

Monocouche Render Systems Ltd
Domestic Contract Terms & Conditions

1. Formation of Contract

- 1.1 All contracts, which we shall enter, are subject to these Terms & Conditions and it is hereby expressly agreed by you that your contractual conditions (if any), terms, exclusions, inclusions and any other matters set out prior to entering contract are excluded in their entirety unless otherwise stated and expressly agreed within the order, purchase order, contract and/or order acknowledgement and by prior agreement of the company only.
- 1.2 The issuance of any contract, purchase order or order shall not in any manner override these terms and conditions which shall be incorporated into any contract, purchase order or order howsoever arising unless otherwise agreed by the company.
- 1.3 Quotations submitted by us shall (unless previously withdrawn), be open for acceptance for a period of 30 days from the date thereof, following which we shall be entitled to review and where necessary amend our quotation prior to entering contract.
- 1.4 No quotation provided by us shall constitute an offer.
- 1.5 Any performance of any obligation under or connected with the contract by you shall have the effect of binding the parties in contract under these terms and conditions exclusively. Any performance of any obligation by us shall be based solely on these terms and conditions and shall not act as an agreement to enter any alternative contract or terms and conditions.
- 1.6 Where required, you may need to provide evidence of available funding before we enter contract with you, and this will be to the reasonable satisfaction of the company. We may, from time to time, require that you provide an update as to your funding and this shall constitute a condition of our continuing performance under the contract.
- 1.7 On occasions we may require that you pay a deposit or security before we commence works. All securities will be held for the duration of the contract and shall only be set off against any final payment due after completion of the works.
- 1.8 Any samples, drawings, descriptive matter, or advertising issued by us and any descriptions of the goods or illustrations or descriptions of the services contained in any catalogues, brochures or other advertising materials are issued or published for the sole purpose of giving an approximate idea of the services and/or goods described in them. They shall not form part of the Contract nor have any contractual force unless otherwise agreed by us.

2. Goods

- 2.1 The goods are as described in our quotation. We reserve the right to modify the goods to be supplied including if required by any applicable statutory or regulatory requirement. We shall notify the Customer in any such event.
- 2.2 Particulars of dimensions, capacities, performance ratings, specifications, drawings and other data included in manufacturers' catalogues, price lists or other documents supplied by us constitute only an approximate guide and shall not be of any contractual effect.

3. Delivery/Installation

- 3.1 Whilst we undertake to perform and complete the work of installation on the specified premises and to supply in connection therewith the equipment and materials so specified in our quotation, we do not undertake to do so within any time or by any specified date. Accordingly, time shall not be of the essence and the parties irrevocably agree that the customer shall have no rights in respect of set off for any delay howsoever arising.
- 3.2 Any reference to any time or date shall be construed as an estimate of the time within which it is reasonable for us to perform or complete the works when such time or date was referred to and no more.
- 3.3 In the event of performance or completion of the work or of the supply of equipment and materials so described being prevented, hindered, or impeded by reason of strike, lockout, combinations of work people, shortage of labour (locally or nationally), fire, frost, accident, breakdown, acts of God, force majeure, failure to deliver by any of our sub-contractors or suppliers, or any cause whatsoever beyond our control, then we shall be entitled to suspend despatch, delivery, and installation under this contract (upon giving notice in writing to you) for the period required by us to overcome the consequences of such causes or any such cause and will be under no responsibility whatsoever for any consequent non-delivery or delay, and you will not be entitled to cancel this contract without our written consent or to make any claim upon us in respect of such non-delivery or delay.
- 3.4 Without prejudice to any of the matters aforesaid, in the event of delay howsoever caused in completion of the work of installation our liability for any loss or damage (direct or indirect) howsoever caused shall not exceed £100.00 and the parties hereby irrevocably agree that this value shall be a reasonable and complete remedy to all and any matters arising.
- 3.5 Whilst we shall endeavour to complete all works in a sequential manner without interruption, we shall be under no obligation to conduct works in accordance with any programme either submitted or received nor shall we be required to undertake any works in any manner so as to coincide with any other trade or obligation.

