

# **Paxton Restoration Ltd**

## **Terms and Conditions**

Prepared by:  
**Paxton Restoration Limited**

9<sup>th</sup> February 2010



# Contents

<b>Paxton Restoration Ltd</b>	<b>1</b>
<b>Terms and Conditions</b>	<b>1</b>
<b>Contents</b>	<b>3</b>
<b>1.Definitions</b>	<b>4</b>
<b>2.Estimates and Order Acceptance</b>	<b>5</b>
<b>4.Works Specification and Boundaries</b>	<b>6</b>
<b>5. Variations to Works</b>	<b>7</b>
<b>6. Completion of Works</b>	<b>7</b>
<b>7.Delay</b>	<b>8</b>
<b>8.Terms of payment</b>	<b>8</b>
<b>9.Title &amp;Risk</b>	<b>9</b>
<b>10.Price</b>	<b>10</b>
<b>11.Cancellation</b>	<b>10</b>
<b>12.Disputes</b>	<b>10</b>
<b>13.Termination</b>	<b>11</b>
<b>14.Warranties</b>	<b>12</b>
<b>15.Indemnity and limitations of liability</b>	<b>13</b>
<b>16.General</b>	<b>13</b>

# 1. Definitions

- 1.1 "Additional Works" means any additional Goods mutually agreed and accepted in Writing between the Customer and Paxton.
- 1.2 "Commissions Queue" means the list governing the order in which Paxton undertakes the Orders of Customers, managed entirely at Paxton's own discretion.
- 1.3 "Conditions" means these terms and conditions of supply.
- 1.4 "Contract" means the contract between the Customer and Paxton for the supply of the Goods, consisting of the signed and accepted Estimate and these Conditions.
- 1.5 "Customer" means the person or persons to whom Paxton may agree to supply Goods in accordance with these Conditions.
- 1.6 "Goods" means any products and/or services to be provided by Paxton to the Customer in accordance with these Conditions.
- 1.7 "Notice" means notification by either party in Writing.
- 1.8 "Notice of Variation" means a document raised by Paxton to note agreed variations, including additions and deletions to the Order, agreed and signed by both the Customer and an authorised Paxton representative.
- 1.9 "Order" means the order issued by or on behalf of the Customer to Paxton for the purchase of Goods by signed Estimate.
- 1.10 "Paxton" means Paxton Restoration Ltd and any trading division or subsidiary or authorised associated Contractor.
- 1.11 "Practical Completion" means where Works are deemed complete for the purpose of the Contract, irrespective of outstanding defects and the point where defects liability begins.
- 1.12 "Estimate" means the Estimate produced by Paxton following any Survey as an estimate of Works for the Customer.
- 1.13 "Satisfaction Notice" means the acknowledgement document signed by the Customer that proves irrevocably that Works are complete as a final certificate.
- 1.14 "Schedules" means any and all of the Schedules of these Conditions.
- 1.15 "Snagging List" means the list of minor remedial Works agreed between parties at the scheduled end of Works.
- 1.16 "Survey" means any site visit by Paxton in support of the Estimate process, up to the acceptance of any Estimate by the Customer.
- 1.17 "Variations" means any additions or deletions to the Works, including additional materials, labour, transportation and waste removal costs, permits, fees and logistics charges.
- 1.18 "Website" means Paxton's website located on the internet at domain location [www.paxtonrestoration.co.uk](http://www.paxtonrestoration.co.uk) or such other website as Paxton may operate from time to time.
- 1.19 "Works" means the Goods mutually agreed and accepted in Writing between the Customer and Paxton. This also applies to Additional Works.
- 1.20 "Writing" includes without limitation emails, faxes, Website based information, acknowledgements, invoices and any non-transitory form of visible reproduction of words to the primary addresses of the Customer and Paxton.
- 1.21 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2. Estimates and Order Acceptance

2.1 The Estimate is a fixed price for the Works, having been created using all information available from the Survey or Surveys, but subject to Variations.

