

GORMAN DAMP PROOFING LTD

TERMS & CONDITIONS OF SALE AND SUPPLY



1.0 The following are the only terms and conditions

upon which Gorman Damp Proofing will undertake all and any permitted service and or supply of goods. No variation or alteration to any term or condition as herein contained will be permitted without the express written consent of Gorman Damp Proofing.

2.0 DEFINITIONS

- 2.1 (a) The customer**
Means the person or corporate body who places an order for the goods and or services of the supplier which is acceptable to the supplier.
- (b) The supplier**
Means Gorman Damp Proofing.
- (c) The quotation**
The quoted price for the provision of goods and services by the supplier and as set out overleaf or which are attached to the order.
- (d) The order**
Means the formal acceptance of the quotation by the customer.
- (e) The contract**
Means the agreement between the customer and supplier for the provision of the goods and services set out on the quotation overleaf which is signed by the customer and the supplier.
- (f) Goods**
Means the material items which are provided by the supplier
- (g) Services**
Means the services or works which are provided by the supplier
- (h) Conditions**
Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the customer and the supplier
- (i) Delivery date**
Means the day on which the goods are delivered to or are collected by the customer or the date upon which the service is provided to the customer by the supplier
- (j) Price**
Means the price for goods and or services including carriage, packing, insurance and VAT where applicable.
- (k) Writing**
includes telephone text, telex, cable and facsimile transmission and including transmissions made by computer network including the electronic mail system or network whether the same be transmitted on the "Internet" network or otherwise.
- 2.2 The definitions in these conditions are for assistance and convenience only and form no part of this agreement or these conditions shall not affect their interpretation.

3.0 Formation of agreement

- 3.1 Any order given by the customer shall be accepted entirely at the discretion of the supplier and shall only be accepted upon these conditions. The proposal given on this (or attached to this) quotation will only remain valid for a period of 30 days.
- 3.2 These conditions shall apply to all contracts for the sale of goods or the provision of services by the supplier to the customer and shall override any contrary, different or additional terms and conditions including any terms or conditions contained in or referred to in any order form, purchase order confirmation or any other document or correspondence from the customer.
- 3.3 No variation to these conditions shall be binding unless agreed in writing by the authorised representatives of the customer and the supplier. Any agreed variation may be subject to additional charges.
- 3.4 No order which has been accepted by the supplier may be cancelled by the customer except with the agreement in writing of the supplier and in terms that the customer shall indemnify the supplier in full against all loss (including loss of profits), costs, damages, charges and other expenses incurred by the supplier as a result of the cancellation.
- 3.5 Acknowledgement and acceptance of this contract is made by the customer placing an order within the period specified in paragraph 3.1 above, at which the buyer will be bound by these Terms and Conditions.

4.0 Specification

- 4.1 Any specification, sample, description, representation (whether made orally or otherwise) or any correspondence, statement, promotional or sales literature is given for general information only and shall not form part of this contract or be binding upon the supplier unless agreed in writing by the authorised representatives of the customer and the supplier.

5.0 Price and payment

- 5.1 The price of the goods shall be at the supplier's quoted price. All prices quoted are valid for 30 days from the time of the quotation after which time they may be altered by the supplier after giving written notice to the customer.
- 5.2 The supplier reserves the right to increase the price of the goods at any time to reflect the increase in the costs to the supplier due to any factor beyond the control of the supplier (including though not limited to any increase in the costs of labour, materials, value added tax or other costs of manufacture or increases in price by those who supply the supplier with materials or labour) or due to any change in delivery dates, quantities or specification of the goods which is requested by the customer or any delay caused by any instruction of the customer of the failure of the customer to give the supplier adequate information or instruction.
- 5.3 The costs of pallets and returnable containers will be charged to the customer in addition to the price of the goods but full credit will be given to the customer provided that they are returned undamaged to the supplier before the due payment date.
- 5.4 Payment of the price shall be due within 30 days of the date on the suppliers invoice and the supplier shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the goods has not passed to the customer. Time for payment shall be of the essence of the contract. Title to the goods shall not pass until paid for in full and the customer shall remain a Bailee only until such time.
- 5.5 If the customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the supplier the supplier shall be entitled to:
- 5.5.1 Cancel the contract or suspend any further deliveries to the customer
- 5.5.2 Appropriate any payment made by the customer to such of the goods (or the goods supplied under any contract between the customer and the supplier) as their supplier may think fit (notwithstanding any purported appropriation by the buyer).
- 5.5.3 Charge to the customer interest (both before and after any judgement) on the amount unpaid at the appropriate rate above The Bank of England base rate, until payment in full is made (a part of a month being treated as a full month for the purposes of calculating interest). Compensation charges and debt recovery charges in accordance with the prevalent late payment legislation.
- 5.5.4 The customer shall not be entitled to set off any claim against the purchase price of the goods.
- 5.6 A charge of £12-50 will be made to cover bank charges and administration costs in the event that any cheque submitted by the customer fails to clear on first presentation or is subsequently returned dishonoured.
- 5.7 A 15% handling charge will be levied on all goods accepted for credit.
- 5.8 Goods will not be accepted for credit after 10 days from the date of the invoice.
- 5.9 Credit will not be given unless the original invoice number is quoted.
- 5.10 Exchange units will be charged in full pending the return of the original unit.
- 5.11 In the event that any invoice remains outstanding beyond our normal credit terms, any subsequent invoices will become due and payable immediately, whether the same are due for payment, or not.

