PRIME OAK BUILDINGS LTD
TERMS & CONDITIONS OF CONTRACT
The following Conditions shall apply to all contracts entered into by or on behalf of Prime Oak Buildings Ltd ("Prime Oak")

1 DEFINITIONS

1.1 In these Terms

"CONDITIONS" means the standard conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

"CONTRACT" means the contract for the sale and purchase of the Goods and supply of the Services;

"CONTRACT PRICE" means the Price of the Goods and Services to be supplied by Prime Oak as agreed

"CONSTRUCTION PROJECT" means the construction project of the Customer referred to in the Specification consisting of a number of separate, independent contracts including this Contract;

"CUSTOMER" means the person who accepts Prime Oak's Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;

"GOODS" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

"PLANNING FEE" means all costs and expenses incurred by or on behalf of Prime Oak in connection with the initial and all subsequent planning applications on behalf of the Customer

"PRIME OAK" means Prime Oak (Buildings) Limited (registered in England under number 3725306);

"SERVICES" means the services of construction/erection of the Goods into a timber framework to be supplied by Prime Oak in accordance with these Conditions as more particularly set out in the Specifications;

"SPECIFICATIONS" means the specifications for the Goods and/or Services as agreed between the Customer and Prime Oak;

"WRITING", and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 GENERAL

2.1 Acceptance by Prime Oak of the Customer's order is conditional upon acceptance by the Customer of these conditions, which shall prevail over any terms or conditions of the Customer (apart from alterations to or departures from these conditions specifically agreed by Prime Oak in writing).

2.2 **The Customer hereby acknowledges that the Goods and Services supplied hereunder relate only to the supply and construction of a timber framework which forms part of the Customer's Construction Project. The Customer may further acknowledges and confirms that in entering into this Contract the Customer is aware that the Customer may be required to contract directly with other contractors separately and independently from Prime Oak in order to complete the Construction Project and recognises that Prime Oak are not providing or contracting to provide any other work other than the supply of the Goods and Services hereunder. Accordingly Prime Oak is not responsible for the completion of or failure to complete any additional works required completing the Construction Project which is not included within the Goods or Services to be supplied hereunder.**

2.3 Prime Oak shall sell and the Customer shall purchase the Goods in accordance with Prime Oak's written quotation, subject in either case to these Conditions.

2.4 Prime Oak's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by Prime Oak in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

3 TENDERS, QUOTATIONS, CONCLUSIONS OF CONTRACTS

3.1 All tenders /quotations issued by Prime Oak shall not be considered to be offers placed by Prime Oak but shall be valid for a period of 30 days from the date thereof or such longer period as may be agreed between the parties in writing.

3.2 The Contract Price is based upon uninterrupted access to the Customer's premises until completion of the Services and Prime Oak reserves the right to increase the Contract Price in circumstances where uninterrupted access is not provided.

3.3 The Contract may not be cancelled by the Customer without the prior written consent of a Director of Prime Oak.

4 CONSTRUCTION TIME

4.1 Prime Oak will use its best commercial endeavours to deliver the goods and, where appropriate, to complete the Services at the rate and within the time estimated in the Specification but Prime Oak shall not be liable for any loss or damage whatsoever suffered by the Customer as a result of any failure by Prime Oak, for whatsoever reason, to deliver the Goods or to complete the Services within the time so specified. Unless specifically agreed in writing between Prime Oak and the Customer time of delivery of the Goods or completion of the Services shall not be of the essence of the Contract.

4.2 Goods will not be delivered nor will Services be commenced by Prime Oak until all and any approvals, permissions or consents, necessary for the Construction Project have been obtained, including, without limitation, any planning permissions or buildings regulations consent. Prime Oak will not be liable to the Customer for any delays in the provision of, or failure to provide the Goods or Services where such delays or failure arise from matters which are beyond the reasonable control of Prime Oak. The Customer shall be responsible for ensuring the accuracy of any permissions or consents applied for by the Customer or by Prime Oak on behalf of the Customer.

4.3 If the Customer fails to obtain all and any necessary consents for the Construction Project, the Contract shall determine forthwith and without any further liability being incurred by either party. Prime Oak shall, within 14 days of receiving written notification of such failure, reimburse to the Customer that part of the Contract Price already paid by the Customer less the Planning Fee which shall in such circumstances remain payable by the Customer. Where the amount previously paid by the Customer is less than the Planning Fee the Customer shall pay the difference to Prime Oak immediately upon receiving Prime Oak's invoice for the same.

