

**ACCORDIAL TERMS AND CONDITIONS OF SALE**  
**CONDITIONS FOR THE SERVICE AND/OR REPAIR WORK**  
**CARRIED OUT BY ACCORDIAL**

**1. Contract Terms**

In these Conditions:

- (a) "the Seller" means Accordial;
- (b) "the Buyer" means the individual, firm, company or other party with whom the Seller contracts;
- (c) "Service" means a health and safety maintenance check as outlined in the document entitled "Terms of Service";
- (d) "Repair" means any parts required by the Buyer in order to repair their Product;
- (e) "Parts" means the Parts (including any installation of the Parts) which the Seller is to supply in accordance with these Conditions;
- (f) "Product" means Acoustic Movable Partition, Sliding Folding Partition or Concertina Partition;
- (g) "the Contract" means any contract under which the Seller provides a Service and/or Repair to the Buyers Product.

**2. Basis of the sale**

- (a) No order in pursuance of any quotation or otherwise shall be binding on the Seller unless such order is accepted by the Seller. Any contract made between the Seller and the Buyer shall be subject to these conditions and save as aftermentioned no representative or agent of the Seller has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract will bind the Seller only if in writing and signed by an authorised signatory of the Seller.
- (b) Unless otherwise agreed in writing by the Seller these conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Buyer in his order or pre-contract negotiations or any inconsistent terms by law or trade custom, practice or course of dealing.
- (c) Where the Seller has not given a written acknowledgement of the Buyer's order these conditions will nonetheless apply to the Contract provided that the Buyer has had prior notice of them.
- (d) The Seller reserves the right to correct any clerical or typographical errors made by its employees at any time.
- (e) Any advice or recommendation given by the Seller or its employees or agents as to the storage, application or use of the Buyers Product which is not confirmed in writing by the Seller is followed and acted upon entirely at the Buyers own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

**3. Orders and specifications**

- (a) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer, and for giving the Seller any necessary information relating to the Service and/or Repair within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

(b) The description of what a Service consists of can be found in the document entitled 'Terms of Service'. Any Repairs and the quantity and description for the Parts shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

(c) If the Parts are made to a specification, instruction or design supplied by the Buyer or any third party on behalf of the Buyer then;

I. The suitability and accuracy of that specification, instruction or design will be the Buyer's responsibility;

II. The Buyer will indemnify the Seller against any infringement or alleged infringement of any third party's intellectual property rights including, but not limited to patent, design right, registered design, trademark, trade name or copyright and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country;

III. The Buyer will indemnify the Seller against any loss, damage or expense in respect of any liability arising in any country by reason of the Parts being made to such specification, instruction or design.

**4. Quotations and Payment**

(a) Unless otherwise stated in writing by the Seller payment of the Sellers invoices shall be made by the Buyer not later than 30 days after the end of the month in which the relevant invoice date falls notwithstanding that property in the Parts has not passed to the Buyer and any separate payment agreed for a Service and/or Repair shall be made not later than 30 days after the date of which the Service and/or Repair is completed or, in the event that the Service and/or Repair cannot be carried out due to the act or default of the Buyer, its servants or agents, when the Seller is available to carry out the Service and/or Repair. Time for payment shall be of the essence of the Contract.

(b) If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above NatWest PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

**5. Performance of the Contract**

(a) For the purposes of this clause "an intervening event" shall mean any such event as is described in sub-clause (5.f) hereof.

(b) The Seller expressly reserves the right to subcontract all or part of the work described in the quotation or offer without notice to the Buyer, it being understood that the Seller will be responsible for such work in all respects as if it had been carried out by the Seller. The Buyer shall at the request of the Seller sign all correctly compiled Completion Certificates and similar documentation presented by such subcontractors as if they had been presented by the Seller.

(c) Before a Service and/or Repair is carried out by the Seller the Buyer shall at its own expense and responsibility;

(i) Carry out all works that may be necessary in order to prepare the location at which the Service and/or Repair is to be undertaken and/or any Parts that are to be installed for their receipt and installation, including

but not limited to the provision of a level, even and sound floor to permit the proper and safe usage of the goods and provide sufficient light, power, water and other services including secure and waterproof storage facilities for the Parts pending installation and the Sellers or its agents plant, equipment, tools and materials required in connection with such installation save as otherwise agreed obtain all necessary statutory or other consents and approvals for the installation of the Parts.

(c) Should the Seller be delayed in or prevented from carrying out a Service and/or Repair due to any cause whatsoever beyond the reasonable control of the Seller, the Seller shall be at liberty to terminate the Contract or suspend the order placed by the Buyer on the Seller without incurring any liability for any loss or damage arising therefrom, but without prejudice in any such case to rights accrued to the Seller in respect of any Service and/or Repair already made.

(d) While the Seller will endeavour to carry out a Service and/or Repair by any date or within any period agreed upon with the Buyer, such dates and periods are estimates only given in good faith and the Seller will not be liable for any failure to carry out a Service and/or Repair by any such date or within such a period. Time for the performance of the Contract shall not be of the essence of the Contract. Moreover, the Seller shall be entitled to defer the Service and/or Repair until any monies due from the Buyer have been received.

