

ASCOT TIMBER BUILDINGS LTD
TERMS & CONDITIONS OF CONTRACT
JANUARY 2016

The following conditions shall apply to all contracts entered into by or on behalf of Ascot Timber Buildings Ltd (ATB)

1. DEFINITIONS

1.1 In these terms

“ATB” means Ascot Timber Buildings Limited (registered in England under number 4512379);

“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 the purchase of the goods and the supply of the services;

“CONTRACT PRICE” means the Price of the goods and services to be supplied by ATB 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 ATB’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 is the seller to supply in accordance with these conditions

“SERVICES” means the services of construction/install of the goods or a timber frame building to be supplied by ATB 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 ATB

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“WRITING” and any similar expression, comparable means of communication including electronic mail

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

1.3 The headings in their terms are for convenience only and shall not affect their interpretation

2.GENERAL

2.1 Acceptance by ATB 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 ATB 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 acknowledge and confirms that in entering into his contract the customer is aware that the customer maybe required to contract directly with other contractors separately and independently from ATB in order to complete the construction project and recognises that ATB are not providing or contracting to provide any other work that the supply of the goods and services hereunder. Accordingly, ATB is not responsible for the completion of or failure to complete any additional works required completing the construction project which is not included with the goods or services to be supplied hereunder

2.3 ATB shall sell and the customer shall purchase the goods in accordance with ATB’s written quotation, subject in either case to these conditions

2.4 ATB employees or agents are not authorised to make any representations concerning the goods or services unless confirmed by ATB 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.ESTIMATES, QUOTATIONS, COMPLETION OF CONTRACTS

3.1 All estimates/quotations issued by ATB shall not be considered to be offers placed by ATB but shall be valid for a period of 30 days from date thereof or such longer period as maybe 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 ATB reserves the right to increase the contract price in circumstances when uninterrupted access is not provided

3.3 The contract may not be cancelled by the customer without prior written consent of a Director of ATB

3.4 The customer consents to ATB providing the services as soon as possible and if appropriate within the 14-day period allowed for cancellation (“Cancellation Period”) set out in the consumer contracts (information cancellations and additional charges regulations 2013. The customer acknowledges that as a



consequence of this consent, should it exercise its right to cancel within the cancellation period it shall be required to pay ATB for the services providing during the cancellation period up to the date of cancellation

4.CONSTRUCTION TIME

4.1 ATB 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 ATB shall not be liable for any loss or damage whatsoever suffered by the customer as a result of any failure by ATB, for whatsoever reason, to deliver the goods or to complete the services within the time so specified. Unless specifically agreed in writing between ATB 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 ATB until all and any approvals, permissions or consents, necessary for the construction project have been obtained, including, without limitation, any planning permissions or building regulations consent. ATB 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 ATB. The customer shall be responsible for ensuring the accuracy of any permissions or consents applied for by the customer or by ATB on behalf of the customer

4.3 If the customer fails to obtain all and any necessary consents for the construction project, (i) the customer shall, at ATBs request appoint ATB as its agent for the purpose of obtaining such consents and/or (ii) ATB may at its sole discretion notify the customer in writing that the contract shall determine forthwith and without any further liability being incurred by either party. ATB 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 ATB immediately upon receiving ATB's invoice for the same.

5.MATERIALS & OWNERSHIP

5.1 The property of the goods, whether fixed or unfixd, 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 ATB (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 ATB

5.2 Until such time as the property in the retained goods passes to the customer, ATB shall be entitled at any time to require the customer to deliver up the retained goods and shall be deemed irrevocably to authorise ATB 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 ATB in accordance with this clause 4 shall be without prejudice to all of any of ATB'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 ATB, 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 ATB) 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 ATB, the customer shall nonetheless pay to ATB 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 ATB in replacing any such goods and in reinstating or restoring any such work provided, however, the customer shall not be responsible for any damage loss or sustained arising solely from the negligence of ATB, 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 ATB delivers the goods to a place designated by the customer

7.2 Claims against ATB for short or incorrect delivery shall be notified to ATB in writing within 7 days of the receipt of the goods. ATB shall make good shortage or errors in delivery within a reasonable time thereafter and ATB shall not 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 ATB as set out above

7.3 All delivery dates are week commencing and are estimate only

7.4 In the event of the customer fails to take delivery of the goods (or any instalment of the goods) or fails to give ATB 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 ATB's fault) then without limiting any other right or remedy available ATB 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.CARING FOR YOUR BUILDING

The customer acknowledges that the building and associated materials will require maintenance and attention as detailed in after sales guide

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 with their ground worker. 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 ATB who, in such circumstances shall be responsible for the same. ATB will quote any repair work required but will not be responsible for cost allowed.

10.STAINING

All stain marks are natural and will occur. Any site protection of goods, fixtures or concrete must be done by others e.g. drive ways, dwarf walls concrete aprons etc.

11.COMPLIANCE WITH LAW & REGULATIONS

It shall be the sole responsibility of the customer to comply in every aspect with all relevant planning and building regulation requirements, statues, order in council, regulations, by-laws or other lawful requirements and to obtain all necessary consents, licences, permits or authorities which may be required in connection with any works to be performed pursuant to the contract notwithstanding that ATB may provide assistance in this respect.

