

PRIME OAK

TERMS & CONDITIONS OF CONTRACT

The following Conditions shall apply to all contracts entered into by or on behalf of Whitlock & Lowe Limited trading as 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 if contracted for the 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 Prime Oak;

“GOODS” means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with the Contract;

“PLANNING EXPENSE” means all costs and expenses incurred by or on behalf of Prime Oak in connection with the initial and all subsequent planning applications (including re-submitted or renewed applications) on behalf of the Customer;

“PRIME OAK” is a trading name of Whitlock & Lowe Ltd (registered in England under number 03453676);

“SERVICES” means the Services as appropriate for delivery, construction/erection of the Goods to be supplied by Prime Oak in accordance with the Contract and as more particularly set out in the Specification together with any other Services which are ancillary (such as planning) and have been agreed to be performed as part of the Contract;

“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, including 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 the Prime Oak element of the Customer’s Construction Project. The Customer 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 and nor are they project managing the work of others. Accordingly Prime Oak is not responsible for the completion of or failure to complete any additional works required which are 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. QUOTATIONS, CONCLUSIONS OF CONTRACTS

3.1 All quotations issued by Prime Oak shall not be considered to be offers placed by Prime Oak but shall be valid for a period of 14 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 by an appropriate and reasonable amount in circumstances where uninterrupted access is not provided.

3.3 The Customer consents to Prime Oak providing the Services as soon as possible and if appropriate within any legislative period allowed for cancellation (“Cancellation Period”).

4. CONSTRUCTION TIME

4.1 Prime Oak will use its best commercial endeavours to deliver the Goods and, where appropriate, to complete the Services in the Specification within a reasonable period of time 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 by any specified date. Unless specifically agreed in Writing between Prime Oak and the Customer time for delivery of the Goods or completion of the Services shall not be of the essence of the Contract.

4.2 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 approvals, permissions, consents or agreements (including party wall agreements) applied for by the Customer or where relevant and by agreement, by Prime Oak on behalf of the Customer. It may not be possible or advisable to proceed with the services until the same are obtained.

4.3 If the Construction Project is one which requires planning permission and Prime Oak are making the planning application as part of the Services then Prime Oak are authorised to proceed to prepare and submit any application on behalf of the Customer and without further instruction. The Customer agrees that such application will be for the use set out in the signed planning questionnaire. If planning permission is refused Prime Oak shall be entitled to resubmit or renew that application or alternatively appeal the refusal. In the event that any resubmission, renewal or appeal is unsuccessful in overturning the refusal, Prime Oak shall within 14 days of receiving confirmation of the same, reimburse to the Customer such monies as have been received towards the Contract Price less the Planning Expense. If the monies received are insufficient to cover the Planning Expense the Customer shall be liable to pay the difference to Prime Oak.

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 the Customer fails to take delivery of the Goods (or any part 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. The Customer acknowledges that the Goods require further protection as set out in the "Caring for Your Oak Framed Building Letter" presented by Prime Oak to the Customer. Any further protection against moisture ingress into timber is the responsibility of and an expense of the Customer.

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.

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, statutes, 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 (at their discretion) assistance in this respect.

12. PAYMENT TERMS

12.1 Upon entering into the Contract the Customer shall forthwith pay to Prime Oak a deposit.

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 and/or renewal and/or appeal by either the Customer or by Prime Oak) the Customer shall within 30 days thereafter pay 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 balance to 40% shall be paid forthwith and in any event within 30 days of entering into the Contract. Subject to payment being made in accordance with this clause Prime Oak shall waive such Planning Expense as it may be entitled to recover or charge for.

12.3 Following payment in accordance with clause 12.2 above Prime Oak shall agree with the Customer a week commencing date for delivery of the Goods and will commence manufacture.

12.4 The Customer shall pay a further 50% of the Contract Price 14 days prior to delivery.

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

12.6 Prime Oak will suspend delivery of Goods or the provision of the Services at any time when any sum pursuant to clauses 12.1 to 12.5 above are due and have not been received by Prime Oak in cleared funds. Prime Oak do not guarantee or warrant that the timing of the resumption of the Services shall be in any way proportional to the length of the Customer's delay in paying and the Customer shall indemnify Prime Oak in respect of any costs incurred by Prime Oak as a result of such delay. Any sum pursuant to clauses 12.1 to 12.5 above which has not been so received on the date due shall incur interest at a rate of 5% per annum above the base rate of Barclays Bank plc from time to time.

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 If the terms of clause 4.3 are engaged and if any altered or varied application that you instruct us to make is also refused (there being the same right to then resubmit or renew or appeal that altered or varied application on the part of Prime Oak) then the reimbursement as set out in clause 4.3 shall apply.

12.10 For supply only contracts the payment referred to within clause 12.2 shall increase to 50%. Clause 12.5 shall not apply to supply only contracts as payment in full needs to be made prior to delivery.

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, Pandemic, 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. Prime Oak shall have no responsibility to provide working plans, diagrams and drawings in respect of works being undertaken by others.

15. WARRANTY

Please refer to the latest Prime Oak warranty guidance at www.primeoak.co.uk as amended from time to time.

16. DATA PROTECTION AND DATA PROCESSING

16.1 For the purposes of data protection legislation, the Customer is the data controller and Prime Oak is the data processor. Prime Oak shall, in relation to any personal data processed in connection with the performance by Prime Oak of its obligations under the Contract, ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to personal data appropriate to the harm that might arise from the unauthorised or unlawful processing or accidental loss, disruption or damage and appropriate and proportionate to the nature of the data to be protected.

16.2 Prime Oak will ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential. Prime Oak shall not transfer any personal data outside of the European economic area unless the prior consent of the Customer has been obtained and appropriate conditions and safeguards compliant with all current legislation are in place.

17. LIMITS OF LIABILITY

17.1 Subject to the provisions of clause 17.5 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.

17.2 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.

17.3 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.

17.4 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 and/or such equivalent provision in the Consumer Rights Act 2015), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

17.5 Where the Goods are sold or the Services provided to a consumer the statutory rights of the Customer are not affected by these Terms.

18. 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.

19. GENERAL

19.1 Interest will be charged monthly on unpaid accounts at the rate of 5% above the base rate of Barclays Bank plc from time to time.

19.2 Where the Contract is cancelled for whatever reason, the Customer shall indemnify Prime Oak in full against

(i) Such third party costs and expenses incurred by Prime Oak up to the time of cancellation and (ii) Prime Oak's loss of profit on the Contract such that they are put into the position they would have been had the Contract proceeded. 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.

19.3 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.

19.4 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.

19.5 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.

20. EXPORT

20.1 Where the goods are supplied for export from the United Kingdom, the provisions of this Condition 18 shall (subject to any special terms agreed in writing between the Customer and Prime Oak) apply notwithstanding any other provision of these Conditions.

20.2 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.

20.3 The Goods will be sold ex works.

21. 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.

22. 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 chargeable. 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. Prime Oak shall not be liable for any loss arising from any defects which are due to defects in or on an adjoining building to which the Goods are attached.

February 2021