



## MARSHALL-TUFFLEX LIMITED TERMS AND CONDITIONS OF SALE (2019 EDITION)

Registered Office:

55-65 Castleham Road, St Leonards On Sea, East Sussex, TN38 9NU.

In these terms, Seller means C&C Marshall Limited or any associated company of C&C Marshall from time to time.

### 1. BASIS OF THE SALE

- 1.1 These terms shall apply to all contracts between the Buyer and the Seller and shall prevail over any terms put forward by the Buyer, unless the Seller expressly agrees to them in writing. No conduct by the Seller shall be deemed to constitute acceptance of any terms put forward by the Buyer. Acceptance by the Buyer of delivery of the goods shall constitute acceptance of these terms. All orders of the Buyer against the Seller's quotations are subject to the final acceptance of the Seller.
- 1.2 No variation of these terms shall be valid unless signed by the Seller.
- 1.3 The Seller's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed. Terms contained in any catalogues or price lists of the Seller shall not form part of the contract for sale and purchase of the goods unless otherwise agreed by the Seller.

### 2. AGENCY STATUS

Marshall-Tufflex Limited, Marshall-Tufflex International Limited and Tufflex Limited act only as selling agents for their principal, C&C Marshall Limited.

### 3. DELIVERY

- 3.1 Delivery of the goods shall be made by the Buyer collecting the goods at the Seller's premises during the Seller's usual business hours at any time after the Seller has notified the Buyer that the goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the goods to that place. Unless otherwise agreed, the Seller will be responsible for the costs of delivery of the goods to locations in England, Wales and Scotland. However, the Buyer will be responsible for any special delivery charges - e.g. overnight or next-day delivery costs. Orders with a net value of less than £200 shall be subject to a handling charge of £15 exclusive of VAT at the applicable rate, unless agreement is reached to the contrary.
- 3.2 Quoted delivery times are based on current commitments and are subject to review by the Seller at time of acceptance of order. The Seller shall not be liable for any delay in delivery of the goods.
- 3.3 The Seller endeavours to supply the exact quantity ordered but, as this is not always possible, reserves the right to deviate within reasonable limits from the quantity ordered. The quantity delivered shall be deemed to be the quantity ordered.
- 3.4 If the goods are to be delivered in instalments, each instalment shall be deemed to constitute a separate contract. Any failure to deliver any instalment or any defect in any instalment shall not give the Buyer the right to cancel future instalments.
- 3.5 If the Seller is liable to the Buyer for failure to deliver goods, that liability shall be limited to the difference (if any) between the contract price and the price (in the cheapest available market) of goods similar to the goods not delivered.
- 3.6 Any property of the Buyer which is transported in the Seller's vehicles is insured against fire risk only. In all other respects such transport is at the Buyer's own risk, and the Buyer should consider obtaining its own insurance accordingly.
- 3.7 The Seller reserves the right to suspend delivery in the event that credit insurance cover in respect of the Buyer is withdrawn after the date of acceptance of an order or in the event that any amounts owed by the Buyer to the Seller are overdue for payment or in the event that the Seller has reasonable grounds on which to believe that the Buyer will be unable to pay the price for the goods ordered.

### 4. IMPROVEMENTS

- 4.1 The Seller is continuously improving the specification of the goods. The Buyer shall have the benefit of such changes in specification or in the length of time for manufacture of the goods.
- 4.2 The Seller reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory or EU requirements or, where the goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

### 5. PRICE

- 5.1 The Seller reserves the right to increase the price of the goods to reflect any increase in its total costs of materials, labour, overheads, foreign exchange or other costs connected with the manufacture or delivery of the goods. The Seller shall give written notice of such increase prior to delivery of the goods.
- 5.2 The price is subject to value added tax and any other duty or tax which is applicable.

### 6. TERMS OF PAYMENT

- 6.1 Where a credit account has been arranged, invoices are due for net payment by the 20th day of the month following the date of the invoice, unless agreed in writing to the contrary.
- 6.2 In all other cases, unless agreed in writing to the contrary, payment in full is due three days before delivery or manufacture.
- 6.3 The Seller shall be entitled to recover the price even if property in the goods may not have passed to the Buyer. The time of payment of the price shall be of the essence.

- 6.4 All sums due from the Buyer which are not paid on the due date shall bear interest from day to day at the annual rate of 3% over the daily base lending rate of Barclays Bank PLC for the time being.
- 6.5.1 The Seller may appropriate any payment made by the Buyer and apply it in total or partial satisfaction of any debt then due from the Buyer to the Seller.
- 6.5.2 Where the amount paid by the Buyer is less than the amount due to the Seller under the contract to which it is appropriated, the Seller may appropriate the payment to any individual goods or item supplied under that contract.
- 6.6 The Buyer will pay the price in full without any discount, deduction, set-off or abatement which it may claim on the grounds of any breach by the Seller of the contract for the sale and purchase of the goods.
- 6.7 The Buyer will pay the price in full without any discount, deduction, set-off or abatement which it may claim on the grounds of any breach by the Seller of any other contract between the Buyer and the Seller or on the grounds of any other liability which the Buyer may allege against the Seller.