12.PAYMENT TERMS

12.1 Payment terms will be set out on quotation

12.2 Following payment in accordance with clause 12.1 above ATB shall agree a timescale for delivery of the goods

12.3 ATB may suspend delivery of goods or services at any time when any sum pursuant to clauses 12.1-12.2 above are due and have not been received by ATB in cleared funds and ATB cannot guarantee that the timing of the resumption of the services shall be proportional to the length of the customer's delay in paying and the customer shall indemnify ATB in respect of any costs incurred by ATB as a result of such delay. Any sum pursuant to clauses 12.1-12.2 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 Natwest from time to time

12.4 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



12.5 All payments made pursuant to this clause 12 shall be made without set-off deduction or counterclaim by the customer

13. STRIKES ETC. (FORCE MAJEURE)

13.1 ATB 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 the 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 ATB shall notify the customer as soon as reasonably practicable after the circumstances preventing performance arise. During the continuance of such event of Force Majeure ATB'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 & PLANS

Whilst ATB will take all reasonable care to ensure that working plans, diagrams and drawings provided to the customer are adequate to facilitate the erection and 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 ATB, and in relation to any part of the structure not erected by ATB, 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 workman like manner

15. GUARANTEE

15.1 ATB guarantees to the Customer that the **structure (not including roof coverings)** of the buildings that comply with building regulations shall be free from material defects for a period of 5 years from the date of the final completion invoice 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 the final completion invoice be free from material non-structural defects. ATB cannot be held responsible for warping, shrinkage, cracking and expansion or the like.

15.2 Clause 15.1 does not apply if a fault arises from:

15.2.1 Normal deterioration

15.2.2 Improper or faulty handling, installation or maintenance other than carried out as authorised by ATB

15.2.3 Repair of or modification to the goods or services by or on behalf of the customer other than ATB



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

15.2.5 Storm damage

15.2.6 Damage caused by horses or livestock including poor stable/animal management

15.2.7 Failure to treat the goods in accordance with ATB recommendations in after sales guide

15.2.8 If a fault arises due to any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the goods after risk has passed to customer

15.2.9 If within 5 years after installation a material structural defect or within 12 months a material non-structural defect should be discovered and: -

15.2.10 The customer notifies ATB in writing within 7 days after discover giving full particulars and either at its own expense and risk (where goods have not been erected or installed) returns the goods to ATB: or (at ATB's sole option) permits ATB to inspect the same; and

15.2.11 Such a defect has arisen from faulty materials employed or workmanship carried out by ATB existing but not discoverable upon inspection at the time of delivery of the goods or (as the case may be) completion of the services ATB shall at its sole option supply replacements or (as the case may be) rectify the defective service and in which case ATB shall have no further liability to the customer. The provision of this clause 15 shall also apply to the repaired or replacement goods or services during the warranty period.

15.2.12 If the customer has not paid for the services and/or products in full by the date of the defect in services and/or products is notified to ATB then ATB has no obligation to remedy the defect in terms of this clause 15.

15.2.13 The customer rights against ATB under this condition are not assignable

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 ATB negligence or liability under the Consumer Protection Act 1987 ATB 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 ATB 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 ATB in full against

(i) all losses, costs and expenses incurred by ATB up to the time of cancellation and (ii) ATB's loss of profits on the contract. For the avoidance of doubt a Customer's failure to give instructions to pursue or otherwise process any necessary application for planning permission shall be an event which ATB 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 terms of this contract is intended for the benefit of any third party and the parties do not intend that at 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 ATB hereunder or any other communications from the customer to ATB in respect of the Contract shall be in writing and shall be effective if received by a director of ATB, but not otherwise.

19. EXPORT

19.1 Where the goods are supplied for export for the United Kingdom, the provisions of this Condition 17 shall (subject to any special terms agreed in writing between the Customer and ATB) apply notwithstanding any other provisions 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 shall be sold ex-works.



20.PHOTOGRAPHS

ATB reserves the right to photograph the completed project for our records and/or marketing

21.CUSTOMER OBLIGATIONS

21.1 The customer will provide access to ATB and nominated ATB personnel as specified in these terms and conditions and will co-operate with all reasonable requests made by ATB

21.2 The customer will provide electricity and water to ATB for the completion of services

21.3 The customer shall ensure the site and the access complies with all health and safety requirements and does not endanger the safety and welfare of ATB operatives

21.4 The customer is responsible for identifying the location of underground utility type pipes and cannot hold the supplier responsible for damage to these should this occur during the provision of the timber building or goods

22. WARRANTY

22.1 Some of ATB chosen manufacturers will provide warranty, and at the time of delivery correspond to the description given by the manufacturer

22.2 The manufacturer will warrant that the services will be performed using all reasonable skill and care

22.3 Without prejudice to clause 22.1 and 22.2 and except as expressly stated in these conditions, all warranties whether express or implies, by operation of law or otherwise are hereby excluded in relation to the service and/or products to be provided by the supplier.

23.EXCLUSIONS

Quotations for insulation and fire retardant materials 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.

ATB are not, under any circumstances, a party to any contract or arrangement entered into when you select one of our recommended tradesman or professional based on ATB's introduction. We accept no responsibility for any goods or services or information (including any prices) provided by this introduction. In particular, we shall have no liability for any loss, damage, quality of workmanship or professional advice.