

OTFORD BUILDERS MERCHANTS LTD CONDITIONS OF SALE
Issued 1st July 2023

1. Information about us

1.1. We are Otford Builders Merchants Limited, a company incorporated in England and Wales with company number 01020161 (the 'Company', 'we' or 'us'). Our registered address is 60 High Street, Otford, Sevenoaks, Kent, TN14 5PH. Our registered VAT number is GB210 0951 21.

1.2. You can find our contact details here: <https://www.obmltd.co.uk/page/contact-us>

1.3. When you purchase Goods from us, these are the only conditions ("Conditions") that apply. We will not accept changes you make to these Conditions. We may make changes to these Conditions but you can always find the most up-to-date version on our website.

1.4. We use certain defined terms in these Conditions to make them easier to read, as follows:

Contract: means the contract between us and you for the supply of the Goods set out in an Order that is accepted by us.

Customer or you: the person or firm who purchases the Goods from us.

Goods: the goods (or any part of them) set out in the Order.

Order: your order for the Goods which may be set out in a purchase order form or your written acceptance of our quotation, or be placed over the telephone, online via our website, or in branch, as the case may be.

2. These Conditions and your rights under them

2.1. Please read these Conditions carefully before you submit an Order. You have different rights depending on if you are a consumer or a business customer and different clauses in these Conditions will apply to you (as indicated in bold). You are a consumer if you are an individual and you are buying Goods for your personal use (and not for use in connection with your trade, business, craft or profession).

3. The Order

3.1. The Order constitutes an offer by you to purchase the Goods. Where we issue either a written acceptance of the Order (including via email), or a verbal acceptance of the Order over the telephone, a Contract between us and you shall come into existence.

3.2. You must make sure that all terms in the Order are accurate and complete, particularly where we are making or procuring a product to measurements or requirements that you have given to us. You are responsible for ensuring that such measurements or requirements are correct.

4. Our Goods

4.1. Goods may vary slightly from their pictures.

4.2. If you are a business customer, any samples, drawings, descriptive matter or advertising produced by us and any descriptions or illustrations contained in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them and do not form part of the Contract.

4.3. We have the option to supply all or any of the Goods to the nearest metric equivalent.

5. Delivery

5.1. The cost of delivery shall be as shown on our website page (as updated) here: <https://www.obmltd.co.uk/page/>

delivery. You can request a hard copy of the delivery price list by contacting us using the details in clause 1.

5.2. We will deliver the Goods to the kerbside of the address in the Order or such other location we and you agree. Our delivery personnel are not permitted to enter into or onto your premises unless you request them to do so. Where they do so, it is at your sole risk and whilst our delivery personnel will use due skill and care to avoid any property damage, we shall, subject to clause 13.2, have no liability for any damage incurred as a result.

5.3. Goods will be delivered provided a suitable road exists for the purpose of unloading and provided the delivery personnel deem it safe or to the nearest kerbside point that our delivery personnel deem safe.

5.4. Delivery is deemed complete and accepted at the point at which the Goods arrive at the delivery location ready for unloading.

5.5. All labour and equipment required to unload the Goods immediately upon delivery shall be supplied by you and our delivery personnel shall not be responsible for unloading the Goods.

5.6. We will notify you of an approximate time and date when delivery will take place (typically within 30 days, unless we are making or procuring a product for you in which case a longer period may apply). You agree and accept that any dates are approximate only and the actual delivery date may be different. If there is a substantial delay, you may contact us to end the Contract in which case we will provide you with a refund for Goods you have paid for but not received.

5.7. Where there is a delay of more than 15 minutes in unloading the Goods at the delivery location, you may be charged the following waiting charges, each of which shall be payable to us:

5.7.1. A waiting fee at either our applicable rate, or as specified on our website page <https://www.obmltd.co.uk/page/delivery>; and

5.7.2. an administration charge of £50 plus VAT.

5.8. If you place an Order for less than a full load of Goods, you may be charged a part-load charge. If this charge is applicable, you will be notified at the time of placing the Order.

5.9. We may deliver the Goods by instalments, in which case the dates for delivery of each instalment will be agreed on a case-by-case basis. Instalments shall be invoiced and paid for separately. Any delay in delivery of or defect in an instalment shall not entitle you to cancel any other instalment. In the case of any sale involving more than one delivery, if you do not make payment by the due date, we may suspend any further deliveries until payment is made.

