

Insulation  
SOUTHERN EUROPE

# Terms & Conditions of Sale



## Kingspan Insulation, S.A.U. Terms & Conditions of Sale

This Contract is between the Buyer (as specified in the Kingspan Order Confirmation) and Kingspan (as defined in these Conditions).

### 1 Interpretation

1.1 In these Conditions including the Kingspan Order Confirmation unless the context otherwise requires, the following words have the following meanings:

“Kingspan”:	Kingspan Insulation, S.A.U. (Registered in Girona Commercial Registry, under Tax Identification Number A-17014002).
“Buyer”:	The natural or legal person as specified in the Kingspan Order Confirmation who agrees to purchase the Goods from Kingspan and to whom Kingspan agree to sell the Goods.
“Conditions”:	The terms and conditions of sale of Kingspan set out in this document and includes any special terms and conditions agreed in writing between the Buyer and Kingspan in accordance with the procedure set out in these Conditions.
“Kingspan Order Confirmation”:	Document issued by Kingspan, once Kingspan and the Buyer have agreed on all of terms of the Order, with details of the Goods ordered and Buyer’s details. The Order Confirmation will be sent on-line throughout a medium that attests the reception of the communication (for instance, e-mail sent with read receipt).
“Confidential Information”:	The content of these Terms and Conditions, of the Contract, as well as, its terms and conditions and the information related to them. Also, all information that may reasonably be considered confidential will have that status.
“Contract”:	The contract for the purchase and sale of the Goods by the Buyer from Kingspan.
“Delivery address”:	The address where the Goods are to be delivered by Kingspan (if Kingspan are to deliver) more specifically as detailed in the Kingspan Order Confirmation, and if none is specified then the Buyer shall collect the Goods from Kingspan at a location nominated by Kingspan.
“Delivery Constraint”:	Any and all limitations preventing free access of standard-length articulated vehicles from the point of manufacture or storage of the Goods by Kingspan to the unloading location on the Delivery address more specifically as set out by the Buyer in the Kingspan Order Confirmation.
“Delivery Price”:	The cost of carriage of the Goods from the place of manufacture or storage by Kingspan to the Delivery address if Kingspan are to deliver the Goods to the Delivery address.
“Order”:	The Goods to be purchased by the Buyer, agreed upon by the Buyer and Kingspan, throughout any of the means allowed (phone, e-mail or letter).
“Estimated Delivery Date(s)”:	The date or dates as specified in the Kingspan Order Confirmation when Kingspan shall endeavour to deliver the Goods to the Delivery address.
“Force Majeure”:	Any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of supplies or subcontractors.
“Goods”:	Manufactured building and insulation products, building and insulation systems or ancillaries which Kingspan is to supply to the Buyer in accordance with these Conditions, and as more specifically set out in the Kingspan Order Confirmation.
“Made to Order Goods”:	Goods to be produced by Kingspan that will be customized to the Buyer’s needs and specifications. It is a manufacturing process in which the production of the Goods will be subject to the previous information and specifications to be provided by the Buyer.
“Standard Goods”:	Goods that will not need to be designed, customized or tailored to Buyer’s specific needs.
“Goods Price”:	The price for the Goods “FCA” (Incoterms 2010).
“Total Price”:	The sum of the Goods Price and the Delivery Price (if any) included in the Order Confirmation.
“Writing”:	Includes letter, cable, facsimile transmission and communication by email but only when in accordance with these Conditions.

1.2 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.

1.3 The headings in these Conditions are for reference only and shall not affect their interpretation.

### 2 Basis of the Sale

2.1 Kingspan shall sell and the Buyer shall purchase the Goods for the Total Price in accordance with these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No purported variation to these Conditions or any subsequent variation shall be binding on Kingspan unless agreed in writing (which in this case shall not include email) by the head of the legal department for the time being of Kingspan or a Main Board Director of Kingspan and agreed in writing by the authorised representative of the Buyer.