6.0 Delivery of goods and provision of services

- 6.1 Any dates or time given for delivery of the goods or provision of services by the supplier is given in good faith but is an estimate only and the supplier shall not be liable for any delay in delivery of the goods or provision of the service howsoever caused.
- 6.2 Delivery shall take place when the goods are delivered to the customer's address or such other place as has been agreed in writing by an authorised representative of the supplier.
- 6.3 The delivery vehicle shall only proceed to the end of the hard road nearest to the agreed delivery address.
- 6.4 If the customer collects any goods from the supplier's premises, delivery shall take place when the customer collects those goods.
- 6.5 The supplier shall be entitled to deliver the goods in instalments. Each delivery shall constitute a separate contract. Any failure by the supplier to deliver any one or more of the instalments in accordance with this contract or any claim by the customer in respect of any one or more of the instalments shall not entitle the customer to treat the contract as a whole as repudiated.
- 6.6 If the customer fails to take delivery of the goods or fails to give the supplier adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the supplier, the supplier may:
- 6.6.1 Store the goods until actual delivery and charge the customer for the reasonable costs (including insurance) of storage; or
- 6.6.2 Sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the customer for the excess over the price under the contract or charge the customer for any shortfall below the price under the contract.

- 6.7 No item(s) will be accepted for credit without the express agreement of the supplier. In any event, no item(s) will be accepted for credit if the item(s) are customer built, built to the customers specification or ordered in from any other manufacturer.

7.0 Acceptance of the goods

- 7.1 The customer shall be deemed to have accepted the goods upon delivery/collection. Claims in respect of damage to goods, wrong delivery or defects shall be made immediately and in any event within 24 hours from the date of delivery and in writing.
- 7.2 Save as is hereinafter provided, after acceptance, the customer shall not be entitled to reject goods which are not in accordance with the contract.
- 7.3 Where goods are not delivered the customer shall within 24 hours of the time of delivery notify the supplier in writing.

8.0 Supplier obligations

- 8.1 Before starting any works the supplier will carry out an inspection to make sure that all works quoted for are appropriate and practicable.
- 8.2 The supplier will carry out all works in accordance with the proposal and any subsequent order or variation.
- 8.3 The supplier may where necessary sub-contract parts of the works to suitably qualified sub-contractors.
- 8.4 The supplier will ensure that all materials supplied comply with safe building practices and are free from defects when used or installed.
- 8.5 The supplier will comply with all relevant health and safety regulations, including (but not limited to) site safety and personal safety of employees, contractors, and visitors.
- 8.6 The supplier will at all times hold appropriate and valid insurance, including public liability insurance.
- 8.7 The supplier shall ensure that all works are carried out with reasonable care and skill and to a reasonable standard.
- 8.8 The supplier shall ensure that where required all relevant codes of practice and building regulations are complied with.
- 8.9 The supplier may at any time refuse or withdraw direct access to the works where required for health and safety reasons.
- 8.10 If during the works any issues are found that require additional time or materials or because of alterations in design, specification or otherwise and this causes an increase in costs the supplier will send the customer a further proposal giving details of the extra costs and will only proceed with the works once the customer's written acceptance has been received.
- 8.11 The supplier shall ensure that all furniture, flooring and any soft furnishings are covered and protected from dust and any other damage before works commence.
- 8.12 Unless the supplier specifically agrees and prices for waste removal in the quotation, the customer shall ensure the safe and proper disposal of all waste materials generated by the works.
- 8.13 Where required the supplier shall ensure that all subsequent building inspections of the completed works are carried out before the supplier leaves the site.

