1. DEFINITIONS

In these Terms and Conditions of sale of Goods and/or Services by the Company to the Customer, the defined terms shall have the meaning given to them in the Order Acknowledgement. In the absence of either an Order Acknowledgement or use of a defined term in the Order Acknowledgement, these Terms and Conditions shall be interpreted using the following defined terms:

‘Order Acknowledgement’ means the document referred to as “order acknowledgement” in the terms and conditions of sale and/or purchase of the Goods and/or Services by the Company;

‘Agreement’ shall mean together the Order Acknowledgement (including any schedules to it) and the Terms and Conditions (together with any Special Terms) or, in the absence of a Purchase Order, these Terms and Conditions alone;

‘Applicable Anti-Bribery Law’ means any bribery, fraud, kickback, or other similar anti-corruption legislation in existence in the UK or in the US (as defined by the UK Bribery Act and the US Foreign Corrupt Practices Act 1977);

‘Authorized Person’ means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors;

‘Bribery Act’ means the UK Bribery Act 2010 (as amended from time to time);

‘Company’ shall mean Alumasc Building Products Limited, whose registered office is Burton Latimer, Kettering, Northamptonshire, NN15 5JP (company registration number 3929260);

‘Customer’ shall mean the company, firm or person buying (or who has requested to buy) the Goods and/or Services from the Company;

‘Expected Due Date’ shall mean the date when the Goods are expected to be delivered by;

‘Goods’ shall mean any goods supplied or to be supplied by the Company;

‘Order Acknowledgement’ means the document referred to as “order acknowledgement” and in a form provided by the Company, which sets out the commercial terms agreed by the parties relating to the sale of Goods and/or Services by the Company to the Customer;

‘Expected Performance Date’ shall mean the date when the Services are expected to be performed by;

‘Premises’ shall mean the delivery address to which the Goods are to be delivered or the premises where the Services are to be performed;

‘Price’ shall mean the total charged for the Goods and/or Services which shall be inclusive of all packaging and exclusive of value added and other taxes and all freight, off-loading, carriage, insurance and delivery charges (unless agreed otherwise in the Order Acknowledgement and subject at all times to the application of haulage charges set out at clause 7);

‘Quote’ shall mean any information or estimate (written or oral) provided by the Company to the Customer in respect of Goods and/or Services requested to be provided by the Company to the Customer, prior to the issue of an Order Acknowledgement by the Company in respect of such Goods and/or Services;

‘Services’ shall mean any services supplied or to be supplied to the Customer by the Company;

‘Special Terms’ shall mean any terms and conditions agreed in writing by the parties to apply in addition to, or in substitution of the Terms and Conditions; and

‘Terms and Conditions’ shall mean the standard terms and conditions of sale set out herein.

2. APPLICATION OF TERMS AND CONDITIONS

2.1 All Goods and Services supplied by the Company are supplied on these Terms and Conditions. Any contract for the sale of Goods and/or Services shall not be subject to (and the Company specifically excludes) any other terms and conditions which the Customer may seek to impose whether or not the Customer’s terms and conditions are referred to or referred to in any offer, acceptance or counter offer made by the Customer.

2.2 No variation to an Agreement (subject to these Terms and Conditions) shall be binding unless agreed in writing by the authorised representatives of the Company and the Customer.

2.3 This Agreement contains the whole agreement between the Company and the Customer and supersedes all prior representations, arrangements, understandings, agreements and terms and conditions of sale and/or purchase between the Company and the Customer relating to the subject matter hereof. The Parties have not relied upon, and will have no remedy in respect of, any warranty, statement, representation or understanding made by any party unless it is expressly set out in this Agreement. The only remedy available to either Party in respect of any such statement, representation, warranty or understanding shall be damages for breach of contract under the terms of this Agreement and neither Party shall have the right to rescind for negligent or innocent misrepresentation in relation to this Agreement. Nothing in this Agreement shall restrict or exclude either Party’s liability for fraudulent misrepresentation.