4. Quality

- 4.1 We warrant that on delivery and if applicable in accordance with our Warranty/the Collateral Warranty period the Goods shall:
- 4.1.1 conform in all material respects with their description;
- 4.1.2 be free from material defects in design, material, and workmanship;
- 4.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 4.2 Subject to clause 4.3, we shall, at our option, repair or replace any defective Goods, or refund the price of the defective Goods in full if:
- 4.2.1 the Customer gives notice in writing in accordance with the terms of our Warranty where applicable or otherwise within 48 hours of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1/20;
- 4.2.2 We are given a reasonable opportunity of examining such Goods; and
- 4.2.3 the Customer (if asked to do so by us) returns such Goods to us at our cost.
- 4.3 We shall not be liable for the Goods' failure to comply with the warranty in clause 4.1/20 if:
- 4.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;
- 4.3.2 the defect arises because the Customer failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

4.3.3 the defect arises as a result of us following any drawing, design or specification supplied by the Customer;

4.3.4 the Customer alters or repairs such Goods without our written consent;

4.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

4.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.3.7 the defect arises as a result of any other building component not effectively installed or causing or likely to cause the defect, such as incorrect window cills, roof details, blocked guttering or similar.

4.4 Except as provided in this clause, we shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1/20.

4.5 These Conditions shall apply to any repaired or replacement Goods supplied by us.

5. Price

5.1 All prices quoted are based on the costs of labour, equipment, materials, plant, transports, and conformity with statutory obligations prevailing at the date of quotations; in the event of any change in any of the costs aforesaid between the date of quotation and the date of delivery or the date of installation, the labour, equipment, materials, plant and transport will be invoiced upon the basis of the prices prevailing on the date of delivery or installation.

5.2 If you disagree with any such invoiced price, then the quoted price will be payable at the time or times herein provided for and the reasonableness of the extent (if any) of any increases or decreases in the quoted price shall be referred to adjudication pursuant to The Scheme for Construction Contracts (England and Wales) Regulations 1998 Part I.

6. Payment

6.1 Time for payment shall be of the essence under this contract and in the event of failure to comply with the terms as to payment (whether paid by instalments or otherwise) we shall have the option to treat the contract as at an end in accordance with the provisions of clause 6.10 and to remove any equipment and materials whether already delivered or installed or not and you will be liable to indemnify us against any costs, charge or liability arising out of or in connection with such termination of the contract and no alleged fault or deficiency in any equipment, materials or workmanship shall entitle you to withhold any payment provided for by this contract.

6.2 Without prejudice to our right to treat the contract as at an end as a result of non-payment or to suspend the same and to claim indemnity as aforesaid, interest shall be payable from the date at which any payment falls due at the rate of 5% above Bank of England base rate at the time to payment became due along with the reasonable cost of recovery.

6.3 The Price for the Goods and/or Services shall be the price as agreed in the Order. The Price is exclusive of:

6.3.1 amounts in respect of value added tax ("VAT") and all other applicable taxes and duties, which the Customer shall pay to us at the prevailing rate; and

6.3.2 the costs and charges of packaging, insurance, and transport of the Goods, which the Customer shall pay to us (unless otherwise stated as included).

- 6.4 We may require payments to be made by instalments on the basis of a percentage of the total Price or as otherwise agreed in writing with the Customer. In the event of interim payments, the clause at 6.5 to 6.9 shall apply.
- 6.5 Payments shall become due to us on the date of receipt by the Customer of our application for payment ("Application and/or Invoice"). Each Application shall set out the amount that we consider to be due and the basis upon which that amount has been calculated.
- 6.6 No later than 2 days after each amount becomes due, the Customer shall notify us of the sum that the Customer considers to have been due at the payment due date in respect of the amount of the relevant Application and the basis upon which that amount has been calculated. Where the customer fails to provide such notice, the default sum shall be the sum stated on our Application and/or invoice.
- 6.7 The final date for payment by the Customer shall be 7 days after the submission of our Application and/or Invoice.
- 6.8 Unless the Customer has served a notice under clause 6.9, it shall pay us the sum referred to in the Customer's notice under clause 6.6 (or if the Customer has not served such a notice, then the sum referred to in our Application and in either case, payment shall be made without deductions) (together referred to as "the Notified Sum") on or before the final date for payment of the relevant amount.
- 6.9 Not less than 2 days before the final date for payment, the Customer may give us a notice that it intends to pay less than the Notified Sum and any such notice shall specify the sum that the Customer considers to be due on the date the notice is served and the basis upon which that sum is calculated. The Customer must pay at least the sum so notified and without deduction.
- 6.10 In the event of the Customer being in default of payment of any amount due to us under the Contract then on giving the Customer 2 days' notice in writing specifying the grounds for so doing, we may suspend performance of any or all of our obligations under the Contract. We shall resume our obligations under the Contract within a reasonable time after receipt of any outstanding payment. Any suspension arising under this clause shall entitle us to payment of reasonable costs and expenses incurred as a result and the period of suspension shall be disregarded in computing any agreed date for completion of our obligations and we shall not otherwise be liable to the Customer in regard to such suspension. Should the suspension continue for a period of 7 days from the date of suspension (by notice) then we may terminate the contract with immediate effect upon written notice.
- 6.11 We reserve the right to, by giving notice to the Customer at any time before delivery, increase the price to reflect any increase in the cost of the Goods and/or Services that is due to:
- 6.11.1 any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials, and other manufacturing costs);
- 6.11.2 any request to us to change the delivery date(s), quantities, or types of Goods and/or Services ordered; or
- 6.11.3 any delay caused by any instructions of the Customer or failure of the Customer to give us adequate or accurate information or instructions.
- 6.12 The Customer 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, set off any amount owing to it by the Customer against any amount payable by us to the Customer.

