

# GENERAL CONDITIONS OF SALE

## 1. General

All goods and products ("Products") sold and supplied by VELFAC are subject to these conditions ("Conditions") which shall apply to the exclusion of any terms and conditions which the buyer of the Products ("Buyer") purports to apply whether on the Buyer's order/contract form or on any other document. No contract for the sale and supply of Products ("Contract") shall be made until VELFAC has confirmed the Buyer's order by issuing a written confirmation of contract. VELFAC's employees and agents are not authorised to make representations concerning the Products or to vary these Conditions, or to commit VELFAC in regard to the Products (including in regard to dates or times for delivery) other than as set out in a VELFAC written confirmation of contract. The Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representation, which is not so confirmed. The Buyer's attention is drawn specifically to clause 5 of these Conditions.

## 2. Budget prices, Tender Quotations and Contract Price

If budget prices are given by VELFAC they are a general indication of the cost of the Products, are not binding and are subject to change. Tender quotations are: (a) given on the basis that no contract will come into existence until VELFAC has issued its written confirmation of contract, (b) are valid for 60 days from issue (unless withdrawn before) and are based on the Buyer's requirements as made known to VELFAC and/or as specified by VELFAC in its tender quotation, and (c) assume delivery of Products within 6 months of the date of the tender quotation. The price for the Products as specified in the confirmation of contract ("Contract Price") is subject to change as a consequence of any variation of the Buyer's requirements from those specified in the Contract which is accepted by VELFAC, including following the detailed design of the Products. VELFAC will have no liability to proceed with manufacture and delivery of the Products until such change in the Contract Price (if any) has been agreed by the Buyer as set out in clause 5 of these Conditions.

## 3. Design

Where VELFAC is to provide designs, drawings, calculations and ideas ("VELFAC Design"), the Contract is deemed to incorporate the VELFAC Design Programme ("Design Programme"). VELFAC's liabilities to complete the VELFAC Design and to meet dates for manufacture and delivery of the Products is subject to the Buyer's full compliance with the Design Programme, including to provide information and procure the co-operation and approvals of any other party involved with the VELFAC Design.

4. Buyer's responsibilities. The Buyer is responsible (a) for acceptance of, and the successful integration of, the VELFAC Design and/or the Buyer's specification, with the designs, specification and proposals of others and of other parts of the project for which the Products are intended, (b) to ensure that the Products are appropriate for any particular application and comply with relevant local and national legislation, standards, codes of practice and other statutory requirements. Delays or failure by the Buyer, to comply with the Design Programme requirements, to provide details of its requirements and/or specifications for Products, or to promptly provide VELFAC with all information and assistance requested from time to time to facilitate the proper and timely performance of the Contract may result in the Products missing their allotted or estimated manufacturing time. VELFAC shall not be liable for any failure (by whatever margin) on its part to meet an agreed delivery date arising out of a delay or failure of the Buyer. The Buyer shall ensure the correctness of information provided and that its requirements and specifications are sufficient for the Buyer's purposes. The Buyer shall indemnify VELFAC against all costs, claims, damages, expenses and losses incurred or awarded against VELFAC arising directly or indirectly or consequentially out of a claim that Products infringe or allegedly infringe any confidentiality or proprietary right, trade mark, copyright or other intellectual property right of any third party by reason of the manufacture, resale or use of the Products to the extent that any infringement arises as a result of designs, requirements or specifications submitted by the Buyer to VELFAC.

## 5. Failure to agree to the terms of a confirmation of delivery

At the stage at which VELFAC is able to commit to manufacture of the Products, VELFAC will supply the Buyer with a confirmation of delivery to confirm details of, the Products, the dates for delivery and any changes to the Contract Price. In the absence of an express acceptance by the Buyer within 5 working days of VELFAC having provided the Buyer with the confirmation of delivery, including of any revision to the terms of the Contract resulting from the details in the confirmation of delivery, unless VELFAC determines otherwise, the Buyer will be deemed to have cancelled the Contract and VELFAC shall have no further liability in regard to the manufacture and delivery of the Products. Where VELFAC is required to undertake a process of detailed design of the Products, the confirmation of delivery will be provided once VELFAC has been able to complete the detailed design and the Buyer has complied with its obligations under clause 3 and 4 of these Conditions. Following acceptance by the Buyer of VELFAC's confirmation of delivery, changes or amendments to the Buyer's requirements for the Products will be subject to VELFAC's written consent. Where they are accepted by VELFAC the Buyer accepts any consequent delay in delivery of the Products and shall indemnify VELFAC against additional costs (including cost of all labour and materials lost) incurred by VELFAC as a result. Products once manufactured to a Buyer's specification cannot be revised. In the event of any cancellation by the Buyer, including as provided for under this clause 5, the Buyer shall indemnify VELFAC in full against all costs (including costs of all labour and materials lost), loss (including loss of profit), damages, charges and expenses incurred by VELFAC as a result of the cancellation.

## 6. Packaging

Unless otherwise agreed in writing, VELFAC will package the Products as VELFAC in its sole discretion considers appropriate in the light of the nature of the Products and method of transportation. Special packaging will be at the Buyer's expense and may delay delivery.