2.3 Kingspan’s employees or agents are not authorised to make any representations or warranties concerning the Goods unless confirmed by Kingspan in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Kingspan shall be subject to correction without any liability on the part of Kingspan.

2.5 The Order agreed upon by the Buyer and Kingspan shall constitute agreement by the Buyer to these Conditions and to the terms of the Contract.

2.6 Any advice or recommendations given by Kingspan or its employees or agents to the Buyer or its employees or agents as to storage, application, installation or use of the Goods, which is not confirmed in writing by Kingspan, is followed or acted upon entirely at the Buyer’s own risk, and accordingly Kingspan shall not be liable for any such advice or recommendation which is not so confirmed.

### 3 Orders & Specifications

3.1 **Kingspan’s acceptance:** The Order shall be agreed between Kingspan and the Buyer throughout any of the means allowed, and, once agreed, shall constitute Kingspan’s acceptance to the Order and to its conditions.

3.2 **Buyer’s acceptance:** Notwithstanding the above, Kingspan will always send the Buyer an Order Confirmation which will include all of the Order’s terms agreed upon by Kingspan and the Buyer. Provided the Buyer does not declare otherwise within forty-eight (48) hours from the Order Confirmation’s reception, shall constitute Kingspan’s acceptance to the Order and to its conditions. The Buyer shall be responsible to Kingspan for ensuring the accuracy of the information submitted by the Buyer given in the Kingspan Order Confirmation, and for giving Kingspan any further necessary information relating to the Goods within a sufficient time to enable Kingspan to perform the Contract in accordance with its terms.

3.3 The Buyer shall be responsible to Kingspan for ensuring the accuracy of the information submitted by the Buyer given in the Kingspan Order Confirmation, and for giving Kingspan any further necessary information relating to the Goods within a sufficient time to enable Kingspan to perform the Contract in accordance with its terms.

3.4 The quantity, quality and description of and any specification for the Goods shall be those set out in the Kingspan Order Confirmation.

3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by Kingspan in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Kingspan against all loss, damages, costs and expenses awarded against or incurred by Kingspan in connection with or paid or agreed to be paid by Kingspan in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from Kingspan’s use of the Buyer’s specification.

3.6 Kingspan reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or which do not materially affect their quality or performance.

3.7 **Standard Goods Orders cancellation fees:** Cancellation fees shall be applicable to Standard Goods Orders in the case the Buyer cancels the Kingspan Order Confirmation once the Forty-Eight (48) hours mentioned in clause 3.2. have elapsed. The cancellation fees shall be of the 5% of the Total Price included on the Kingspan Order Confirmation. In any case, the mandatory minimum amount in the event of cancellation under the terms herein shall be of Five Hundred Euro (€500).

3.8 **Made to Order Goods cancellation fees:** Cancellation fees shall be applicable to Made to Order Goods Orders in the case the Buyer cancels the Kingspan Order Confirmation once the Forty-Eight (48) hours mentioned in clause 3.2. have elapsed. The cancellation fees shall be of the total price incurred in the purchasing of the materials needed to produce the Made to Order Goods included on the Kingspan Order Confirmation. In any case, the mandatory minimum amount in the event of cancellation under the terms herein shall be of Five Hundred Euro (€500).

3.9 Modification fees shall be applicable in the case the Buyer modify the quantity of Goods ordered or the Estimated Delivery Date incorporated on the Kingspan Order Confirmation. In any of such cases, Kingspan will have the right to apply modification fees up to a total amount of Two Hundred and Fifty Euro (€ 250).