2.2 Acceptance of the Estimate shall mean acceptance of these Conditions.

2.3 Acceptance shall be made by signing the Estimate document and returning it in Writing. The Estimate shall then become the Order for Works.

2.4 A deposit of 40% shall become due immediately on acceptance of the Estimate. Funds must clear before the commencement of Works.

2.5 Following acceptance of the Estimate, Paxton will contact the Customer to inform the Customer as to their entry position on the Commissions Queue and will advise on the current lead time for the commencement of Works, without committing to a specific date. Paxton will make best endeavours to accommodate the reasonable requests of the Customer for timings wherever possible, subject to Paxton's own criteria. As the Order progresses to the top of the Commissions Queue, Paxton will arrange a mutually acceptable date and time for the commencement of the Works.

2.6 All Orders placed by the Customer whether written or oral shall constitute an offer to buy from Paxton at the given Estimate price, within the time specified, under these Conditions, subject to availability of the Goods and to acceptance of the Order by Paxton's authorised representative. No Order submitted by the Customer shall be deemed to be accepted by Paxton unless and until confirmed in Writing by Paxton. Any Estimate given by Paxton does not constitute an offer capable of acceptance. These Conditions shall apply in respect of all contracts for the supply of Goods of any nature whatsoever by Paxton to the Customer.

2.7 All Orders are accepted and Goods supplied subject to these Conditions only. No terms or conditions put forward by the Customer shall apply. No amendment of these Conditions will be valid unless confirmed in Writing on or after the date hereof by Paxton's authorised representative.

2.8 The Customer shall be responsible for ensuring the accuracy of the Order and for giving Paxton any necessary access and information to enable Paxton to perform the Contract.

2.9 Where the Customer fails to obtain the necessary permissions or authorisation from Building Regulations and Planning Authorities before commissioning Works, or fails to comply with the required due process of those organisations, Paxton shall be entirely indemnified from any encumbrance, lien, withholding or consequential loss without exception.

2.10 Any specification for the Goods shall be those set out in Paxton's Estimate (if accepted by the Customer) or the Customer's Order (if accepted by Paxton).

2.11 Paxton reserves the right to make any changes and additions in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements, which do not materially affect their quality or performance. Paxton reserves the right by notice in Writing to the Customer to alter these Conditions.

2.12 Any advice or recommendation given by Paxton or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Paxton is followed or acted upon entirely at the Customer's own risk, and accordingly Paxton shall not be liable for any such advice or recommendation which is not so confirmed.

2.13 Paxton reserves the right to sub-contract any part or all of the Works, over which these Conditions shall apply.

2.14 Works undertaken at weekends or public holidays may be liable to additional charges at Paxton's discretion, without Notice.

## 3. Project Commencement

3.1 On arrival for comment of Works on the first day of the project, a further 30% of the agreed Estimate value (inclusive of VAT) shall be payable. Paxton retains the unequivocal right to withdraw and withhold Goods until payment has been issued.

3.2 Payment of the balance due, including any adjusted balance is due on the final Day. For the avoidance of doubt, where variations to the schedule mean that it is not possible to calculate the Invoice balance on the final day, the remaining 30% of the Estimate balance must be paid and an additional Invoice or Credit Note will be raised for the adjustment in due course.

## 4. Works Specification and Boundaries

4.1 Paxton will undertake the repair, renovation and replacement of sash windows and other interior and exterior joinery projects.

4.2 All new woodwork will be finished with industry standard primer unless otherwise specified by the Customer.

4.3 Additional decoration to a final gloss finish is not included with the Works. Paxton can made recommendation of professional decorators who can contract directly with the Customer on request.

4.4 With regard to pre-existing unbonded and unsound plaster which is disturbed during window renovation, for the avoidance of doubt Paxton shall not be responsible or liable for replastering Works to the areas adjacent to the window Works. Any replastering can be offered but only at additional charge as it requires a third party trades professional or entirely at Paxton's discretion. Paxton will make good small areas of plaster directly adjacent to the box frame as long as the plaster is sound.