9.0 Customer obligations

- 9.1 The customer will permit the supplier access during normal working hours to carry out an inspection and thereafter to undertake the works according to the programme set out in the proposal.
- 9.2 The customer will remove all items necessary to allow the supplier to commence the works and cover and protect all fixtures and fittings, which cannot be removed.
- 9.3 The customer will be responsible for any redecoration required due to the works which is not expressly included in the quotation.
- 9.4 The customer will obtain all consents, licences, and permissions, (including if necessary planning permission) from landlords, local authorities and others, which are required before the works can commence and in a timely manner so as not to delay the works.
- 9.5 The customer shall ensure that where required all necessary party wall agreements are entered into prior to commencing the works.
- 9.6 Where the customer is required to provide the supplier with measurements or other information such measurements or information must be correct. If the supplier relies on the measurements or information given when preparing the proposal and such measurements or information are incorrect the supplier reserves the right to increase the price to make good any errors or additional work required as a result.
- 9.7 The customer shall only access the immediate area of the works with the supplier's express permission.
- 9.8 If the customer does access the works they (and any third party under their control) shall observe all relevant health and safety regulations and follow the advice and directions of the supplier at all times.

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10.0 Defects and Snagging

- 10.1 The supplier will not be responsible for defective products
- 10.2 The supplier working with the customer shall agree and produce a comprehensive "snagging list" of faults to be corrected before the works end and any final payment is made to the supplier.
- 10.3 The supplier reserves the right to delay completion of any snagging list where payment for work previously and satisfactorily completed is late.
- 10.4 The supplier will carry out any remedial works within a reasonable time schedule and weather permitting, provided that the customer allows access for the remedial works to be completed. Payment of any balance due must be made immediately upon completion of any remedial works.
- 10.5 The customer will not unreasonably prevent access to the supplier but in the event that access is denied for more than 14 days, then the customer will forfeit any right to withhold any outstanding payment, whether or not snagging works have been completed. Any breach of this clause shall constitute a fundamental breach of contract and the supplier entirely reserves the right to demand payment in full, in this event.

11.0 Warranties and liabilities

- 11.1 Subject to the conditions set out below the supplier warrants that the goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of delivery.
- 11.2 The above warranty is given by the supplier subject to the following conditions:
 - 11.2.1 The supplier shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the customer.
 - 11.2.2 The supplier shall be under no liability in respect of any defect in the work arising from works carried out by other trades, fair wear and tear, wilful damage, negligence, ingress of moisture (whether atmospheric or otherwise), abnormal working conditions, failure to follow the suppliers instructions (whether oral or in writing), misuse or alteration or repair of the work without the suppliers approval.
 - 11.2.3 The above warranty does not extend to parts, materials or equipment not provided by the supplier, in respect of which the customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the supplier.
 - 11.2.4 Any claim by the customer which is based on any defect in the quality or condition of the goods or works or their failure to correspond with specification shall (whether or not delivery is refused by the customer) be notified to the supplier within 24 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after the discovery of the failure or defect. If delivery is not refused and the customer does not notify the supplier accordingly, the customer shall not be entitled to reflect the goods and the supplier shall have no liability for such defect or failure.
- 11.5 Where any valid claim in respect of any of the goods or works which are based on any defect in the quality or condition of the goods or works or their failure to meet specification is notified to the supplier in accordance with these conditions, the supplier shall be entitled to replace goods (or the work in question) free of charge or, at the supplier's sole discretion, refund to the customer the price of the goods (or any proportionate part of the price), but the supplier shall have no further liability to the customer.
- 11.6 Except in respect of death or personal injury caused by the supplier's negligence, the supplier shall not be liable to the customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract for any indirect special, or consequential loss of damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the supplier, its employees or agents, or otherwise) which arise out of or in connection with the supply of the goods or services by the buyer, and the entire liability of the supplier under or in connection with the contract shall not exceed the price of the goods.

12.0 Force Majeure

- 12.1 The supplier shall not be liable to the customer or deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the supplier's obligations in relation to the goods, if the delay or failure was due to any cause beyond the supplier's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the supplier's reasonable control:
 - 12.1.1 Act of God, explosion, flood, tempest fire or accident,
 - 12.1.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 12.1.3 Acts, restrictions, by-laws, prohibitions or measures of any kind on the part of any government parliamentary or local authority;
 - 12.1.4 Import or export regulations or embargo;
 - 12.1.5 Strikes, lockouts or other industrial action or trade disputes (whether involving employers of the supplier or any third party);
 - 12.1.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 12.1.7 Power failure or breakdown in machinery.