5 MATERIALS & OWNERSHIP

5.1 The property of the goods, whether fixed or unfixed, shall not pass to the Customer until the full Contract Price of the goods and all sums from time to time owing by the Customer in respect of the goods (but excluding any charges levied for the installation or erection of the goods) to Prime Oak (whether under this or any other Contract) shall have been paid in full; such goods are referred to as "retained goods". Until payment of all such sums the Customer shall hold the retained goods in a fiduciary capacity for and behalf of Prime Oak.

5.2 Until such time as the property in the retained goods passes to the Customer, Prime Oak shall be entitled at any time to require the Customer to deliver up the retained goods and shall be deemed irrevocably to authorise Prime Oak to enter upon any of the Customer's premises, with or without vehicles, for the purpose of removing the retained goods.

5.3 The repossession of retained goods by Prime Oak in accordance with this clause 4 shall be without prejudice to all or any of Prime Oak's other rights against the Customer under the Contract.

5.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness the retained goods or any part of them which remain the property of Prime Oak, but if the Customer does so the full Contract Price (insofar as it has not been paid) shall (without prejudice to any other right or remedy of Prime Oak) forthwith become due and payable.

6 RISK

All goods delivered to the Customer whether fixed or unfixed and notwithstanding clause 5.1 above shall be at the sole risk of the Customer and in the event of the goods or any part thereof being lost, damaged, destroyed or stolen, howsoever occurring before payment for them in full has been made to Prime Oak, the Customer shall nonetheless pay to Prime Oak the full value of any such goods and the full value of any of the work damaged, destroyed or lost together with any additional costs incurred by Prime Oak in replacing any such goods and in reinstating or restoring any such work provided, however, the Customer shall not be responsible for any damage or loss sustained arising solely from the negligence of Prime Oak, its servants or Agents.

7 DELIVERY

7.1 Delivery of the goods shall be made, and risk of damage to or loss of the goods shall pass to the Customer when Prime Oak delivers the goods roadside to that Customer or to a place designated by the Customer.

7.2 Claims against Prime Oak for short or incorrect delivery shall be notified to Prime Oak in writing within 7 days of receipt of the goods. Prime Oak shall make good shortage or errors in delivery within a reasonable time thereafter and Prime Oak shall not thereafter be liable for any loss whatsoever arising out of such shortages or errors in delivery. The Customer shall not be entitled to reject the goods if no notice of short or incorrect delivery is notified to Prime Oak as set out above.

7.3 All delivery dates are week commencing and are estimate only.

7.4 Provision must be made by either the client or the client's builder for Prime Oak's waste by form of skip.

7.5 In the event of the Customer fails to take delivery of the Goods (or any instalment of the Goods) or fails to give Prime Oak adequate delivery instructions at the time of delivery (other than by reason of any cause beyond the Customer's reasonable control or by reason of Prime Oak's fault) then without limiting any other right or remedy available Prime Oak may store the Goods and any relevant storage charges incurred for the same shall be charged to the Customer and be immediately due and payable or sell the goods at the best price obtainable and charge the Customer any shortfall below the price of the goods under the Contract.

8 JOINERY

All joinery comes to site with a clear base coat ready for staining or painting by others. Any further protection against moisture ingress into timber is the responsibility of and an expense of the Customer. All joinery is likely to expand due to moisture level changes. Prime Oak allows one return visit to site within 12 months from delivery. If ironmongery is not our standard, the joinery will be supplied and fitted by others.

9 SITE FOOTPRINT / ACCESS

In all cases the Customer is responsible for the accuracy of the groundwork or building footprint in relation to their house, garden. The Customer will be responsible for agreeing the footprint setting out prior to excavation of foundations. The Customer shall provide good access (sufficient for the use of heavy goods vehicles and machinery) and shall be responsible for rectifying any damage to any lawn, hedge, driveway or other Customer property caused by the provision of the Services including the use on the Site of any heavy goods vehicles or machinery unless such damage is caused by the negligence of Prime Oak who, in such circumstances shall be responsible for the same. Prime Oak will quote any repair work required but will not be responsible for cost allowed

10. STAINING

All stain marks are natural and will occur and fade with time. Any site protection of goods or fixtures from staining must be done by others e.g. driveway, dwarf walls etc.

11. COMPLIANCE WITH LAW AND REGULATIONS

It shall be the sole responsibility of the Customer to comply in every aspect with all relevant Planning and Building Regulations requirements, statues, order in council, regulations, by-laws or other lawful requirements and to obtain all necessary consents, licenses, permits or authorities which may be required in connection with any work to be performed pursuant to the Contract notwithstanding that Prime Oak may provide assistance in this respect.