(e) While the Seller will endeavour to complete the Service and/or Repair on the agreed date or within any period agreed upon with the Buyer, an intervening event may occur during the agreed date or within any period agreed upon with the Buyer that may prevent any Service and/or Repair from completion. If such an event occurs, the Seller will attempt to contact the Buyer to discuss the problem before any action is taken. The Seller shall have no liability for any defect or failure of the Product if an intervening event should occur.

(f) An intervening event shall be any of the following;

i. Any cause whatsoever beyond the reasonable control of the Seller;

ii. The original manufacturer of the Product or another Service and/or Repair contractor of whom is different to the Seller may have used non-standard Parts on the Buyers Product to which the Seller is unfamiliar with and as a result will prevent the Seller from completing the Service and/or Repair on the agreed date or within any period agreed upon with the Buyer.

**6. Failure to Pay, Cancellation or Deferment**

(a) For the purposes of this clause "an intervening event" shall mean any such event as is described in sub-clause (6.e) hereof.

(b) Cancellation by the Buyer will only be accepted at the discretion of the Seller and in any case on condition that any costs or expenses incurred by the Seller up to the date of cancellation and all loss or damage resulting to the Seller by reason of such cancellation will be paid by the Buyer to the Seller forthwith. Acceptance of such cancellation will only be binding on the Seller if in writing and signed by an authorised signatory of the Seller.

(c) Any costs incurred by the Seller due to suspension or deferment of any order by the Buyer or in the event that the Buyer defaults in giving instructions for the performance of the Contract, any Service and/or

Repair will be payable by the Buyer forthwith on demand.

(d) If there shall be an intervening event, the Seller may, within a reasonable time thereafter, defer or cancel any further Services and/or Repairs and treat the Contract of which these conditions form part as determined but without prejudice to its rights to the full purchase price for Services and/or Repairs carried out and damages for any loss suffered in consequence of such determination.

(e) An intervening event shall be any of the following,

i. failure by the Buyer to make full payment when it becomes due;

ii. breach by the Buyer of any of the terms or conditions of the Contract;

iii. the Buyer's proposal for or entry into any composition or arrangement with its creditors;

iv. the presentation against the Buyer of any Petition for a Bankruptcy Order, Administration Order, Winding-Up Order, or similar process;

v. the appointment of an Administrative Receiver or Receiver in respect of the business or any part of the assets of the Buyer.

vi. the Seller forming the reasonable opinion that the Buyer has become or is likely in the immediate future to become unable to pay the Buyers debts (adopting, in the case of a Company, the definition of that term set out in Section 123 of the Insolvency Act 1986).

**7. Limitations of Liability**

(a) Subject as expressly provided in these Conditions, and except when the Parts 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.

(b) Where the Parts are sold under a consumer transaction (as Defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

(c) Any claim by the Buyer which is based on any defect in the quality of the Service and/or Repair or its failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of the Service and/or Repair (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Service and/or Repair is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Service and/or Repair and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Service and/or Repair had been completed in accordance with the Contract.

(d) Where any valid claim in respect of any Service and/or Repair which is based on any defect in the quality of the Service and/or Repair carried out or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to at the Sellers sole discretion carry out another Service and/or Repair free of charge or, refund to the Buyer the price of the Service and/or Repair (or a proportionate part of the price), and the Seller shall have no further liability to the Buyer.

(e) The Seller shall not be liable to the Buyer 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 consequential loss or damage (whether for loss of profit or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the Service or Repair, except as expressly provided in these Conditions.

(f) The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Service and/or Repair, if the delay or failure was due to any cause beyond the Seller's reasonable control.

**8. Intellectual Property**

(a) Any drawing, plan, design work, specification or other material including any retained or stored on any computer software either prepared or supplied by the Seller for any purpose whatsoever in connection with the Service and/or Repair provided to the Buyer shall at all times remain the property of the Seller and shall not be used or copied by the Buyer for any purpose other than that immediately connected with the Service and/or Repair.

**9. Export**

(a) Where any Parts are supplied to the Buyer for export from the United Kingdom whether with the Seller's knowledge or not, the provisions of this clause (subject to any special terms agreed in writing between the Buyer and Seller) shall apply notwithstanding any other provisions of these Conditions.

(b) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Parts into the country of destination and for the payment of any duties thereon.

(c) Unless otherwise agreed in writing between the Buyer and the Seller, the Parts shall be delivered ex works and the Seller shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979.

**10. General**

(a) The proper law of all contracts with the Seller shall be English law which shall govern in all respects the construction and effect of such contracts and of these conditions. The Buyer agrees that in the event of any dispute arising out of the Contract or the performance thereof the Buyer will submit to the jurisdiction of the English court.

(b) The headings to the paragraphs of these conditions are for ease of reference only and shall not affect the interpretation or construction thereof.

(c) If any provision of these conditions is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.

(d) Failure by the Seller to enforce strict compliance with these conditions by the Buyer will not constitute a waiver of any of the provisions of these conditions.

(e) 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.