## 7. Delivery and transfer of risk

Dates for delivery will remain estimates until the Buyer has accepted the dates for delivery as part of the confirmation of delivery as referred to in clause 5. However such date/s will still be subject to change as set out elsewhere in these Conditions and at no stage will be of the essence under the Contract. Unless otherwise agreed in writing between the parties the Products shall be delivered DDU (as such term is defined in Incoterms 2000) to the Buyer's designated place of delivery in the UK or Eire, and prior to off-loading which shall be the Buyer's responsibility. The Buyer shall inspect the Products on delivery and will notify VELFAC in writing within three days of any shortage or damage in transit. The Buyer shall also on delivery mark the carrier's receipt note with details of any visible damage in transit. The Products shall be at the Customer's risk from the time that they are delivered to the Customer. The Customer shall be responsible for the full purchase price in the event of loss or damage arising from any cause whatsoever. Damage caused during off-loading shall be the Buyer's responsibility.

## 8. Prices and terms of payment

The Buyer is responsible for payment of the Contract Price, including any changes to the Contract Price as provided for under these Conditions. VAT shall be due (where applicable) in addition along with relevant import and other duties, taxes and expenses, but quoted prices include carriage and insurance to the point of delivery. VELFAC may at its discretion carry out a credit investigation on the Buyer to ensure the Buyer's ability to meet its payment obligations to VELFAC in accordance with the Contract. VELFAC reserves the right to amend the following payment terms (including but not limited to requesting payment before commencement of manufacture and/or delivery) and/or cease to supply goods and/or services to the Buyer in the event that the result of these investigations do not meet with the reasonable approval of VELFAC and their insurers. VELFAC's invoices can be issued at interim stages and are due on the date of issue to the Buyer. The final date for payment of any invoice, unless otherwise agreed in writing and subject always to the aforementioned credit investigations, shall be 30 days from the date of invoice. Time for payment shall be of the essence and payment must be made free of all deductions, withholdings, set off (legal or equitable) or abatement whatsoever. If an invoice is not paid in full by the final date for payment, without prejudice to any other rights or remedies VELFAC may, at its option without incurring any liability, suspend performance of its obligations under the Contract until payment is made. VELFAC is entitled to interest at a rate of 4% above the base rate from time to time of Barclay's Bank Plc to be calculated on a daily basis on any balance outstanding until payment in full is received. VELFAC may claim for payment notwithstanding that title for Products remains with VELFAC.

## 9. Retention of title

Until paid in full for amounts due under the Contract or any other contract with the Buyer together with all interest payable on overdue amounts, and notwithstanding delivery and the passing of risk, VELFAC shall retain legal and beneficial title to the Products supplied which the Buyer shall hold as bailee on a fiduciary basis for VELFAC even if the Buyer processes the Products and/or incorporates them in or with any other product or products. The Buyer shall store the Products and maintain records of the Products and any new product or products formed from the Products, in such a way that they are clearly identifiable as VELFAC's property. The Buyer shall keep the Products separate from those of the Buyer and third parties

and shall keep the Products protected and insured. The Buyer may sell the Products and/or new product or products to any third party provided that the Buyer shall hold the proceeds of sale on trust for VELFAC and keep such proceeds in a separate bank account.

The Buyer's right to possession of the Products shall immediately terminate; (a) if the Buyer fails to make any payment to any of its creditors when due, compounds with its creditors, convenes any meeting, passes any resolution or presents, or suffers any petition to be presented for voluntary or compulsory liquidation or has an administrator, receiver, administrative receiver or manager appointed over all or part of its assets, or takes or suffers any similar action in consequence or debts or becomes insolvent, or if any steps are taken to achieve any of the above consequences; or (b) if the Buyer shall pledge or in any way charge by way of security for any indebtedness any of the Products or new product or products which remain the property of VELFAC, whereupon VELFAC shall have the right, without prejudice to any other remedies to enter without prior notice any premises and to repossess and dispose of any Products or new product or products owned by it which have been formed from the Products.

## 10. Assignment/Performance

VELFAC may assign any of its obligations to, or exercise any of its rights through, any associated company or sub-contractor. The Buyer shall not assign or transfer any benefit of the Contract without VELFAC's prior written consent.