7. Property

7.1 The property in any equipment and materials despatched, delivered, or installed by us in accordance with or pursuant to this contract shall remain with us until the whole of the price has been paid irrespective of whether such equipment and materials have been installed in whole or in part and such equipment and materials shall be at your risk until payment has been completed so that should any equipment and materials or the premises to which they have been delivered or installed, be lost destroyed or damaged by any cause whatsoever or howsoever arising between despatch and final payment the contract price shall be paid in full less the costs of such installation or completion as remains to be carried out when such loss destruction or damage took place.

8. Defects

8.1 In the case of a system being installed which is to be installed on or over any existing structure (new or otherwise) notwithstanding any express or implied condition (statutory or otherwise) as to description fitness for any particular purpose, it is agreed that the Customer shall retain liability as to the suitability of any sub-structure or structure and shall not rely on any representation as to the suitability of any sub-structure or structure made by us.

8.2 Any defect arising as a result of any unsuitability of the existing structure (new or otherwise) shall remain the sole liability of the Customer. We may elect to provide guidance and/or an option for repair of any defects arising in these circumstances but shall not provide any warranty as to the suitability of such repairs. Payment of the cost of repairs arising in these conditions shall be a condition precedent to us proceeding.

8.3 Notwithstanding any express or implied condition (statutory or otherwise) as to description, fitness for any particular purpose or merchantability, it is agreed that prior to completion of installation we shall not be liable for any loss or damage (direct or indirect) or consequential loss howsoever caused which arises in connection with any equipment or materials (whether manufactured by us or not) delivered or supplied by us under this contract or with the installation thereof.

8.4 In respect of any defects howsoever arising, the Customer shall notify us within not more than 48 hours of any defect arising providing a description of the defect and supporting evidence. We shall thereafter have a period of not less than 28 days (48 hours in the case of an emergency) with which to rectify any defects (or such other further time as may be necessary and agreed).

8.5 In respect of defects caused to other connected installations, property, goods, or services, we shall be liable to you for the maximum of £1,000.00 howsoever arising.

8.6 The customer shall have no right of set off in respect of any defects howsoever and whenever arising unless they have complied with the provisions of clause 8.4 and until written agreement has been obtained from us for works to be carried out by a third party.

8.7 We shall not be liable in respect of any loss of use, disruption, delay, or other associated costs arising from any defect howsoever arising.

9 Tests

9.1 If we undertake any tests to our products and/or completed installation, these shall be for demonstration purposes and shall not be relied on in respect of any undertaking or representation.

10 Protection

- 10.1 The Customer shall, as instructed by us and unless otherwise agreed and provided for within our Quotation, protect all surrounding finishes, structures, window cills, windows, soffits, fascia's, brickwork or other materials, products, surfaces, finishes or areas that may reasonably be affected by our works.
- 10.2 The Customer shall indemnify us in respect of any damage causes to any surrounding structures or finishes, howsoever arising.

11 Alterations and Modifications

- 11.1 In the event of any alterations or modification being made to the premises wherein our materials are to be or are being installed or to any plan or design relating to such premises or plant to be constructed, altered, or modified, the contract price will be increased or decreased by the amount (taking into account costs, profits and overheads) occasioned by such alterations or modifications. If you disagree with any such increase or decrease, then the quoted prices will be payable at the time or times herein provided for and the extent (if any) of such increase or decrease shall be referred to arbitration in accordance with the Arbitration Act, 1950.

12 Patents, Registered Designs and Trademarks

- 12.1 We shall not be liable for the infringement of any patent, registered design, trademark, or other protective right where goods are manufactured to your design(s) and/or instruction(s) and you will fully indemnify us against any claim in respect thereof howsoever arising.

13. Termination

- 13.1 Without affecting any other right or remedy available to it, we may terminate the Contract by giving you not less than two weeks' written notice.
- 13.2 If we terminate the Contract under clause 13.1, you shall pay us a fair and reasonable amount for any work in progress on the Services at the time of termination.
- 13.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.3.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing to do so;
 - 13.3.2 the other party is declared or becomes insolvent, applies for or has a moratorium declared in respect of any of its indebtedness, takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business (an "Insolvency Event");
 - 13.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 13.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.4 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to the Customer if:

13.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment subject to the provisions of Clause 6.10; or

13.4.2 there is a change of Control of the Customer.

