

## Towers & Sanders Ltd, T/A LEWIS Access – Terms and Conditions for the Supply of Products

These terms and conditions apply to your order for LEWIS Access' Products. Please read them carefully. If **you are a Consumer**, we would draw your attention in particular to clauses 3.2, 7.4, 7.6 to 7.8, 8.4 to 8.7 and 9.2. If **you are a trade customer**, we would draw your attention in particular to clauses 3.2, 7.4, 7.6 to 7.8 and 11.

### 1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions:

<b>Conditions:</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4.
<b>Contract:</b>	the contract between the Supplier and the Customer for the sale and purchase of the Products comprising of these Conditions and the Order which shall come into existence in accordance with clause 2.2.
<b>Consumer:</b>	an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession who purchases Products from us.
<b>Customer:</b>	the person who purchases the Products from the Supplier, and <b>you</b> and <b>your</b> has the same meaning.
<b>Order:</b>	your order for the Products submitted to us by telephone or by any other order process specified by us from time to time.
<b>Order Confirmation:</b>	the confirmation sent by us to you, as described in clause 2.3.
<b>Product Warranties:</b>	the warranties set out in clause 8.1.
<b>Products:</b>	the aluminium access equipment and/or other products to be provided by us to you, as comprised in the Order.
<b>Specification:</b>	any specification for the Products, including measurements, platform and/or working height and any other requirements, which may be agreed by us and you during the Order Process.
<b>Supplier:</b>	Towers & Sanders Limited (Company Number: 05526105), trading as "LEWIS Access" and <b>us</b> , <b>we</b> and <b>our</b> has the same meaning.

1.2 A reference in these Conditions to:

- 1.2.1 a **person** shall include an individual, company, partnership, and other corporate bodies and associations (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns;
- 1.2.2 **writing** or **written** excludes fax but includes email;
- 1.2.3 the singular shall include the plural and vice versa and a reference to one gender shall be a reference to the other gender and matter and vice versa; and
- 1.2.4 **include**, **including** and in **particular** or anything similar are illustrative only and none of them shall limit the sense of the words following them and each of them shall be deemed to incorporate the expression **without limitation**.

### 2 The Order Process

- 2.1 When you submit your Order, this constitutes an offer by you to purchase the Products in accordance with these Conditions. You are responsible for ensuring that the information given to us in connection with your Order is complete and accurate.
- 2.2 The Order shall be deemed to be accepted when we confirm acceptance of it and/or take payment of the price of the Products (or, if earlier, when we issue the Order Confirmation), at which point, and on which date, the Contract shall come into existence.
- 2.3 We will provide you with an Order Confirmation which will contain a VAT invoice (including a summary of the Products and their Specification), a further copy of these Conditions and any other relevant documentation. The order details contained in the VAT invoice will be incorporated into the Contract. If you notice any discrepancies in the Order Confirmation, please contact us immediately.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3 Specification and requirements**

- 3.1 You are solely responsible for ensuring that any Specification you provide to us is complete and accurate. You acknowledge that whilst we can give you information concerning the nature of our Products, we are not engaged to provide any technical advice with regards to Specification. We may help you choose your Products, but you accept responsibility for making the decision as to type of Product which you wish to purchase.
- 3.2 By placing an Order, you hereby warrant to us that you (and anyone else who may use the Products with you or on your behalf):
  - 3.2.1 have capacity and are able to read and understand the necessary instruction manuals which come with the Products; and
  - 3.2.2 you are competent and able to safely assemble the Products which you are purchasing and there is no reason why you should not undertake such a task.

Please note that we strongly recommend that you undertake training before you attempt to assemble scaffolding products.

### **4 Price**

- 4.1 The price of the Products shall (subject to clause 4.3) be the price agreed in the Order, as set out in the Order Confirmation.
- 4.2 We may occasionally provide quotes for our Products. Please note that due to fluctuations in our manufacturing and other costs, any quotes we provide are only valid for 28 days.
- 4.3 If we accept and process an Order and it becomes clear that there is an obvious pricing error, we may terminate the Contract and refund any sums paid by you.
- 4.4 The price of the Products excludes:
  - 4.4.1 amounts in respect of value added tax (**VAT**), which you will also pay at the prevailing rate (please note that the current rate of VAT at the date on which these Conditions were last updated is 20%); and
  - 4.4.2 the costs and charges of packaging, insurance and transport of the Products and other ancillary expenses in connection with the delivery of the Products which shall be invoiced to the Customer.

If you are a Consumer, we will give you an “all inclusive” price, including VAT and delivery charges during the Order process.

4.5 After the Contract comes into existence, we may, by giving notice to you at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to any factors beyond our control, including:

4.5.1 any request by you to change the delivery date(s), quantities or types of Products ordered, or the Specification (if any); or

4.5.2 any delay caused by any instructions provided by you or a failure by you to give us adequate or accurate information or instructions.