2.4 This Agreement and any warranty given in writing by the Company relating to the Goods and/or Services contains the whole agreement between the Company and the Customer. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law.

2.5 The Company’s employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Company in writing into the Agreement. The only remedy available to either Party in respect of anything said or done by any person (whether written or oral) not expressly set out referred to in this Agreement. Nothing in this Agreement shall limit or exclude liability for fraudulent statements.

2.6 Acceptance of the Goods by the Customer or the signature of a representative of the Customer on any invoice, invoice or other document which expressly refers to this Agreement shall be conclusive evidence before any court or arbitrator that these Terms and Conditions apply. Previous dealings between the Company and the Customer shall not vary or replace these terms or be deemed in any circumstance whatsoever to do so. Clause headings appearing in these Terms and Conditions are for convenience only and shall not be construed as part of these Terms and Conditions or taken into account in the interpretation thereof.

2.7 Reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

3. QUOTES AND FORMATION

3.1 All Quotes from the Company are estimates only and a binding Agreement will only be formed following:

3.1.1 receipt of an order for Goods and/or Services (pursuant to a Quote or not, as the case may be); and

3.1.2 issue of an Order Acknowledgement by the Company or (if sooner) the Customer procuring the Goods or commencing the Service provision, at which point the Customer’s offer will have been accepted and the Agreement will be formed.

3.2 In circumstances when the Goods and/or Services are of a bespoke or non-standard nature:

3.2.1 requiring the approval of drawings by the Customer, a failure of the Customer to provide such approval in a timely manner may result in delays to the Expected Due Date; and

3.2.2 without prejudice to any of its other rights under this Agreement, the Company reserves the right to rescind the Agreement in relation to the Customer on any Quote, invoice or other document which expressly refers to this Agreement, without any costs and expenses it will incur prior to the issue of an Order Acknowledgement.

3.3 All such acceptances by the Company are subject to the availability of the necessary materials and to the Company being able to obtain any necessary authorisation and/or licences and to the same remaining valid.

3.4 Any lead times referred to in any Quote are provided for estimate purposes only.

4. ACCURACY

4.1 The Agreement is not a contract for sale of goods by description. All descriptive matter, specifications, calculations, drawings, particulars of weights, dimensions, coverage rates submitted or issued by the Company or otherwise contained in the Company’s price lists or other documents is approximate only and none of these shall form part of the Agreement or give rise to any independent or collateral liability upon the Company being intended merely to present a general idea of the Goods and Services as described therein.

4.2 The Company may modify the specification of Goods or Services without notice provided that such modification does not materially affect the performance of the Service or the Goods.

5. PRICE

5.1 All prices quoted in the Quote are the Company’s current prices at the time of providing the Quote. The price payable for the Goods or performance of Services shall be the Price ruling at the date of dispatch or performance and the Company shall be entitled to adjust the Price of the Goods and/or Services at any time between the date of the Order Acknowledgement and the date of delivery of the Goods or performance of the Service, to take account of any increase in costs incurred by the Company (such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), changes to its price lists or any change in delivery dates, quantities or specifications for the Goods or Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions (as referred to in the edition of Incoterms applicable at the date of the Order Acknowledgement) save as expressly varied hereby and exclusive of VAT, purchase or other taxes and subject to clause 7, any costs of carriage and insurance where applicable, which shall be added at the rate in force at the time the Goods and Services are invoiced.

5.2 Special orders and non-standard colours will be subject to a manufacturer’s premium; such premium will be detailed in the Quote and/or Order Acknowledgement.

5.3 If the Customer discovers a typographical error in the Price, it will inform the Customer as soon as possible and give the Customer the option of reconfirming its order at the correct price or cancelling it, without liability for cancellation set out at clause 22.2. If the Customer cancels in such circumstances and has already paid the Price, the Company will provide a full refund of this.