13.0 Risk and damage

- 13.1 Risk of damage to or loss of the goods shall pass to the customer:-
 - 13.1.1 In the case of goods to be delivered at the supplier's premises, at the time when the supplier notified the customer that the goods are available for collection: or
 - 13.1.2 In the case of goods to be delivered otherwise than at the supplier's premises, at the time of delivery or, if the customer wrongfully fails to take delivery and the passing of risk in the goods, at the time when the supplier has tendered delivery of the goods.
- 13.2 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property and the goods shall not pass to the buyer until the supplier has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the supplier to the customer for which the payment is then due.
- 13.3 Until such time as the property in the goods passes to the customer, the customer shall hold the goods as the supplier's fiduciary agent and Bailee and shall keep the goods separate from those of the customer and third parties and properly stored, protected and insured and identified as the supplier's property, but shall be entitled to resell or use the goods in the ordinary course of business.
- 13.4 If the customer sells the goods in such manner as to pass to a third party a valid title to the goods the customer shall hold the proceeds of sale on trust for the supplier.
- 13.5 Until such time as the property in the goods passes to the customer the supplier shall be entitled at any time to require the customer to deliver up the goods to the supplier and, if the customer fails to do so forthwith, to enter upon any premises of the buyer or any third party where the goods are sold and repossess the goods.
- 13.6 The customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods that remain the property of the supplier, but if the customer does so all monies owing to the customer to the supplier shall (without prejudice to any other right or remedy by the supplier) forthwith become due and payable.
- 13.7 Nothing herein shall constitute the customer the agent of the supplier for the purpose of any sub-sale of the goods.
- 13.8 Notwithstanding the preceding provisions of this clause, the supplier may, at his sole option and at any time by notice in writing to the customer transfer the property and the goods to him.

14.0 Disputes and complaints

- 14.1 In the event of any dispute or complaint regarding the works or materials which are provided by the supplier, the customer may in the first instance give notice to the supplier verbally.
- 14.2 Upon receipt of any verbal complaint, the supplier undertakes to discuss and inspect the nature of the complaint and will endeavour to provide a remedy. The customer will ensure that the supplier has access to carry out any remedial works.
- 14.3 In the event that an agreement cannot be reached then the customer must make a formal complaint in writing, setting out the specific details of the complaint or dispute and this must be sent to the supplier within seven days.
- 14.4 If upon receiving formal notice of complaint the supplier cannot suggest a remedy or denies any liability for any alleged defect or complaint, then the matter will either:
 - (a) be referred to the supplier's governing body for inspection Or:
 - (b) be subject to survey by a surveyor appointed by RICSAny costs incurred will be borne jointly by both parties and both parties agree to accept the decision of any appointed surveyor. Any refusal to comply with this clause will constitute a fundamental breach of contract.

15.0 Insolvency of the Customer If;

- 15.1 If the customer makes any voluntary arrangement with his creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction): or
- 15.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the customer: or
- 15.1.3 The customer ceases, or threatens to cease to carry on business: or
- 15.1.4 The supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the customer and notifies the customer accordingly
- 15.2 If this cause applies then, without prejudice to any other right or remedy available to the supplier, the supplier shall be entitled to cancel the contract or suspend any further deliveries under the contract without liability to the buyer and if the goods have been delivered but not paid for the price shall immediately become due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 15.3 If this clause applies the supplier by its employees or agents shall be entitled to enter on or into any land, buildings or vehicles where the goods or part of them are situated to retake possession of the same (and the customer shall for such purposes notify the supplier of the whereabouts of the goods).
- 15.4 If this cause shall apply then the customer shall notify the supplier forthwith.

16.0 General

- 16.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.2 No waiver by the supplier of any breach of contract by the customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.
- 16.4 This contract shall be governed by the laws of England and Wales and the buyer agrees to submit to the jurisdiction of the English courts.

17.0 Right to cancel

(off-premises and distance selling only)

- 17.1 Under the terms of this Contract you have the right to cancel within 14 days starting the day after the date the contract is entered into. Your cancellation rights are as more particularly described in the attached "Cancellation Instructions". If you do wish to cancel please use the attached cancellation form.

18.0 Cancellation Instructions

- 18.1 Rights to cancel
- 18.2 You have the right to cancel this contract within 14 days without giving any reason.
- 18.3 To exercise the right to cancel you must inform us "Gorman Damp Proofing Limited" of your decision to cancel this contract by a clear statement (e.g. a letter sent by post or email) by letter to 56 Broadway, Eccleston, St Helens, WA 10 5QG, or by email to: info@gormandampproofing.co.uk. You may use the attached model cancellation form, but it is not obligatory.
- 18.4 To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

19.0 Effects of cancellation

- 19.1 If you cancel this contract, we will reimburse to you all payments from you not including the costs of deliver (except for the supplementary costs arising if you chose a type of delivery other than the lease expensive type of standard delivery offered by us).
- 19.2 We may make a deduction from the reimbursement for loss in value of goods supplied if the loss is the result of unnecessary handling by you.
- 19.3 We will make the reimbursement without undue delay, and not later than:-
- 19.4 If there were no goods supplied, 14 days after the day on which we are informed about your decision to cancel this contract.
- 19.5 We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise: in any event, you will not incur any fees as a result of the reimbursement.
- 19.6 If you requested to begin the performance of services during the cancellation period, you shall pay us an amount, which is in proportion to what has been performed until you have communicated us your cancellation from this contract, in comparison with the full coverage of the contract.