12. PAYMENT TERMS

12.1 Upon entering into the Contract the Customer shall forthwith pay to Prime Oak a deposit of 10% of the Contract Price or to a maximum of £5,000.00 + VAT.

12.2 Following the passing of any planning application (whether or not the same has been subject to amendment and/or alteration and/or resubmission by either the Customer or by Prime Oak in agreement with the Customer or by the Planning Authority) the Customer shall within 60 days thereafter pay an additional 30% of the contract price or such sum as is required such that the total payment equals 40% of the contract price (if less than a 10% deposit was paid). In the event that planning permission is not required or Prime Oak are instructed to proceed without such permission the 30% shall be paid forthwith and in any event within 60 days of entering into the Contract. Subject to payment being made in accordance with this clause Prime Oak shall waive such planning fee as it may be entitled to.

12.3 Following payment in accordance with clause 12.2 above Prime Oak shall agree with the Customer a timescale for delivery of the goods.

12.4 The Customer shall pay 50% of the Contract Price within 7 days of notification by Prime Oak that the Goods are available for delivery to the Customer.

12.5 The remaining 10% of the Contract Price shall be paid by the Customer upon completion of the Services.

12.6 Prime Oak may suspend delivery of Goods or the provision of the Services at any time when any sum pursuant to clauses 12.1 to 12.4 above are due but unpaid.

12.7 The Customer shall not be entitled to withhold payment as a result of any failure of any other contractor in complying with the terms of that contractor's agreement with the Customer in connection with the Construction Project.

12.8 All payments made pursuant to this clause 12 shall be made without set-off deduction or counterclaim by the Customer.

12.9 In the unlikely event that planning permission is refused and in the event that any resubmitted or altered application that you instruct us to make is also refused (as opposed to being passed in an amended form from that applied for in which case this clause does not apply) the contract shall terminate and any payment made pursuant to clause 12.1 above shall be refunded to the Customer by Prime Oak less a sum sufficient to cover Prime Oak's (or such third party as they may instruct) reasonable costs and expenses of the planning application which may or may not be limited to the planning fee.

13. STRIKES ETC. (FORCE MAJEURE)

13.1 Prime Oak shall not be liable to the Customer if it is unable to carry out any provision of the Contract for any reason beyond its control including (but without limitations) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock-out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts or materials required for the performance of the Contract ("Force Majeure").

13.2 Prime Oak shall notify the Customer as soon as reasonably practicable after the circumstances preventing performance arise. During the continuance of such event of Force Majeure Prime Oak's contractual obligations shall be suspended until the Force Majeure has fully abated, without liability to the Customer for any loss or damage whatsoever suffered directly or indirectly by reason of any such suspension.

14. DRAWINGS AND PLANS

Whilst Prime Oak will take all reasonable care to ensure that working plans, diagrams and drawings provided to the Customer are adequate to facilitate the erection or installation of the goods in a proper and workmanlike manner, it shall, in those cases where the erection or installation of the goods is not undertaken by Prime Oak, and in relation to any part of the structure not erected by Prime Oak, be the sole responsibility of the Customer to ensure that all working plans, diagrams and drawings meet with the Customer's requirements in every aspect and furthermore, it shall be the sole responsibility of the Customer in such cases to ensure the erection of the goods in a proper and workmanlike manner.

15. WARRANTY

15.1 Prime Oak warrants to the Customer that the structure of the Goods shall be free from material defects for a period of 10 years from the date of completion of the Services and in relation to any other material defect which does not affect the structure of the goods ("material non-structural defect") the Goods shall for a period of 12 months from the date of delivery of the Goods be free from material non-structural defects. For the avoidance of doubt and without limitation a defect is not a defect in the structure of the goods if it is a defect which manifests itself in the electrical or brass fitments to the goods or in the glassware comprised in the goods.

15.2 If within 10 years after delivery a material structural defect or if within 12 months of delivery a material non-structural defect shall be discovered and:-

15.2.1 The Customer notifies Prime Oak in writing within 14 days after discovery giving full particulars and either at its own expense and risk (where the goods have not been erected or installed) returns the goods to Prime Oak: or (at Prime Oak's sole option) permits Prime Oak to inspect the same;

and

15.2.2 Such a defect has arisen from faulty materials employed or workmanship carried out by Prime Oak existing but not discoverable upon inspection at the time of delivery of the goods or (as the case may be) completion of the Services

then Prime Oak shall at its sole option supply replacements or (as the case may be) rectify the defective Services and in which case Prime Oak shall have no further liability to the Customer. The provisions of this clause 15 shall also apply to repaired or replacement goods or Services during the warranty period.