6. DELIVERY AND PERFORMANCE

6.1 Delivery shall be made by the Company immediately following notification to the Customer that the Goods are ready for collection. Delivery by the Company to a carrier for the purpose of transmission to the Customer shall be deemed to be delivery to the Customer. Section 32(2) of the Sale of Goods Act 1979 shall not apply.

6.2 Expected Due Dates and Expected Performance Dates are given and included in good faith but are only an estimate. Time for delivery of Goods and/or provisions of Services is not of the essence and the Company shall not (subject to clause 14.1.1) be liable for any loss (including loss of profis), damage, costs, charges or expenses caused directly or indirectly by failure (for any reason) to meet the Expected Due Dates and Expected Performance Dates (even if caused by the Company’s own negligence), and further, the Customer shall have no right to cancel the Agreement in the event of such a failure.

6.3 The Company shall be entitled to make delivery of the Goods listed in an Order Acknowledgement by instalments and to invoice separately for each instalment,
including in relation to bulk call off orders. Where delivery of the Services is made by instalments, the Services may be performed in sections in any sequence. Deliveries of further instalments and performance of further sections may be withheld until the first instalment of Services comprised in earlier instalments and/or sections have been paid for in full.

6.4 Where the Company has agreed to delivered deliveries, such deliveries shall be accepted by the Customer within three months from the date of the Order Acknowledgement. If the Customer fails to take delivery within such period, the risk shall pass to the Customer and the balance remaining undelivered together with storage costs shall be invoiced to the Customer and payment shall become immediately due.

6.5 Goods to which the Customer agrees to collect Ex Works must be collected within three days of the Company notifying the Customer that the Goods are ready (or such shorter period if agreed by the parties). If the Goods are not collected within this period the risk shall pass to the Customer.

6.5.1 invoice the Customer for the Goods and to charge for storage of the Goods, the Goods being held at the Customer’s risk and, and/or to make such withholding and/or deduction from amounts due from the Customer to the Company by way of set-off or counterclaim as the Customer may, in its absolute discretion think fit notwithstanding any purported appropriation by the Customer.

7. HAULAGE CHARGES

7.1 The haulage charges for Goods will be as detailed in the Company’s “Schedule of Carriage Charges” in force at the date of dispatch.

7.2 Small loads or express deliveries of Goods will be charged on an individual basis.

8. PAYMENT

Where the Agreement is a “construction contract” as defined in the Housing Grants Construction and Regeneration Act 1996, or a term of the Customer, then the following clauses marked 8A shall apply, and in all other cases, the clauses marked 8B shall apply:

8A.1 Full Price (including VAT) of the Goods and Services as invoiced shall be paid to the Company on the 28th day of the month following the month of delivery of the Goods and/or performance of the Services. This is the final date for payment.

8A.2 Not later than seven days before the final date for payment of an amount due, the Customer may give a written notice to the Company which shall specify any amount proposed to be withheld and/or deducted from that due amount, the substantiated ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground and, subject thereto, the Company shall be entitled to make such withholding and/or deduction.

8A.3 The Company may bring an action for the Price of the Goods even though the Customer’s property in them may not have passed to the Customer.

8A.4 Time for payment of the Price shall be of the essence.

8A.5 The Customer shall indemnify the Company against all expenses and legal costs incurred by the Company in execution or process of law; (e) a petition is presented or an order is made for a winding-up of the Customer; or (f) a receiver or administrator is appointed over any of the Customer’s assets; or

8A.6 Interest shall be payable by the Customer on overdue amounts. The Company reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.

8A.7 The Customer shall be entitled to suspend the obligations under this Agreement to deliver Goods to and/or perform Services without liability for any losses that the Customer may suffer as a result of such suspension until such time as all sums due from the Customer in respect of any Goods in settlement of such invoices as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer.