4.5 Where secondary glazing is in situ, and needs to be removed before Paxton can gain access to the primary window scheme, Paxton may request that the Customer instructs the Company who installed the secondary glazing for the Customer to remove and replace the secondary glazing at the Customer's expense before and after Paxton's Works. Alternatively Paxton may make a charge to remove and replace the secondary glazing scheme. However, any breakages, replacement parts or other service charges shall be payable by the Customer and Paxton shall be indemnified from additional cost.

4.6 Standard scraping back and preparing windows for re-decoration means preparation Works to the flat faces of the windows and box frames, but not the mouldings, glazing bars, lay rails and architrave. Should this higher level of detailed preparation be required, this must be discussed and negotiated in advance as the increased labour element will increase the charge.

4.7 Where the Customer is supplying window furniture, Paxton shall be able to charge additionally for the time and materials required to install and make-good the new installation.

4.8 For the avoidance of doubt, Paxton will not offer the betterment of existing installations and infrastructure within the scope of remedial Works. All new and improved items must be negotiated and agreed at additional charge.

4.9 Paxton will provide protection to the furniture and fittings in the direct area of the Works using protective coverings and other means.

4.10 Paxton will leave the working area clean and tidy at the end of each working day, and ensure that the working area is comprehensively cleaned at the conclusion of the Works. The definition of sufficient cleaning shall be determined by Paxton.

4.11 It is the responsibility of the Customer to remove the fixtures and fittings in the immediate and adjacent area to the Works, including but not limited to furniture, removable décor and objects, curtains, pelmets and window boxes. Paxton will not remove or replace or disconnect and reconnect the Customer's fixtures and fittings. It is the Customer's responsibility to ensure that all fixtures and fittings are adequately protected. Where the Customer has not made provision for protection and/or removal of such items, Paxton shall be indemnified from any damage incurred during the progress of Works.

4.12 Paxton will arrange for the removal of waste generated and accumulated by Paxton's Contract and Works only.

4.13 Paxton will not protect furnishings and fittings for dust and damage in rooms apart from the immediate working area. Such protection remains the Customer's responsibility and risk, and Paxton will be indemnified against any claim. It is the Customer's responsibility to ensure that carpets and flooring in rooms and transit areas are adequately protected. Offers to clean fixtures and fittings are made at Paxton's sole discretion.

4.14 Unless otherwise agreed, the Goods are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified. Paxton reserves the right to increase its quoted or listed price or to charge accordingly in respect of any Orders accepted for Goods of non-standard specifications and in no circumstances will it consider cancellation of such Orders or the return of the Goods. Paxton reserves the right to supply in substitution to the Goods or component parts thereof goods or component parts of goods the specifications of which are equivalent or superior to the Goods.

4.15 Determination as to the extent of the remedial and preparation Works that shall be regarded as Works for carpenters and Works for decorators shall be specified entirely at the discretion of Paxton.

4.16 Paxton shall not be liable for the cost of further maintenance of Customer electronic alarm systems, surveillance and other security systems following the Works, and shall be indemnified from any such claim.

4.17 Although Paxton will make best endeavours to ensure that Customer premises remain secure at all times, where faulty security devices or unsafe security management policies result in unauthorised third party access, loss, theft or other damage, Paxton shall be indemnified from claim.

4.18 Removal and reconnection of all telecommunications cables and equipment is the sole responsibility of the Customer and Paxton shall not be responsible to alteration or damage to cables affected during the window Works, whether originally scheduled or additional Works.

4.19 Where the Customer fits window furniture, security or other items to the windows, if single or double glazed Glass is damaged, Paxton shall not be liable for repair and replacement.

4.20 Paxton shall not be liable for pre-existing damage to the glass or seals of single or double glazed windows.

## 5. Variations to Works

5.1 Although Paxton makes best endeavours to provide a complete analysis and list of Works with an Estimate, nevertheless Variations to Works commonly occur. Paxton bears no responsibility for the cost of additional unforeseen, progressively dilapidated and un-noticed Works which come to light once the project is underway. These items are subject to discussion, agreed remedial action and cost between the Customer and Paxton.