## 11. Warranty and liability

Subject to payment in full for the Products, and to the qualifications set out below, VELFAC warrants that the Products will correspond with the confirmation of delivery and will be free from defects in materials and workmanship for a period of: 12 years in the case of windows, 5 years in the case of external doors and 1 year in the case of electrical components, from the date of delivery PROVIDED; (a) the Products have been installed, transported, maintained and used in accordance with any instructions, recommendations or specifications of VELFAC whether oral or in writing or best industry practice; (b) the defect was notified to VELFAC in writing within 8 days of the date of delivery or, (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure; (c) the defect was not caused by fair wear and tear, neglect, misuse or improper adjustment; (d) the defect does not result from compliance with any drawings or specification supplied to VELFAC by the Buyer; and (e) the Buyer has allowed VELFAC reasonable opportunity to inspect the Products and such inspection confirms that the Products are defective. Should VELFAC be responsible for a defect, VELFAC will at its option either refund an appropriate part of the purchase price, repair the Products or provide replacement Products (or spare parts) free of charge. Where replacement Products (or spare parts) are provided by VELFAC, the Buyer shall pay all associated costs of removing defective Products, and reinstating replacement Products, which costs are not covered by this warranty. Further, (a) the glass panes must have been fitted in the VELFAC factory or by a VELFAC approved installer or service engineer; (b) the glass panes in the spacer track must have been stamped with the date of production (year/month); (c) the glass panes must not be damaged by external conditions, i.e. knocks or blows, or by movements of adjoining buildings; (d) the glass panes must not be damaged by frost damage, thermal effect or any chemical damage to the glass; (e) the glass panes must not have been exposed to any processing after delivery, i.e. grinding, sand blasting, etching, painting, sticking on, or any other surface treatment; (f) the drain path on the window system must not have been blocked; (g) panes with "added/built in features" i.e. lead glass windows, alarm systems, blinds etc. are covered by a 5-year guarantee. Except for the above warranties, all other warranties, conditions and other terms, whether express or implied by statute, under common law or otherwise in relation to the Products and this Contract (apart from terms implied as to title under The Sale of Goods Act 1979 or terms implied under The Consumer Protection Act 1987) are expressly excluded. This exclusion includes, but is not limited to, an exclusion of any condition or warranty of fitness for particular purpose, satisfactory quality, usefulness or timeliness. VELFAC shall be under no liability to the Buyer for loss of profit, loss of business, depletion of goodwill or any costs, expenses (including legal expenses) or other claims for indirect or consequential compensation whatsoever (howsoever caused) resulting from defective material, faulty workmanship or otherwise and whether caused or not by the negligence of VELFAC, its employees or agents. Provided always that VELFAC accepts liability for fraudulent misrepresentation or death or personal injury caused by its negligence. In no circumstances shall VELFAC's liability to the Buyer for any breach of the Contract exceed the price paid for the Products with respect to which the claim is made, such higher sum as may be paid to VELFAC under the terms of any available insurance policy.

## 12. Notices

All communications between the parties about the Contract must be in writing and delivered by hand or sent by prepaid first class post or by facsimile to the other party's registered office in the UK. Notices shall be deemed to have been received; if sent by pre-paid first class post, 2 business days after posting (exclusive of the day of posting); if delivered by hand, on the day of delivery, if sent by facsimile transmission, on a working day prior to 4.00 pm at the time of transmission or otherwise on the next working day.

## 13. Termination, suspension and security

VELFAC may, without prejudice to any other right or remedy available to VELFAC, immediately terminate the Contract, suspend contractual performance or require any payment in advance or satisfactory security for further deliveries under the Contract by written notice to the Buyer in the event that the Buyer; (a) defaults in making any payment, (b) remains in breach of its obligations to VELFAC under the Contract or under any other contract with VELFAC having been given 14 days notice of the breach in writing (including for non-compliance with Design Programme obligations), or (c) any of the insolvency events specified in Clause 9 occurs to the Buyer. Without prejudice to any other rights or remedies available, VELFAC may demand immediate payment of outstanding amounts which shall then become due and payable.

## 14. Governing law and jurisdiction

The Contract and these Conditions shall be in all respects subject to English law and the English courts. If any dispute arises out of or in relation to the Contract or these Conditions, the parties will use their reasonable endeavours to resolve that dispute amicably by discussion. Either party may at any time refer such a dispute to adjudication. Any adjudication shall be carried out pursuant to the Model Adjudication Procedure published by the Construction Industry Council current at the time of the reference. The Adjudicator shall be nominated at the request of either party by the Royal Institute of Chartered Surveyors.

## 15. Intellectual property rights

All intellectual property rights, title and interest in and to the Products and drawings, technical data, reports, documents, designs and information whatsoever which VELFAC submits to the Buyer in connection with the Contract (including, without limitation, patents, trade marks, names, logos and devices, copyright, design right and registered design) shall belong to VELFAC and must not be copied or shown to any third party without the prior written consent of VELFAC.

## 16. Force majeure

Without prejudice to any other provision herein, VELFAC shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performance or any failure to perform any of the obligations of VELFAC under the Contract due to circumstances beyond its reasonable control, including without limitation, war, governmental restrictions, fire, flood or storm, explosion, accident, civil disturbance, shortage or unavailability of stock or manpower, industrial action and transportation delays.

## 17. Severability

If any of the terms and conditions of the Contract (or part thereof) or these Conditions shall be found to be illegal, invalid, unenforceable, all other terms and conditions of the Contract or these Conditions not affected by the same shall remain in full force and effect.

## 18. Contracts (Rights of Third Parties) Act 1999

The parties hereby confirm that no term of the Contract and these Conditions is intended to confer on any third party any right or benefit and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded. 19. Definitions "Buyer" means the person, firm or company whose order is accepted by VELFAC. "VELFAC" means VELFAC A/S whose registered office is Dalgas Allé 7, DK-7400 Hernim, Denmark.