9. TERMINATION

Without prejudice to any of its other rights the Company shall, at its option, be entitled by notice to terminate this Agreement immediately in whole or in part and demand payment of any amount due or accruing to the Company (whether under this Agreement or otherwise), re-sell the Goods and/or withhold or cancel any deliveries and the Customer shall keep the Company indemnified against all costs, demands, expenses and losses suffered by the Company if any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) occurs or is likely to occur:

9.1 (a) the Customer is in breach of any of its obligations under this Agreement if, capable of remedy, the Customer has not remedied within 30 days of receiving written notice from the Company particulars of such breach; (b) the Customer shall not apply for any interim order (within the meaning of Section 268 Insolvency Act 1986); (d) an encumbrance takes possession of any of the Customer’s assets, or any of the Customer’s assets is or are the subject of a bankruptcy petition being presented against the Customer; (e) a bankruptcy order is made; (f) a receiver or administrator is appointed over any of the Customer’s assets.

9.2 The Customer shall not give the Company the right to repudiate this Agreement, to reject the Goods (save insofar as they materially exceed the amount ordered) or to claim damages for breach of contract and the Customer shall be obliged to accept and pay for the Price for the quantity delivered (except as aforesaid if the Customer has the right to reject the Goods under this clause 6.5.1.

10. RISK

Risks of damage to or loss of the Goods (or in each instalment of the Goods where the Company has elected to make deliveries by instalment pursuant to clause 6.3) shall pass to the Customer when the Goods are delivered, in accordance with the terms of clause 6.1. Section 20(2) Sale of Goods Act 1979 shall apply.

11. PROPERTY

Notwithstanding the passing of risk under clause 10 above, unless and until full payment with cleared funds of all monies due from the Customer shall have been made to the Company in respect of all the Goods delivered or to be delivered to the Customer and comprised in the Agreement and in respect of all and any Goods supplied or to be supplied by the Company under this Agreement, property in and title in such Goods (both legal and equitable) shall remain with the Company and the following provisions of this clause shall be applicable:

11.1 Until title to the Goods passes to the Customer, the Customer shall keep the Goods in good and substantial repair and condition and the Goods shall be protected and stored in such a way as to be clearly identifiable as belonging to the Company. The Customer must not destroy or deface any identifying marks on the Goods or their packaging; and must keep the Goods in such a state of preservation as to be capable of sale at the price at which they were sold and the Company shall not mix them with any other money nor pay the proceeds into an overdrawn bank account.