5.10. If no-one is available to unload and confirm receipt of the Goods at agreed delivery location, the delivery personnel shall, at their sole discretion either leave the Goods at the delivery location if they deem it safe to do so, or return the Goods. In the event that the Goods are returned:

5.10.1. the delivery personnel will leave a note about how to rearrange delivery or where to collect the Goods from;

5.10.2. you will be charged the delivery cost together with any subsequent delivery costs incurred by further attempts at delivery together with any associated abortive charges; and

5.10.3. we shall also be entitled to store the Goods at your risk and charge you for appropriate storage costs.

5.11. Where the delivery personnel deliver the Goods but are unable to obtain a signature confirming delivery of the Goods, they will take a photograph of the Goods being left at the delivery location and this will be deemed proof of delivery.

5.12. Re-delivery:

5.12.1. If you are a consumer and, despite our reasonable efforts, we are unable to contact you for further instructions or we are otherwise unable to deliver the Goods to you within a reasonable time, we may end the Contract.

5.12.2. If you are a business customer, and ten business days after the day on which we notified you that the Goods were ready for delivery you have still not accepted delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods.

5.13. We do not accept liability for shortages in quantities of the Goods, whether delivered or collected, unless you notify us within one business day of delivery or collection. You shall not be entitled to reject the Goods if we deliver up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from you that the wrong quantity of Goods was delivered.

6. Ownership and risk

6.1. The risk in the Goods shall pass to you on completion of delivery.

6.2. If you are a consumer then ownership in the Goods shall pass to you when we receive payment in full for the Goods.

6.3. If you are a business customer, the following provisions of this clause 6 shall apply to you with respect to title in the Goods:

6.3.1. Title to the Goods shall not pass to you until the earlier of:

6.3.1.1. the time at which we receive payment in full (in cash or cleared funds) for the Goods and any other goods that we have supplied to you, in which case title to the Goods shall pass at the time of payment of all such sums; and

6.3.1.2. you resell the Goods, in which case title to the Goods shall pass to you immediately before the time at which resale by you occurs.

6.3.2. Until title to the Goods has passed to you, you shall:

6.3.2.1. store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;

6.3.2.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.2.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.2.4. notify us immediately if you become subject to any of the events listed in clause 12.2;

6.3.2.5. give us such information relating to the Goods as we may require from time to time; and

6.3.2.6. provide us access to the Goods by way of irrevocable licence during all normal business hours, irrespective of whether they are on land owned or occupied by you or your customer.

6.4. Subject to clause 7.12, you, the business customer have the right to sell and deliver the Goods or the resultant goods to third parties in the ordinary course of business before we receive payment for the Goods but you shall hold the proceeds of sale on trust for us. You assign to us all rights and claims which you may have against your customers arising from such sales until full payment is made to us for the Goods.

7. Price and Payment

7.1. The price payable for the Goods sold shall be contained in our current price list at the time the Order is placed. If no list price is given for the Goods sold, then the price to be paid shall be the price specified in our quotation. We have the right, without notice, to revise prices where necessary prior to the placement of any Order.

7.2. If you are a business customer, all prices are exclusive of VAT. You shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.3. If you are a consumer, the price of the Goods, including VAT, will be set out in the quotation or otherwise displayed to you prior to you placing an Order.

7.4. Quotations and prices are for the supply of Goods and materials only. No other terms of any main building contract shall affect these conditions.

7.5. Quotations are valid for 30 days only and we reserve the right to withdraw any quotations at any time prior to an Order being accepted.

7.6. Any estimate given by us or our representative in respect of quantities required cannot be guaranteed and you are entirely responsible for ascertaining the quantities required by you.

7.7. Credit accounts will be opened at our discretion and terms such terms as we may apply from time to time.

7.8. Unless you are paying using a credit account, all Orders will be paid for at the time the Order is placed. All Orders where we are making or procuring a product are payable upfront.

7.9. If you dispute any invoice, you must notify us in writing prior to the due date for payment of the relevant invoice and provide full details of the disputed amount and the nature of the dispute. You shall pay the undisputed portion of any invoice in accordance with clause 7.8.

7.10. We must receive any notice of dispute within seven business days of your receipt of the invoice.

7.11. If you do not make payment on time, we can charge interest on the balance outstanding. Interest and late payment compensation shall be charged in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

7.12. If you are a business customer, we reserve the right to re-possess any of the Goods in respect of which payment is overdue and re-sell the same, and for this purpose you grant us an irrevocable right and licence to enter upon all or any of your premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in clause 12.2.

7.13. If you are a business customer, you shall pay all amounts due under the Contract in full without any set-off,

counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies we may have, set off any amount owing to us by you against any amount payable by us to you.