## 5 Payment

5.1 We typically require payment for the Products in advance, before we start manufacturing your Products. You may make payment to us by any of the payment methods set out on our website. We will wait for payment to clear before we process your Order.

5.2 If we agree to any credit or deferred payment terms, then you agree to pay the price of the Products in accordance with the terms of any invoice issued by us to you. Time for payment is of the essence.

5.3 If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

5.4 You agree to pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

## 6 Title and Risk

Title and risk in the Products will pass to you on Completion of Delivery (as defined in clause 7.1). However, if we agree to defer or offer credit payment terms (and you are not a Consumer), then title to the Products shall not pass to you until we have received full payment in cleared funds of the price of the Products.

## 7 Delivery

7.1 We will deliver the Products to the location set out in the Order Confirmation or, if you have opted to collect the Products, you will collect the Products from the location specified by us in the Order Confirmation (**Delivery Location**). Delivery is completed on the completion of unloading of the Products at the Delivery Location (**Completion of Delivery**).

7.2 We will notify you of the date(s) on which the Products are expected to be delivered (**Proposed Delivery Date**). We will use our reasonable endeavours to meet the Proposed Delivery Date, however, you agree that the Proposed Delivery Date is approximate only, and the time of delivery is not of the essence. Due to the quantity of Products typically comprised in an Order, our couriers may make delivery of the Products in several instalments, which may occasionally take place over multiple days.

### Inspection of Products

7.3 At Completion of Delivery, you agree to carry out a full inspection of the Products and you

acknowledge that by signing the form presented to you by the courier, you are confirming that there are no noticeable issues with the Products and that you believe the Products conform with the Product Warranties at the time of the inspection.

- 7.4 If you do notice any issues with the Products upon inspection, please inform the courier at the time, who will work with us to put into place any necessary arrangements to rectify any issues.
- 7.5 If, for any reason, you are not available to carry out an inspection and you have given instructions to us or the courier to leave the Products at the Delivery Location, then you accept that you will assume the risk for the Products at the time they are left at the Delivery Location.

#### Failure to accept delivery

- 7.6 If you are unavailable to accept delivery of the Products on the date of delivery, we will contact you to arrange an alternative delivery date. You agree that you will be responsible for the additional delivery costs incurred in making such further delivery.
- 7.7 If you are unable to accept delivery of the Products on any subsequent agreed delivery date, we may (at our discretion) and without prejudice to our other rights and remedies, terminate the Contract. In these circumstances, we will not be under an obligation to refund the price of the Order, however if you are a Consumer, please note your rights at clause 10.3.
- 7.8 We will not be liable for any delay in delivery of the Products that is caused by any failure by you to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 7.9 If we fail to fulfil the Order and deliver the Products in accordance with these Conditions, our liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. This clause 7.9 shall not apply to Consumers.

## **8 Product Warranties and Defects**

- 8.1 The Supplier warrants that on delivery, the Products shall:
- 8.1.1 conform in all material respects with their description and any applicable Specification;
  - 8.1.2 be free from material defects in design, material and workmanship; and
  - 8.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 8.2 If, having carried out the inspection referred to in clause 7.3, you do not believe that the Products conform with the Product Warranties, please notify the courier. If, following Completion of Delivery, you do not believe that the Products conform with the Product Warranties, please notify us.

#### Non-conforming products: rights for trade customers

- 8.3 Provided that:
- 8.3.1 we have a reasonable opportunity of examining photographs of the Products or, where necessary, carrying out an inspection of the Products, and we agree that the Products did not conform with the Product Warranties at delivery; and
  - 8.3.2 the Customer returns such Products to the Supplier's place of business (at our cost);
- we will, at our sole option, repair or replace the defective Products, or refund the price of the defective Products in full.

8.4 Except as provided in this clause 8, we shall have no liability to you in respect of the Products' failure to comply with the Product Warranties.

Non-conforming products: rights for Consumers

8.5 As a Consumer, you have certain rights in respect of non-conforming Products. Please see clause 14 for details of how you can find out more about your rights.

8.6 Generally, as a Consumer, you are entitled to ask us to repair or replace any defective or non-conforming Products at no cost to you. You may, under some circumstances, be entitled to reject the Products, however please note that if you wish to exercise your short-term right to reject the Products, you are required by law to prove that the Products were defective or did not conform with the Product Warranties at the time of delivery.

8.7 In order to exercise your rights, please contact us by using the contact details on our website or in the Order Confirmation. We will do everything we can to assist with your query and, where necessary, to replace or repair the non-conforming Products, or to provide any other remedy as you may be entitled to by law.

8.8 The Product Warranties shall not affect the terms implied by sections 9 to 11 of the Consumer Rights Act 2015 and the Consumer's statutory remedies under consumer legislation.