11.2 Insofar as Goods may be delivered to the Customer prior to the time when payment is received by the Company, the Customer shall hold the same in the capacity of a fiduciary for and on behalf of the Company (as its bailee) until the time when payment is received by the Company in accordance with clause 8 hereof and in such capacity may be sold on such account as the Company may direct or otherwise disposed of by the Company for the same or if the same shall be sold by the Customer, in accordance with the next paragraph of this clause for that part of the proceeds of
sale thereof (the "Company's part of the proceeds") which is equivalent to the
property in Goods has not passed to the Customer.
11.3 The Customer shall not resell, exchange or barter the Goods in any way
whichever, other than in the normal course of its business and providing that
the Customer shall pay the Company's part of the proceeds of such a sale into
a separate bank account clearly denoted as an account containing monies deposited
for the benefit of the Company by the Customer acting in a fiduciary capacity.
The entire proceeds arising by virtue of any such sale, use or disposal shall be
held in trust for the Company and shall not be merged or paid into any other
overdrawn bank account and shall at all times be identifiable as monies belonging
to the Company.
11.4 Upon request, the Customer shall assign forthwith to the Company the benefit of
any agreement whether written or oral under which the Goods have been sold to
a third party notwithstanding and contrary to clause 11.3 above including but not
limited to any security interest on the same and for this purpose the Customer hereby grants an irrevocable right and license to the Company (or its successors in title) through its servants and agents to enter with or without vehicles upon all or any Premises on which such Goods may be situated and to take possession of any such Goods (the cost of which shall be borne by the Customer) where appropriate detaching them from any new objects of which they have become part or with which they have become mixed without liability to the Customer for any consequential damage to the said objects. These rights shall continue to subist notwithstanding the termination of this Agreement whether through the happening of any events specified in clause 9 or otherwise and in any event if it has not been given a reasonable opportunity to inspect the Goods before they have been used by the Customer.
11.5 In respect of damage to all or part of the Goods or loss or non-delivery of part of
the Goods comprised in this Agreement, notification must be made to the Company in writing within seven working days of delivery of the Goods or (where the defect or failure is not apparent on reasonable inspection) within a reasonable time after discovery (or when the Buyer ought reasonably have
been able to discover) for any use of any of the documents prepared for the Customer or disclosed to or obtained by the Company pursuant to or as a result of the provision of the Services.
11.6 Subject to clause 16, and save for any Services provided by the Company, the Customer is relying on its own skill and judgement in relation to the Goods irrespective of any knowledge of the Company, its servants, agents or employees or as to the purpose for which the Goods are supplied or their suitability.
11.7 The Company shall be entitled to recover the price of Goods notwithstanding that
the Customer was notified in Goods not passed to the Customer.
12. INSPECTION/SHORTAGES
12.1 The Customer shall inspect the Goods on delivery or on collection as the case may
be and shall advise the Company in writing within three working days of any
shortages or shortages and the Company shall be entitled to recover the price of
the Goods comprised in this Agreement, notification must be made to the Company in writing within seven working days of delivery of the Goods or (where the defect or failure is not apparent on reasonable inspection) within a reasonable time after discovery (or when the Buyer ought reasonably have been able to discover) for any use of any of the documents prepared for the Customer or disclosed to or obtained by the Company pursuant to or as a result of the provision of the Services.
12.2 In all cases where the Customer complains of defects or shortages, the Company shall
therein be entitled to retain any sum or property recovered at payment of a sum
equivalent to the price of the Goods sold hereunder to the Customer for any consequential damage to the said objects. These rights shall continue to subist notwithstanding the termination of this Agreement whether through the happening of any events specified in clause 9 or otherwise and in any event if it has not been given a reasonable opportunity to inspect the Goods before they have been used by the Customer.
12.3 In respect of damage to all or part of the Goods or loss or non-delivery of part of
the Goods comprised in this Agreement, notification must be made to the Company in writing within seven working days of delivery of the Goods or (where the defect or failure is not apparent on reasonable inspection) within a reasonable time after discovery (or when the Buyer ought reasonably have been able to discover) for any use of any of the documents prepared for the Customer or disclosed to or obtained by the Company pursuant to or as a result of the provision of the Services.
12.4 Subject to clause 16, and save for any Services provided by the Company, the Customer
shall without prejudice to the question of liability generally be under no liability
in any event if it has not been given a reasonable opportunity to inspect the Goods
before they have been used by the Customer.
12.5 In respect of damage to all or part of the Goods or loss or non-delivery of part of
the Goods comprised in this Agreement, notification must be made to the Company in writing within seven working days of delivery of the Goods or (where the defect or failure is not apparent on reasonable inspection) within a reasonable time after discovery (or when the Buyer ought reasonably have been able to discover) for any use of any of the documents prepared for the Customer or disclosed to or obtained by the Company pursuant to or as a result of the provision of the Services.
18.2 Section 26(3) of the Unfair Contract Terms Act 1977 shall apply and
understanding that paragraph 4.1.4 all liabilities for injury or death arising directly
from the use of the Goods are expressly excluded.

18.3 Unless otherwise agreed in writing by the Company the currency will be pounds
sterling; and

18.4 The Customer shall be responsible for complying with any legislation or
regulations governing the export of the Goods from the United Kingdom or
governing the importation of the Goods into the country of destination and for the
payment of any associated duties.