8. Pallet charges

8.1. Pallets and packing materials will be charged to you at our current rates. Charges for pallets and packing materials will be refunded in full providing they are returned in a good condition (as determined by us or any relevant supplier). No refund will be given in respect of any pallets or packing materials which are either not returned, or are returned damaged. No partial refunds will be given for damaged pallets.

8.2. Where your Order is supplied and delivered directly by the manufacturer, the manufacturer will not accept responsibility for the collection of pallets. Whilst we will, wherever possible, attempt to arrange collection of pallets via manufacturers, we are not responsible for non-collection of pallets supplied directly by manufacturers. It is your responsibility to arrange for the return of pallets and other chargeable packing materials.

8.3. Where you are entitled to a refund, it will be processed as soon as possible following receipt of returned pallets and packing materials that are eligible for a refund, and in any event within 60 days of the same. Refunds will be credited to the credit or debit card you used to pay for the pallets or packing materials, or to your account if you paid using your credit account. If you do not receive a refund within this time, you must contact us at the details set out in clause 1.2 within 90 days of the date on which the pallets were returned. If you contact us outside of this time period, we may not be able to assist you or ensure you are refunded.

9. Returns

9.1. Where we have procured or made a product, these may only be returned if they are faulty or do not meet the specification as set out in the Order. Please see clause 9.2 if you are a consumer, and clauses 9.3 to 9.5 if you are a business customer.

9.2. If you are a consumer and the Goods are faulty or not as described

9.2.1. you may return the Goods and we will offer you a repair or refund in accordance with your statutory rights, which can be summarised here: <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-consumer-work/the-consumer-rights-act-2015/>; and

9.2.2. where we offer you a refund, refunds will be made to the credit or debit card you paid for the Goods on, or to your account if you paid using your credit account, and will be processed as soon as possible and within 14 days of receiving the returned Goods. Refunds will include the delivery price of the Goods. In each case, if you are unable to return the Goods to the store due to their weight or size, please email us at enquiries@obmltd.co.uk, or call us on 01959 524811 and we will arrange collection free of charge. Please note that your right to return faulty Goods does not include faults caused by accident, neglect, misuse or normal wear and tear.

If you are a business customer and the Goods are faulty or not as described, the below provisions of this clause 9.3 shall apply to

you:

9.3. We warrant that on delivery the Goods shall:

9.3.1. conform in all material respects with their description;

9.3.2. be free from material defects in design, material and workmanship; and

9.3.3. be suitable for their usual purpose.

9.4. Subject to clause 9.5, if you:

9.4.1. give us notice in writing within a reasonable time of discovery, and in any event within a reasonable time following delivery, that some or all of the Goods do not comply with the warranty set out in clause 9.3;

9.4.2. we are given a reasonable opportunity of examining such Goods; and

9.4.3. return such Goods to our place of business at your cost, we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full. If we comply with this obligation, we shall have no further liability in respect of, or arising from the relevant Goods.

9.5. We will not be liable for any fault in the Goods to the extent it arises from:

9.5.1. fair wear and tear, damage caused by you or any third party's default, negligence or misuse of the Goods, including the deliberate or accidental destruction of or damage to the Goods;

9.5.2. any failure to install, use or maintain the Goods in accordance with our or the manufacturer's instructions;

9.5.3. any alterations, modifications or repairs made to the Goods other than those carried out by us; and

9.5.4. any drawing, design, specification or instruction supplied or approved by you.

9.6. If you are: (i) a business customer and you change your mind about the Goods however ordered; or (ii) a consumer and you change your mind about Goods ordered in store, then in each case you do not have a legal right to a refund. We may, at our absolute discretion, accept Goods returned in an "as new" condition for either a refund or exchange, in which case, clause 10 applies.

9.7. If you are a consumer and have changed your mind about Goods ordered online or by phone, you have a legal right to change your mind within 14 days of receiving the Goods and to receive a refund. Please note that this does not apply to any special Orders where we have made or procured the product specifically for you. In order to return the Goods and receive a refund you must:

9.7.1. tell us within 14 days of receiving the Goods that you have changed your mind and that you want to return the Goods by completing our cancellation form (which we will provide to you on request) and returning the Goods to us together with your receipt. If you cannot return the Goods to store due to their size or weight, you can let us know that you want to return the Goods by contacting us;

9.7.2. within 14 days of telling us that you want to return the Goods, you must return the Goods to us. If you have told us that you are unable to return the Goods to us due to their size or weight, we will arrange to collect the Goods from you. If we collect the Goods from you, we will charge you a collection fee. The collection fee will be the same as our delivery fee or the supplier's

fee, whichever is higher;

9.7.3. return the Goods in their original condition.