5.2 Where Additional Works are identified during the Works, which have not been identified in the Estimate, Paxton will give Notice. Where the requirements are discussed and agreed, Paxton shall produce either an additional Estimate for large Works or request signature of a Notice of Variation, which the Customer must accept in Writing, as with the original Estimate. Additional Works will be added to the Invoice. In exceptional cases a further deposit payment may be required, at Paxton's discretion.

5.3 Where it is not possible to reach the Customer to discuss and sign a Notice of Variation, the right of determination in absentia rests entirely with Paxton to ensure security and/or complete Works in a timely way. Paxton warrants that determination of the requirement for Works shall not be inappropriately judged or advised. Paxton will make best endeavours to communicate with the Customer by telephone or in Writing prior to making a determination.

5.4 Variations shall include but not be limited to additional items, deleted items, superceded processes, the cost of additional materials, materials collection time, delivery cost, waste removal, transport related costs, congestion charge, parking permits fees and costs.

5.5 Where the cost of materials supplied to Paxton increases between the time of the acceptance of the Estimate and the Performance of the Works, Paxton reserves the right to charge additional fees.

## 6. Completion of Works

6.1 Paxton's authorised representatives will determine when the end of the Works have been reached and verified, issuing a certificate of Practical Completion. The final 30% payment becomes due and must be paid on the day of issuing of the certificate, irrespective of outstanding defects. It is the responsibility of the customer to make themselves or a representative available to inspect the Works and present payment. Final review shall not be delayed by non-attendance.

6.2 If required, Paxton will collaborate with the Customer to produce a Snagging List of small remedial Works, agreed in Writing. Definition of the Snagging List must be completed within seven days or such claims shall cease to become valid.

6.3 Paxton may agree at its sole discretion to allow a retention against the completion of 'snagging' which shall not exceed 10% of the Invoice value including VAT under any circumstances. In this occurrence, completion of the Snagging List items and subsequent signature of the Satisfaction Notice by the Customer shall be deemed to be the point of completion of the project.

6.4 If Variations have been clearly communicated in time for the final day, Paxton will present a final Invoice which will account for the Variations along with the final 30% of the project. In this instance, it is the full outstanding balance that shall require payment.

6.5 If additional costs, adjustments and expenses come to light after the final day, Paxton will issue an additional Invoice for the items, payment for which is immediately due for payment.

6.6 Where the Customer fails to provide access or facilities to allow Paxton to complete the Contract Works or otherwise close the project, Paxton will issue a certificate of Practical Completion, entirely at Paxton's own discretion, to give Notice of the closure of the project. Payment in full shall become immediately due. Where Notice of closure is enforced before all the items of the Contract Works have been completed, Paxton will determine, at its sole discretion, the proportion of the Works that have been completed and give Notice of the proportion of charges, which shall become immediately due.

## 7. Delay

7.1 Any delay, including failure to provide access at reasonable times as agreed, caused by the Customer or beyond the reasonable control of Paxton are subject to additional charges, at the discretion of Paxton, without Notice.

7.2 Prevention of access to the Working area by obstacles or any other reasons, including but not limited to failure of the Customer to remove furniture and other infrastructure, or negligence by the Customer, will incur additional charges, at the discretion of Paxton, without Notice.

7.3 Where Paxton decides that inclement weather delays the commencement or progress of Works, no extra charges will be made for the lost time.

7.4 Storage of Products comprising part of the Works may be liable to additional charges, at the discretion of Paxton, without Notice.

7.5 Payment of additional charges will be included with the next stage or final payment in settlement of the Order.

7.6 Paxton bears no liability for delays to commencement dates for the Works.

7.7 Paxton shall be entitled to time extensions to perform the Contracted Works, at Paxton's discretion, without penalty.

7.8 The suspension of Works or access by the Customer, and/or refusal to collaborate further with Paxton to allow completion of the Contract, shall be viewed as a breach of Contract and immediately become subject to Paxton's enforced closure procedure, whereupon payment shall also become immediately due.