#### 4 Price of the Goods

- 4.1 The Buyer shall pay the Total Price of the Goods to Kingspan. Kingspan may quote a price for the Goods. All such prices quoted are valid for 30 days only and are on an ex-works basis after which time they may be altered by Kingspan without giving notice to the Buyer.
- 4.2 Kingspan reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Total Price to reflect any increase in the cost of raw material or delivery cost to Kingspan which is due to any factor beyond the control of Kingspan.
- 4.3 If the cost of manufacture, storage or delivery of the Goods is increased as a result of the Buyer changing the Estimated Delivery Date, quantity or specification for the Goods or where there is any delay resulting from any change of instructions of the Buyer or a failure of the Buyer to give Kingspan adequate information or instructions (including any failure to advise Kingspan of any Delivery Constraint) then Kingspan reserves the right to increase the Total Price to reflect such increase in cost. Kingspan will give written notice to the Buyer of the increase on the costs and consequently on the Total Price, as soon as practicable and in any event, before delivery of the Goods.
- 4.4 The Total Price is exclusive of any applicable Value Added Tax, or other State or local taxes, which the Buyer shall be legally liable to pay to Kingspan, and the Buyer shall pay such taxes to Kingspan.
- 4.5 The cost of any pellets or returnable containers or ancillaries will be charged to the Buyer in addition to the Total Price if they are required to ensure safe delivery of the Goods but full credit will be given to the Buyer provided they are returned undamaged to Kingspan within seven days of delivery.
- 4.6 Kingspan shall have the right to resolve the Kingspan Order Confirmation, at any time before the Estimate Delivery Date, by means of written notice to the Buyer, in the case the costs for the manufacturing of the Goods assumed by Kingspan increase over a 10%.

#### 5 Terms of Payment

- 5.1 Kingspan shall be entitled to invoice the Buyer for the Total Price (or, at Kingspan's sole discretion the Goods Price or the Delivery Price) at any time after the Contract is entered into.
- 5.2 Within 60 days of the date of Kingspan's invoice, the Buyer shall pay the invoiced sum even if delivery has not taken place and the property in the Goods has not passed to the Buyer. Where the payment days differ from those above these will be stated in the Buyers credit terms with Kingspan.
- 5.3 If the Buyer fails to pay the total of any sum invoiced by Kingspan on the due date stated on the invoice, then Kingspan shall be entitled to:
  - 5.3.1 Terminate the Contract with immediate effect and/or suspend any further deliveries to the Buyer;
  - 5.3.2 Appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other Contract between the Buyer and Kingspan) as Kingspan may think fit (not withstanding any purported appropriation by the Buyer);
  - 5.3.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of the legal interest of the money in force from time to time and approved in the Spanish General state budget, plus 3% per annum, until payment in full is made with interest to be charged on a daily basis.
- 5.4 Kingspan will not exercise their right to cancel the Contract under clause 5.3 without first notifying the Buyer that he has failed to make payment in full in accordance with these terms of payment and allowing the Buyer three working days from the date of the notification to make the payment in full. Kingspan may give this notification in writing or orally (including by telephone);
- 5.5 If the Buyer makes payment late then the time for delivery of the Goods may be extended by Kingspan by the same period as the payment was late.

#### 6 Delivery

- 6.1 Goods shall be delivered by Kingspan FCA KINGSPAN PREMISES (Incoterms 2010). The Buyer shall comply with its obligations in accordance with FCA Incoterm. Deliveries will be made using articulated vehicles as the standard method of delivery, however, Kingspan may use other vehicle types at Kingspan's discretion. If the Buyer has a specific vehicle requirement or if there are any limitations on the size of vehicle used for delivery this must be specified by the Buyer as a Delivery Constraint in the Kingspan Order Confirmation.
- 6.2 Time and date for delivery shall not be of the essence unless previously agreed by Kingspan in writing. Kingspan will endeavour to deliver the Goods on the Estimated Delivery Date(s) but the Goods may be delivered by Kingspan in advance of or later than the Estimated Delivery Date(s) upon giving reasonable notice to the Buyer.
- 6.3 Kingspan may elect to deliver the Goods in instalments and, where the Goods are to be delivered in instalments, failure by Kingspan to deliver any one or more of the instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If Kingspan fails to deliver the Goods (where time is of the essence) for any reason other than Force Majeure or any cause beyond Kingspan's reasonable control or the Buyers fault, and Kingspan is accordingly liable to the Buyer, Kingspan's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest alternative market) of goods of similar specification to the Goods to replace those not delivered over the Total Price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give Kingspan adequate delivery instructions at the time stated for delivery then, Kingspan may:

- 6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable and additional costs (including insurance) of storage; or
- 6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) charge the Buyer for any balance due to make payment up to the Total Price.