Provided you comply with clauses 9.7.1, 9.7.2 and 9.7.3, we will refund you the price you paid for the returned Goods, less any delivery fee and less any collection fee charged in accordance with clause 9.7.2. Refunds will be made to the credit or debit card you paid for the Goods on, or to your account if you paid using your credit account, and will be processed as soon as possible and within 14 days of receiving the returned Goods. Please note that we have a right to reduce the amount of any refund to reflect any decrease in the value of the Goods caused by the manner in which you have handled them.

10. Restocking fees

10.1. Where we accept a return of the Goods in situations where we are not legally obliged to do so, or where the Goods are returned as a result of failed delivery, we will refund to you the price of the returned Goods less:

10.1.1. any restocking fee charged by the supplier, which will be notified to you upon us accepting the return;

10.1.2. a discretionary administration charge equal to 15% of the price of the returned Goods; and

10.1.3. if we collect the Goods from you, a collection fee will be charged to you. The collection fee will be the same as our delivery fee, or where a haulier collects the Goods from you, the haulier's charge plus an administration fee of £50 + VAT per load.

11. Change of contracting party (applies to business customers only) If you are a business customer you must tell us about any change in your business structure or other circumstance that might affect your ability to pay us.

12. Ending the Contract

12.1. We may end the Contract with you if:

12.1.1. you do not make any payment when due;

12.1.2. you do not provide us with information that is necessary to provide the Goods, for example you do not give us a valid address for delivery; or

12.1.3. you do not allow us to deliver the Goods or collect them from you in accordance with these Conditions.

12.2. If you are a business customer, we may, on written notice, terminate the Contract immediately in the event that you take any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with your 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 your assets or ceasing to carry on business.

12.3. If you are a business customer then without limiting our other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 12.2, or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.

12.4. Other than in the case of an Order where we have made or procured the Goods for you, if we end the Contract in the situations set out in clause 12.1, we will refund you any money paid in advance for any Goods we do not provide but we may deduct or charge you reasonable compensation for the net costs we incur as a result of you breaking the Contract. We may also charge re-stocking fees in accordance with clause 10.

12.5. If you have placed a special Order where we have made or procured the Goods specifically for you and we end the

Contract in the situations set out in clause 12.1, you will not be entitled to any refund.

12.6. On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest.

12.7. Termination of the Contract for any reason shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

13. We are not liable for certain losses

13.1. Other than your obligations to make payment to us, we and you shall not be liable for any failure or delay in performing any of our obligations under the Contract to the extent that such failure or delay is caused by any event beyond our or your reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

13.2. We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; or fraud.

13.3. If you are a consumer, then subject to clause 13.2, we will only be liable to you for foreseeable loss and damage that we cause. If we fail to comply with the terms of the Contract, then we are responsible for loss or damage you suffer that is a foreseeable result of our breaking the Contract or if we fail to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is obvious that it will happen or if, at the time the Contract was made, we both knew it might happen.

13.4. If you are a business customer, then subject to clause 13.2:

13.4.1. we shall not be liable to you for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;

13.4.2. our total liability to you in respect of all other losses arising under or in connection with the Contract shall in no circumstances exceed the price of the Goods; and

13.4.3. all warranties, conditions, terms and liabilities express or implied, statutory or otherwise, on our part, in respect of compliance with descriptions, the quality or the fitness for purpose of the Goods which are not expressly set out in the Contract are excluded except to the extent such exclusion is prohibited or limited by law.

14. Other important terms

14.1. You may not transfer any of your rights or obligations under these Conditions to another person without our prior written consent. We can transfer all or any part of these Conditions to another organisation but your rights under these Conditions will not be affected.

14.2. The failure by either party to exercise or enforce any rights conferred by these Conditions shall not be deemed to be a waiver or any such rights nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

14.3. These Conditions are governed by the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or their subject matter or formation (including non-contractual disputes or claims).

14.4. If any part of these Conditions is disallowed or held to be ineffective by any court or other competent body, the rest of the Conditions will not be affected.

14.5. If you receive an email or other communication purportedly coming from Otford Builders Merchants asking you to transfer funds to any account other than our bank accounts: (a) do not do so and (b) please notify us immediately. Please be careful to check requests for funds or our bank account details with us in person if you are in any doubt. We will not accept responsibility if you transfer money into an incorrect account and it is also unlikely that your bank or building society will offer any refund for any payment you authorise in such circumstances. If you have any concerns about our bank details, we suggest that you make an initial small payment before transferring any significant sums. That way, once we confirm to you that we have received that small payment, you will know that you have the correct details