Other terms concerning the Product Warranties

8.9 We will not be liable for the Products' failure to comply with Product Warranties in any of the following events:

8.9.1 you make further use of the Products after giving notice that you do not believe they conform with the Product Warranties;

8.9.2 the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if you are a trade customer) any good trade practice regarding the same;

8.9.3 the defect arises as a result of us following any drawing, design or Specification supplied by you;

8.9.4 you alter or repair the Products without our written consent;

8.9.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

8.9.6 the Products differ from their description or the Specification (if any) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

8.10 All other warranties or conditions (statutory or otherwise) relating to the Products, including as to quality, description and fitness for purpose, are excluded except in-so-far as such exclusion is prevented by law. The terms implied by sections 13 to 15 of the Sale of Products Act 1979 are, to the fullest extent permitted by law, excluded from the Contract. This clause 8.10 shall not apply to Consumers.

8.11 The Customer is responsible for ensuring that the Products are suitable for the purpose for which the Customer intends to use them and the Supplier gives no warranty in this regard. Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's brochures or website are produced for the illustrative purposes and no warranty is given as to the design, quality, finish, gauge, or any other qualities of the Products, save where expressly given in these Conditions.

8.12 These Conditions shall apply to any repaired or replacement Products supplied by us.

## **9 Cancellation and Returns**

- 9.1 Due to the fact that our Products are manufactured by us to order, our Products cannot be returned, exchanged or refunded unless some or all of the Products do not comply with the warranty set out in clause 8.1 (and the other terms of clause 8 are satisfied). We may, on occasion, agree to cancel, exchange or refund certain Products, however this is at our sole discretion and is subject to you agreeing to any conditions which we may require.
- 9.2 This clause 9 does not affect any additional rights you may have as a Consumer, however, please note that where Products are manufactured by us to order, under consumer law you will not be able to exercise the statutory right of return within 14 days (known as the “cooling-off” period).

## **10 Termination**

- 10.1 Without limiting our other rights or remedies, we may at our discretion terminate this Contract with immediate effect, or suspend the supply of the Products, if:
- 10.1.1 you fail to pay any amount due to us on the due date for payment;
  - 10.1.2 clauses 4.3 or 7.7 apply;
  - 10.1.3 you commit a material or persistent breach of any terms of the Contract and (if such a breach is remediable) fail to remedy that breach within 14 days of that party being notified in writing to do so;
  - 10.1.4 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - 10.1.5 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 On termination of the Contract for any reason you will immediately pay to us all amounts owing to us. This clause 10.2 shall not apply to Consumers.
- 10.3 If you are Consumer, then upon termination of the Contract for any reason, we will refund to you any payment made for the Products that have not been delivered, provided that we may deduct or charge you reasonable compensation for the net costs incurred as a result of terminating the Contract.
- 10.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force.

## **11 Limitation of liability**

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 11.1.2 fraud or fraudulent misrepresentation;
  - 11.1.3 breach of the terms implied by section 12 of the Sale of Products Act 1979;

- 11.1.4 defective products under the Consumer Protection Act 1987; or
- 11.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

11.2 Subject to clause 11.1:

- 11.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of earnings, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the price set out in the Order.

11.3 Clause 11.2 above shall not apply to Consumers.

## **12 Force Majeure**

The Supplier shall not be liable or responsible for any delay in performing, or failure to perform, any of its obligations under this Contract where such delay or failure to perform results from any cause that is beyond the Supplier's reasonable control, including an act of God, civil disturbance, governmental regulations, enactments and changes in law or regulation, prohibitions or restrictions, strike or industrial dispute, difficulties in obtaining workers or materials, breakdown of machinery, fire or accident, non-availability of, or breach or delay caused by, third party contractors (including delivery agents) and adverse weather conditions.

## **13 Confidentiality**

13.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

13.2 Each party may disclose the other party's confidential information:

- 13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that such persons comply with this clause 13.2; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## **14 Consumers**

The Supplier is under a legal duty to supply Products that are in conformity with consumer legislation. If you are a Consumer, your rights in relation to the Products are set out in the Consumer Rights Act 2015 and other consumer legislation, and nothing in this agreement is intended to or will affect your rights. Your rights are subject to certain exceptions and for more detailed information on your rights and exceptions please visit the Citizens Advice website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or call 03454 04 05 06.

## **15 General**

- 15.1 All intellectual property rights (including design rights, know-how, copyright, domain names and all other intellectual property rights) in or arising out of or in connection with the Products and our trading and brand names shall vest in and be owned by the Supplier absolutely.
- 15.2 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 15.3 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 15.4 We may update these Conditions from time to time and we will publish any revised Conditions on our website. If you have an outstanding Contract with us, we will endeavour to provide written notice to you of any new Conditions which apply to the Contract.
- 15.5 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 15.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 15.7 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business or residence (in any other case), and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 15.8 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one business day after transmission.
- 15.9 No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 15.10 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.