## 8. Terms of payment

8.1 Unless Paxton shall have previously agreed an alternative in Writing with the Customer, the Customer shall pay a 40% deposit inclusive VAT, immediately on acceptance of the Estimate, and must clear before the commencement of Works. A further 30% inclusive of VAT shall be payable on arrival of the first day of the project. A final 30%, or the adjusted Invoice value is payable on the final day with the issuing of a certificate of Practical Completion, irrespective of any outstanding defects. Any Variations will be included in a final Invoice. Any Variations notified to the Paxton office after the final day shall be payable on a separately raised Invoice, with payment due on receipt.

8.2 Where the total value of the Order is greater than £4,000, Paxton may require the Customer to negotiate payment milestones based on date or project stage, agreed in Writing by parties.

8.3 All Variations are also bound by these Conditions.

8.4 Paxton will provide Estimates, Invoices and Receipts in Writing. **Cheques shall be made in favour of Paxton Restoration Ltd.**

8.6 If the Customer fails to make payment in accordance with these Conditions then without prejudice to any other right or remedy available to Paxton, Paxton shall be entitled to:-

8.6.1 cancel, suspend any further Works, or suspend any services due to the Customer under the Contract or under any other contract between the Customer and Paxton, or require the provision of such financial security as Paxton may deem necessary before making further supply;

8.6.2 appropriate any payment made by the Customer to such of the Goods as Paxton may think fit;

8.6.3. charge interest on any money which is not paid under the Contract by the due date for its payment. Such interest shall accrue and be calculated on a daily basis, both before and after any judgement (unless a court orders otherwise) and until the date on which it is actually paid, at a rate equivalent to 5% per month. Interest shall be compounded on the first day of each month and be payable on demand.

8.6.4 charge the Customer all the costs incurred by Paxton for recovering the debt from the Customer.

8.7 The Customer shall not be entitled to delay or withhold payment on account of any alleged claim.

8.8 Paxton discovers that it will be unable to fulfil an order where the Customer already paid; payment will be refunded in full within 7 days.

8.9 On completion of the Works, Paxton will ask the Customer to sign the Satisfaction Notice, which is an acknowledgement in Writing that Works have been completed satisfactorily. Signature of the Satisfaction Notice shall not be unreasonably withheld.

## 9. Title & Risk

9.1 Goods shall not pass to the Customer until Paxton has received payment in full of the price of the Goods and all other Goods supplied by Paxton.

9.2 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Paxton has tendered delivery of the Goods. The obligation rests with the Customer to adequately insure the Goods to their replacement value.

9.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Paxton'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 Paxton's property. The Customer shall not purport to be the owner of the Goods.

9.4 Until such time as the property in the Goods passes to the Customer, Paxton shall have absolute authority to repossess, sell or otherwise deal with or dispose of all any or part of the Goods in which title remains vested in Paxton.

9.5 The Customer shall deliver up the Goods to Paxton on demand and, if the Customer fails to do so immediately Paxton, or its authorised agents and representatives may enter any premises of the Customer (using reasonable force if necessary) without notice or any third party where the Goods are stored or part installed and repossess the Goods. The Customer shall on request inform Paxton of the precise location of the Goods, supplying a written schedule of said locations within seven days.

9.6 Paxton shall be entitled to seek a court injunction to prevent the customer from selling, transferring or disposing of such Goods

## 10. Price

10.1 The price for the Works shall be the price accepted in the Estimate, which shall become the Order, subject to additional charges arising for Additional Works with VAT chargeable.

10.2 Any marketing materials, catalogues, price lists, Website, or any other advertising literature or material as used by Paxton are intended only as an indication as to price and the range of goods offered and no prices, descriptions or other particulars shall be binding on Paxton and any typographical, clerical or other error or omission shall be subject to correction at any time without liability on the part of Paxton.