14. Consequences of Termination

14.1 On termination of the Contract:

14.1.1 the Customer shall immediately pay to us all of our outstanding unpaid applications for payment and interest and, in respect of Services and Goods supplied but for which no application has been submitted, we shall submit an application, which shall be payable by the Customer immediately on receipt;

14.1.2 the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then we may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15. Liability

15.1 Without prejudice to the foregoing exclusions and limitations we shall not be under any liability for any loss or damage (direct or indirect), or consequential loss howsoever caused, where such loss or damage arose from out of or in connection with any event which occurred at a time when you were in breach of any obligation to effect payment under this agreement.

15.2 Without prejudice to the foregoing exclusions and limitations our liability for damages in the event of any breach (whether such breach be a fundamental breach or breach of a fundamental term or not) of or failure to perform this contract or resulting from any negligence by us or our servants or agents shall not exceed the total price payable by you under this contract or £1,000.00 whichever sum be the lesser and we shall be under no liability in excess of such sums in respect of any loss or damage (direct or indirect) or consequential loss howsoever caused and howsoever arising, regardless whether the property in the goods despatched delivered or installed has or has not been passed to you.

15.3 We shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

15.3.1 loss of profits;

15.3.2 loss of sales or business;

15.3.3 loss of agreements or contracts;

15.3.4 loss of anticipated savings;

- 15.3.5 loss of use or corruption of software, data or information;
- 15.3.6 loss of or damage to goodwill; and
- 15.3.7 any indirect or consequential loss.

15.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.5 This clause 15 shall survive termination of the Contract.

16. Indemnity

16.1 You shall indemnify us and our servants or agents against all claims and proceedings made or brought against us and our servants or agents in respect of any injury loss or damage (direct or indirect) or consequential loss howsoever arising to any person or property howsoever caused which arises out of or in connection with the execution of the said contract regardless whether the property in the said plant, materials or goods despatched, delivered, or installed has or has not been passed to you.

17. Bankruptcy

17.1 In the event of your bankruptcy or insolvency or in the event of a receiving order being made against you or in the event of your compounding with your creditors or in the event of the commencement of winding up proceedings, (you being a limited company and such proceedings being other than a member's voluntary winding up for the purpose of reconstruction or amalgamation) or in the event of your business being earned on under a receiver for the benefit of creditors or any creditor, then we may at our option terminate this contract by notice in writing, whereupon all sums due from you shall remain due and you shall be liable to us for any loss occasioned in consequence of such termination.

18. Access Equipment

18.1 Any access equipment, plant, or tools, which we may provide, shall be for the use of our workers only. In the event of any person not in our employment in any way making use of such access equipment, plant, or tools, (whether with our consent, expressed or implied, or not) whilst the same is on your premises, any claim which may arise in respect to an accident arising out of or in connection with the use of such scaffolding, plant or equipment by any such person, shall be your sole responsibility howsoever such accident be caused, and you shall keep us fully indemnified against any such claim whatsoever.

19. General

19.1 The Law of England shall govern this contract.

19.2 Our Offer is conditional on: (a) you providing to us [our receiving] a current Credit Rating for your company acceptable to us; or (b) you providing to us [our receiving] a Performance Bond / Parent Company Guarantee satisfactory to us; or (c) our agreeing satisfactory payment terms with you, which may or may not include an advance payment (all at our sole discretion). This condition needs to be satisfied before you can accept our Offer and therefore until such condition has been satisfied or waived by us in writing (at our sole discretion), our Offer is not capable of acceptance by you, and we are free to withdraw it at any time without liability.

20. Collateral Warranties

20.1 We are under no obligation to provide a collateral warranty to any third party.

20.2 In circumstances where we agree to provide a collateral warranty, we will do so only where the following conditions are met:

20.2.1 the collateral warranty must be set out in writing;

20.2.2 prior to execution of the collateral warranty, the Customer must pay an additional sum equivalent to 1% of the Contract for each collateral warranty; and

20.2.3 in any event, the collateral warranty must include clauses providing that we: (1) owes no greater duty to the beneficiary that it owes to the Customer under the Contract; (2) may rely upon any limitation or defence arising from the Contract; and (3) shall have no liability after the expiry of six (6) years from the performance of our obligations under the Contract; and a net contribution clause.

21. Force Majeure

21.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors or any law or any action taken by a government or public authority.

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