15.3 Prime Oak's liability under this Condition applies only to defects appearing before the Customer makes any modification or alteration to the goods and whilst the goods are being properly used stored or maintained and in particular (but without limitation) Prime Oak shall not be liable in the case of defects in Goods not manufactured by Prime Oak or defects arising from: -

15.3.1 Normal deterioration;

15.3.2 Improper or faulty handling, installation or maintenance other than carried out or authorised by Prime Oak;

15.3.3 Repair of or modification to the goods or Services by or on behalf of the Customer other than by Prime Oak;

15.3.4 Defects in or subsidence to any structure or surface to which the goods are affixed or attached;

15.3.5 Glass damage or breakage not attributable to manufacturing defect;

15.3.6 Failure to treat the goods in accordance with Prime Oak's installation instructions;

[15.4 A replacement unit will be supplied free of charge to replace any double-glazed unit which fails in service as a result of material defect within 10 years of installation.]

15.5 The Customer's rights against Prime Oak under this Condition are not assignable.

15.6 The main frame structural 10 year warranty runs from the date of Completion of the Services but shall not apply nor shall any warranty in this clause 15 apply in circumstances where all or any part of the Contract Price has not been paid in full.

16. LIMITS OF LIABILITY

16.1 Subject to the provisions of clause 16.5 below the goods are supplied strictly on the terms that the Customer has satisfied itself of their suitability for their purpose. The Customer acknowledges that all details in catalogues, quotations and acknowledgements of order or similar documents or by word of mouth and all forecasts of performances, howsoever given, are approximate only and do not form part of the Contract unless set out in the Specification.

16.2 Save in respect of death or personal injury caused by Prime Oak's negligence or liability under the Consumer Protection act 1987 Prime Oak shall not be liable under the Contract, whether by way of indemnity or by reason of breach of contract, tort or breach of statutory duty or by way of representation (unless fraudulent) or any implied warranty, condition or other term or in any other manner for consequential or indirect loss of whatever nature suffered by the Customer or for special damages, loss of use, (whether complete or partial) of the goods, or loss of profit.

16.3 The entire liability of Prime Oak under or in respect of the Contract shall not exceed the Contract Price except as expressly provided by these Conditions.

16.4 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

16.5 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 Customer are not affected by these Terms.

17. GOVERNING LAW

The Contract shall be governed by the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.

18. GENERAL

18.1 Interest will be charged monthly on unpaid accounts at the rate of 4% above the Interbank Rate as published in the Financial Times.

18.2 **Where the Contract is cancelled for whatever reason, the Customer shall indemnify Prime Oak in full against (i) all losses, costs and expenses incurred by Prime Oak up to the time of cancellation and (ii) Prime Oak's loss of profits on the Contract. For the avoidance of doubt a Customer's failure to give instructions to pursue or otherwise progress any necessary application for planning permission shall be an event which Prime Oak shall treat as cancelling the Contract.**

18.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

18.4 No term of this Contract is intended for the benefit of any third party and the parties do not intend that any term of this Contract should be enforceable by a third party either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

18.5 Any notices to be given by the Customer to Prime Oak hereunder or any other communications from the Customer to Prime Oak in respect of the Contract shall be in Writing and shall be effective if received by a director of Prime Oak, but not otherwise.

19. EXPORT

19.1 Where the goods are supplied for export from the United Kingdom, the provisions of this Condition 17 shall (subject to any special terms agreed in writing between the Customer and Prime Oak) apply notwithstanding any other provision of these Conditions.

19.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

19.3 The Goods will be sold ex works.

20. PHOTOGRAPHS

Prime Oak reserves the right to photograph the completed project for our records and/or marketing. Copies will be available at nominal cost but copyright will remain that of Prime Oak.

21. EXCLUSIONS

Quotations for insulation may be subject to change due to building regulation requirements. All changes due to building regulation requirements not shown or included in our quotation are over and above our quotation and will be charged.

Prime Oak do not recommend or guarantee the work of any third parties who may be contracted by the Customer on the Construction Project. No implied/collateral contract exists between the Customer and Prime Oak in respect of the provisions of any Goods or Services by any other party for the purposes of the Construction Project.

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