10.3 All prices are given by Paxton at the time of the Order on an ex-works basis and unless otherwise agreed the Customer is liable to pay for the cost of delivery, including but not limited to transport, packaging and insurance. Paxton may, by giving Notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost to Paxton, which without limitation, shall include any of the following circumstances:

10.3.1 where the Customer has requested any variation whatsoever to the quantity, capacity, form, content, style or description of the Goods, or has requested an earlier or a later delivery date; or

10.3.2 where steps are required to be taken by Paxton to comply with any statutory provisions from time to time in force; or

10.3.3 where increases are made in the price charged to the Customer of any equipment or goods bought in from outside suppliers so as to enable Paxton to fulfil the Contract, such as any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture; or

10.3.4 where the supply of the Goods is suspended, varied or otherwise delayed by the Customer, including without limitation, any delay caused by:

10.3.4.1 any variation of or to the Contract by the Customer; or

10.3.4.2 failure to provide Paxton with sufficient information to enable Paxton to satisfy its obligations under the Contract.

10.4 Estimates in Writing are valid for 30 days only, after which time they may be renewed with subsequent price variations to account for the change in cost of materials, goods and services at Paxton's discretion.

10.5 Valid expenses with regard to the Works may include but are not limited to fuel for trade vehicles, parking fees, permit costs, congestion charge, and other means of travel, subsistence, special deliveries, waste removal, packaging and transit Insurance.

## 11. Cancellation

11.1 Full cancellation can be made by either Party with 28 days prior Notice from the scheduled start date. Where the Customer fails to give the required Notice, additional cancellation charges may apply.

11.2 In accordance with Consumer Protection Regulations, Paxton offers a seven day cooling off period, which ends seven working days after written confirmation of the Order (a signed Estimate) is received.

11.3 The Customer shall be fully liable for the costs of any Goods already manufactured partially or in full at the time of cancellation.

11.4 Paxton shall irrevocably be entitled to claim sufficient payment sufficiently to enable recovery of all costs for materials, and labour and profit margins from part payments already made and any other required additional payments, on demand.

## 12. Disputes

12.1 Where the Customer prevents Paxton from completing the Contract Works or undertaking remedial Works to complete the Contract, Paxton will issue a certificate of Practical Completion and full payment shall become due.

12.2 Any dispute about the progress of Works or satisfactory completion of Works must be delivered within seven days from the date of Paxton's issue of a certificate of Practical Completion in Writing.

12.3 If not satisfied, the Customer must allow Paxton and/or its agents an opportunity to inspect and undertake remedial Works. If the Customer does not allow this, Paxton shall not be liable in respect of defects in the Works carried out.

12.4 If the Customer fails to pay in full and continues to prevent Paxton from completing Works the Customer shall be considered in breach of Contract. The Conditions of Title & Risk (clause 9) shall apply. Paxton will be entitled to undertake legal enforcement action to recover Goods and payment.

12.5 Where payment is not received and indication of a dispute is not received by Paxton in Writing, Paxton will initiate legal proceedings or debt recovery proceedings to recover unpaid monies for Works completed.

12.6 Paxton reserves the right to reclaim Goods until such time as they have been paid for in full, including any payments made on the Customer's behalf.

12.7 Paxton will not accept the validity of any unauthorised third party "expert" reports procured by the Customer from independent sources unless Paxton has had the prior opportunity to validate and verify the source in Writing and agreed to accept the source as a valid reference of arbitration in Writing.

## 13. Termination

13.1 This Contract may be terminated immediately by notice in Writing:

13.1.1 by Paxton if the Customer fails to pay any sums due hereunder by the due date or is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or if a petition is presented or resolution passed for its liquidation, or if it makes an arrangement with its creditors (including a moratorium under the Insolvency Act 2000 or a scheme or arrangement under section 425 Companies Act 1985) or a petition for an administration order is presented or if a receiver, administrative receiver or manager is appointed over all or any part of its assets or if it is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or ceases or threatens to cease business trading or does or suffers anything analogous to any of the foregoing in any other jurisdiction;

13.1.2 by the party not in default, if the other party fails to perform any of its obligations and such failure continues for a period of 14 days after Notice in Writing thereof;

13.1.3 by Paxton if the Customer commits or is party to dishonest or fraudulent conduct in relation to this Contract; Any termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party.