19. CONSUMER PROTECTION ACT 1987 ("THE ACT")

If the Customer incorporates Goods with or uses Goods ancillary to any composite or
other products to be produced, manufactured, processed or supplied by the Customer
then the Customer shall:

19.1 shall forthwith on demand provide the Company with copies of all written
instructions, information and warnings to be supplied by the Customer in relation to
the said composite or other products, (provided that such right of or actual
inspection shall not constitute acceptance or approval by the Company of such
instructions, information or warnings); and

19.2 shall indemnify the Company against all actions, claims, costs, demands,
expenses and damages (including without limitation (legal actions) of whatever
ture suffered or incurred by the Company in the event that any claim or claims
are made against the Company pursuant to the Act in relation to or otherwise relating to the
said composite or other products of the Customer in circumstances in which the
Goods were:

19.2.1 not the defective part of the said composite product;

19.2.2 rendered the defective part or became a defective product by reason of an act
or omission of the Customer or by reason of instructions or warnings given by
the Customer or other supplier of the said composite or other products; and

19.2.3 supplied in accordance with a specification and/or drawings furnished by, or on
behalf of, the Customer; and

19.3 hereby acknowledges its duty to pass on to its customers (where appropriate)
all instructions, information and warnings supplied to it by the Company with
the Goods.

For the purposes of this clause 19 only, the word "defective" shall be interpreted in
accordance with the definition of "defect" contained in Part 1 of the Act.

20. ASSIGNMENT

The Customer shall not be entitled to assign nor transfer (nor purport to assign nor
transferring) its rights or obligations under this Agreement nor to any of its
Affiliated Persons, unless details of any such arrangement have
been previously approved in writing by Company.

21. FORC MAJEURE

The Company shall be relieved of its obligations and shall not be liable for any failure or
delay in or from carrying out all or any of its obligations under the Agreement arising
from circumstances outside the Company's control including but not limited to acts of God,
war, riot, strike, lock out, trade dispute (including by and with the Company's
own employees), or any other labour disturbance, power failure; inadequate
performance of, failure of or incorrect processing by computer systems, fire, flood,
difficulty in obtaining workmen, materials or transport, default of suppliers or sub-
contractors or the consequences of hospitalisation or any Government interference or
restriction, import or export regulations or any other circumstances whatsoever
outside the Company's control. Furthermore the Company shall be entitled by written
notice to determine or terminate this Agreement without incurring liability for any loss,
expense or damage resulting to the Customer or any other party.

22. CANCELLATION/CHANGES

22.1 Order Acknowledgements may only be cancelled by the Customer with the prior
written consent of a director of the Company. Cancellation and/or changes will
not be accepted unless the Goods have been made to the Customer's special order
and if accepted by the directors of the Company, will only be made on terms that
the Customer shall indemnify the Company in full against all losses (including loss of
profit), costs, damages and charges incurred (directly or indirectly) by the Company as a result of such cancellation or any change.

22.2 In the event of cancellation by the Customer and/or changes agreed by the
Company, the Customer will indemnify the Company against all expenses, losses
(including loss of profit), costs, damages and charges incurred (directly or indirectly)
incurred by the Company as a result of such cancellation or any change.

23. RETURNS

23.1 Save for returns due to defects in the Goods, Goods returned to the Company
will be accepted only at the director's discretion. In the event of returns being
accepted, a minimum restocking charge of 30% of the Price will be applied
subject always to a minimum charge of £30.

23.2 Subject to the Customer's statutory rights, polyester powder coated Goods are
excluded from order, so will not be accepted if returned.

24. TIME AND INDULGENCE

The whole rights and remedies of the Company in this Agreement or by law shall not
constitute a waiver, be prejudiced or derogated from in any way by the failure or delay
of the Company whether on one or more occasion(s) to exercise any of said rights and
remedies, or by its agreement whether on one or more occasion not to exercise any of
said rights and remedies.

25. ANTI-BRIBERY

25.1 The Customer shall not violate any Applicable Anti-Bribery Law.

25.2 The Customer has and shall at all times implement adequate procedures designed
to prevent it or any Associated Person from engaging in any activity which would
constitute an offence under the Bribery Act if it were carried out in the UK, or
violate any Applicable Anti-Bribery Law.