## **7. FORCE MAJEURE**

If performance of any part of the contract is delayed, hindered, prevented or rendered uneconomic by any cause or causes beyond the Seller's control, the Seller shall be entitled to cancel the contract or suspend his duty to perform for as long as the circumstances amounting to force majeure continue. Circumstances amounting to force majeure shall include (without limitation) adverse weather conditions, industrial action, war, fire, accidents, breakdown of machinery or plant and shortage of materials or labour. The Seller shall not be liable for any cancellation of the contract or suspension of its duty to perform under this clause.

## **8 WARRANTIES AND LIABILITY**

- 8.1 The Seller warrants that the goods will accord with any specification agreed with the Buyer in writing or, if there is no such specification, will be of normal industrial quality.
- 8.2 The above warranty is given subject to the following conditions:-
- 8.2.1 Any recommendation or suggestion relating to the storage or use of the goods made by the Seller or its employees or agents is given in good faith but it is for the Buyer to satisfy itself of the suitability of the goods for its own particular purpose and it shall be deemed to have done so. Accordingly, save as provided in Clause 8.3, unless otherwise expressly agreed in writing, the Seller gives no warranty as to the fitness of the goods for any particular purpose even though that purpose may be specified in the Buyer's order.
- 8.2.2 The Seller shall not be liable under the warranty (or any other warranty or condition) if the total price for the goods has not been paid by the due date for payment.
- 8.2.3 The above warranty does not extend to parts or materials not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.2.4 The Seller does not warrant an exact colour match between extruded product and moulded product.
- 8.3 Subject as expressly provided in these conditions, and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Terms in Consumer Contracts Regulations 1994) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.
- 8.5 In order to allow the Seller adequate time to bring a claim against its carrier and otherwise to protect its position, the Buyer must advise the Seller and any carrier in writing (otherwise than by a qualified signature on the carrier's or Seller's delivery note) of any loss, or damage to, defect in or non-delivery of the goods within the following time limits:-
- 8.5.1 partial loss, damage, or non-delivery of any separate part of a consignment - within three days of delivery of the consignment or part-consignment;
- 8.5.2 non-delivery of whole consignment (i) when despatched to Western Europe - within 10 days of despatch, (ii) when despatched to locations outside Western Europe - within 21 days of despatch, (iii) when despatched by air anywhere in the world - within 7 days of despatch.

In the case of postal delivery the Buyer must within fourteen days from the date of posting advise the Seller in writing (otherwise than by a qualified signature on the Company's delivery note and whether or not delivery is refused by the Buyer) of partial loss, damage or non-delivery of any consignment or separate part of consignment.

The above time periods shall not apply to defects which are not immediately apparent, which shall be notified to the Seller within such longer period as the Seller in the circumstances may reasonably allow.

The Seller shall not be liable for any loss or breach of condition or warranty unless the Buyer complies with the provisions of this clause.

- 8.6 The Seller's liability under this clause is limited to replacement of any goods which do not conform to their warranty or, at the Seller's sole discretion, refund to the Buyer of the price of the goods (or any proportionate part of the price).
- 8.7 The Seller shall not be liable for any loss or damage arising out of the goods whether direct or consequential and whether arising in contract or tort, except in respect of death or personal injury caused by the Seller's negligence. The Seller's liability is limited by this clause in order to enable the Seller to insure against its liability under this contract, the Buyer must bear the risk of any loss in excess of this limit and should insure against such loss.
- 8.8 The Seller shall not be liable for any loss or damage suffered by the Buyer as a result of any claim that the goods infringe any industrial or intellectual property rights of any person.

## **9. RISK AND OWNERSHIP**

- 9.1 Risk in the goods shall pass to the Buyer at the point of delivery and thereafter the Buyer should insure accordingly.
- 9.2 Ownership of the goods shall remain with the Seller until all debts owing to the Seller by the Buyer have been paid in full.

9.3 Until such time as ownership of the goods has passed, the Buyer shall be the bailee of the goods for the Seller and shall store them upon its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the Seller.

9.4 Until such time as ownership of the goods has passed, the Buyer authorises the Seller to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods.

#### **10. SPECIAL ORDERS**

10.1 Any dies, tools or other equipment made or obtained specially for an order of the Buyer remain the Seller's property unless agreed in writing to the contrary. In the event of cancellation of that order, the Buyer will be liable for immediate payment of the Seller's costs in obtaining such equipment.

10.2 If the goods are to be manufactured by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses incurred by the Seller in connection with any claim for infringement of any industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

#### **11. CANCELLATION**

Orders may not be cancelled in whole or in part without the Seller's written consent.

#### **12. LAW AND JURISDICTION**

The contract shall be governed by English law, and the parties agree to submit to the jurisdiction of the English Courts.

#### **13. HEALTH AND SAFETY**

In entering into the contract, the Buyer shall be deemed to have notice of the Health and Safety Statement contained in the Seller's catalogue.

If the Buyer requires any information or advice in connection with the safe use of the goods at work, the Buyer should contact the Seller immediately.

#### **14. CONTRACTS (RIGHTS OF THIRD PARTIES)**

The parties to this contract do not intend any term of this contract to be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any remedy of a third party which exists or is available apart from that Act.'