13.2 Upon termination, Paxton shall have the right to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13.3 If any of the Goods have not been delivered Paxton may 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 or cancel without prior notice any outstanding Order or make delivery subject to payment in advance.

13.4 Paxton has a zero tolerance policy towards harassment of Staff, subcontractors and any Paxton representative. This includes Verbal abuse and intimidation, threat or use of actual physical force. If such harassment is exhibited by the Customer or representative of the Customer, Paxton reserves the right to withdraw all personal from the customer's site without notice or penalty and give notice of termination of the Contract with immediate effect by Notice in Writing. Paxton reserves the right to charge the full Contract value. Paxton shall also retain the right to charge for the cost of reorganising and rescheduling materials, equipment and human resources which have already been allocated to the project. Paxton shall be indemnified from all customer claims and charges relating to consequential losses and other impairments to the Customer's project schedule, following a Harassment issue.

# 14. Warranties

14.1 Paxton warrants that it is able to carry out the Works detailed in the Estimate.

14.2 Paxton warrants that the Goods will correspond with their specification at the Estimate and will be free from defects in material and workmanship.

14.3 Paxton will offer five years Guarantee of repair and replacement for the Works specified in the Order. For the avoidance of doubt, Paxton will not be liable to the failure of any Works not included in the Order.

14.4 The warranty in condition 12.2 does not apply;

14.4.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

14.4.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage), improper installation or maintenance, abnormal working conditions, failure to follow Paxton's instructions (whether oral or in writing), misuse (including without limitation use which was not reasonably contemplated by Paxton at the time when the Contract was entered into) or alteration or repair of the Goods without Paxton's approval.

14.4.3 in respect of any matter regarded as a fault due to a modification, alteration, or replacement required by a change in the requirements of any governmental or regulatory society, institute, authority or other body.

14.5 Paxton shall replace or repair free of charge Goods (or the part in question) which do not meet the warranty in condition (14.2) or, at Paxton's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) but Paxton shall have no further liability to the Customer. Appropriate charges to the price of the Goods before refund shall include, without limitation, the cost of manufacture, purchase, installation, delivery, labour, materials, removal and disposal.

14.6 Failure by the Customer to allow completion of the Contract or pay any sum owing will render the applicable warranty null and void.

14.7 The Customer shall be responsible for the cost of carriage and insurance in respect of all Goods returned by the Customer to Paxton for repair or replacement. In the case of valid warranty claims Paxton shall refund any such reasonable costs. Repaired or replaced Goods shall be delivered to the original point of delivery.

14.8 Paxton reserves the right to levy a surcharge in the event of returned Goods being found not to be defective.

14.9 Paxton shall be entitled at its absolute discretion to refund the price of the defective Goods in the event that such price shall have already been paid by the Customer to Paxton, or, if such price has not been paid, to relieve the Customer of all obligation to pay the sum by the issue of a credit note in favour of the Customer in the amount of such price.

14.10 In respect of all Goods supplied to Paxton by a third party supplier, Paxton will pass on the benefit of any warranty given to Paxton by the third party supplier and will (on request) pass on the details of the terms and conditions of such warranty.

14.11 Paxton shall not be responsible for its failure to perform any of its obligations under this contract, if such failure is the result, directly or indirectly, of the Customer's or third party's products or service.

14.12 The Customer warrants that they are authorised to commission the Works by signing and returning the Estimate, this placing the Order.

14.13 The Customer warrants that the contents and infrastructure of rooms are the sole responsibility and risk of the Customer, and that Paxton is indemnified from any loss or damage to such contents and infrastructure during the Works period.

14.14 Paxton will provide a five year guarantee on all new joinery and a one year guarantee on all repairs. This is subject to fair wear and tear and other external causes, such as subsidence, heave and landslip. Such guarantee is only valid after payment has been received in full. The guarantee will be null and void if Works are subject to misuse or negligence, are modified or tampered with by a third party.

