EXALL or the original purchaser or Permitted Transferee (as applicable) shall give the other written notice of the Dispute, setting out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documents, and on service of the Dispute Notice EXALL and the original purchaser or Permitted Transferee (as

applicable) shall attempt in good faith to resolve the Dispute between themselves; and

- 7.2.if EXALL and the original purchaser or Permitted Transferee (as applicable) are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, CEDR Solve shall nominate the mediator. To initiate a mediation, either EXALL or the original purchaser or Permitted Transferee (as applicable) must serve notice in writing (an “ADR Notice”) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The Mediation will start not later than 30 days after the date of the ADR Notice.
- 7.3.If the Dispute is not resolved within 60 days after service of the ADR Notice, or either EXALL or the original purchaser or Permitted Transferee (as applicable) fails to participate or to continue to participate in the mediation before the expiry of this 60-day period, or the mediation terminates before the expiry of this 60-day period, the Dispute shall be finally resolved by arbitration as set out below.
8. No variation of this warranty, including the introduction of any additional terms and conditions, shall be effective unless in writing and signed by EXALL.
9. No failure or delay by a party to exercise any right or remedy provided under this warranty or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.If any court or competent authority decides that any of the provisions of this warranty are invalid, unlawful or unenforceable to any extent, the condition will, to the extent only, be severed from the remaining conditions, which will continue to be valid to the fullest extent permitted by law.
- 11.The parties do not intend that any of the terms of this warranty shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 12.EXALL hereby warrants that it shall continuously maintain product liability insurance throughout the term of this warranty in the amount of £2,000,000.

13. This warranty shall be construed in accordance with English law. All disputes arising out of or in connection with the present warranty shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

All notifications, claims or matters related to this warranty should be sent to:

Exall Group Limited

Unit 32A Boyton Hall Farm
Boyton Hall Lane
Chelmsford
CM1 4LN