14.15 Where the Customer chooses to decorate but does not complete weather-resistant gloss finishing, Paxton shall not be liable.

14.16 It is the Customer's sole responsibility to discharge the account.

## 15. Indemnity and limitations of liability

15.1 Subject as expressly provided in these Conditions all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

15.2 Where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Customer are not affected by these Conditions.

15.3 Save as otherwise expressly provided in these Conditions, the following provisions set out Paxton's entire liability for any act or omission whether in contract, misrepresentation, pre-contractual misrepresentation, fraudulent misrepresentation), tort (including negligence) or otherwise howsoever arising.

15.4 Paxton shall not be liable for delay caused by non-attendance of Paxton personnel or late delivery or non delivery of materials.

15.5 However, failure to obtain or grant access once starting date and time are agreed leaves the Customer liable to the payment of resources, labour, material, plant, tools, fees and expenses committed and deployed to the project plan.

15.6 Paxton shall bear no liability for the failure of customer supplied materials, including any consequential damage, fault or loss.

15.7 Paxton shall bear no liability where recommended Works have not been carried out by the Customer.

15.8 Paxton's liability to the Customer for death or injury resulting from negligence shall not be limited.

15.9 Paxton accepts liability to the Customer for damage to the tangible property of the Customer resulting from the negligence of Paxton not exceeding £1,000,000 for any one incident or series of incidents arising from a common cause.

15.10 Paxton shall not be liable to the Customer for any increased costs, expenses, loss of data, use, profits, goodwill, business, contracts, revenues or failure to achieve anticipated savings, or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of a claim alleged or an action brought by a third party) even if such loss were reasonably foreseeable or Paxton had been advised of the possibility of the Customer incurring the same.

15.11 Paxton's entire liability for all claims relating to or in connection with the Goods shall be limited to the amount paid by the Customer for the Goods.

15.12 Save as otherwise expressly provided in these Conditions, the Customer shall indemnify Paxton in respect of any cost, claim, expense, loss or liability suffered or incurred in connection with any claim made by any person in connection with the Goods.

15.13 Paxton shall not be under any liability for any failure to perform any of its obligations under the Order due to Force Majeure. For the purpose of this Condition, 'Force Majeure' means: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Paxton or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

15.14 For the avoidance of doubt, Paxton shall only accept liability for remedy to its own Works.

## 16. General

16.1 The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.

16.2 No forbearance, delay or indulgence by Paxton in enforcing any of its rights shall prejudice or restrict the rights of Paxton and no waiver of any such rights or of any breach by the Customer shall be deemed to be a waiver of any other right or any later breach. No waiver by Paxton shall be effective unless in Writing.

16.3 In the event of any of these conditions (or any part of any of them) being found to be void or unenforceable for any reason, the remaining conditions (and the remainder of the condition concerned) shall remain in full force and effect.

16.4 Paxton's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Paxton in writing. The Customer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the contract for any such representations which are not so confirmed (unless such representations were fraudulently made). Any advice or recommendation given by Paxton or its employees or agents to the Customer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by Paxton is followed or acted upon entirely at the Customer's own risk and, accordingly, Paxton shall not be liable for any such advice or recommendation which is not so confirmed.

16.5 These Conditions constitute the entire agreement between Paxton and the Customer concerning the supply of Goods and Works and shall replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation). There can be no change to these Conditions except by written authority from Paxton Directors.

16.6 The Customer shall fully and effectively indemnify Paxton against the total expense to Paxton arising out of the Customer's breach or breaches of these Conditions.

16.7 These Conditions shall be governed and construed in accordance with English Law and the parties submit to the non-exclusive jurisdiction of the English courts.

16.8 No contract will create any right enforceable (by virtue of the contracts (Rights of Third Parties) Act 1999) by any person not identified as Paxton or Customer.

16.9 All correspondence may be served to Paxton Restoration Ltd, 171 Anerley Road, London SE20 8EF.