#### 7 Risk & Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of the effective transfer of the possession of the Goods by the Buyer. It shall be deemed to be transfer of the possession of the Goods at the time of delivery of the Products at the Delivery address (where Kingspan is to deliver the Goods to the Delivery address) or at Kingspan's works (where the Buyer is to collect the Goods) or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Kingspan has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until Kingspan has received in cash or cleared funds payment in full of the Total Price and all other goods under any other contract agreed to be sold by Kingspan to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Kingspan's fiduciary agent, and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Kingspan's property.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) Kingspan shall be entitled at any time to require the Buyer to deliver up the Goods to Kingspan and Kingspan shall be entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Kingspan.
- 7.6 The Buyer shall not be entitled to withhold payment of any amount payable under the Contract to Kingspan because of any disputed claim of the Buyer in respect of defective Goods or any other breach of the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to Kingspan any monies which are not then presently payable by Kingspan for which Kingspan disputes liability.

#### 8 Warranties & Liability

- 8.1 Subject to the conditions set out below, Kingspan warrants that at the time of delivery the Goods will correspond with their specification, with the provisions under the Contract, with the information included on the Kingspan Order Confirmation and will be free from defects in material and workmanship and conform to Kingspan standards.
- 8.2 The above warranty is given by Kingspan subject to the following conditions:
  - 8.2.1 Kingspan shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer in the case the drawing, the design or the other specification have been included on the Kingspan Order Confirmation. For the avoidance of doubt, Kingspan is a supplier of Goods and has no input into the design of any project which the Goods maybe incorporated into;
  - 8.2.2 Kingspan shall be under no liability in respect of any defect in the Goods arising from any failure by the Buyer to install the Goods correctly or failure to comply with Kingspan's installation guidelines issued from time to time, in the case the installation is not foreseen on the Contract or on the Kingspan Order Confirmation.
  - 8.2.3 Kingspan shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Kingspan's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without Kingspan's approval;
  - 8.2.4 Kingspan shall be under no liability for colour degradation in any materials or components incorporated in the Goods or used in their manufacture, due to the use by the Buyer of the Goods;
  - 8.2.5 Kingspan shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Total Price has not been paid by the due date for payment;
  - 8.2.6 If the Buyer makes any material alteration to any of the Goods without Kingspan's prior written approval, then all warranties in the Goods either express or implied shall immediately become void.
- 8.3 The above warranty does not extend to parts, materials or equipment incorporated in the Goods but not manufactured by Kingspan. The Buyer shall be entitled to carry out any claim action against the manufacturer, provided that they shall be liable for damage caused by defects in the parts, materials or equipment incorporated to the Goods that have been manufactured by them, as if they were Kingspan.
- 8.4 Subject as expressly provided in these Conditions, all warranties, representations, statements, conditions or other terms implied by statute or law or otherwise are excluded to the fullest extent permitted by law.
- 8.5 The Buyer shall within 7 days of the arrival of each delivery of the Goods, fully inspect all delivered Good and its specifications in accordance with the Contract and with the Kingspan Order Confirmation and notify Kingspan in writing of any defect or inconformity in the delivered Goods by reason of which the Buyer alleges that the Goods delivered are not in accordance with the specification.
- 8.6 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

- 8.7 Notwithstanding any other provision of this Agreement neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Contract, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.
- 8.8 If at any time Kingspan claims Force Majeure in respect of its obligations under this Agreement with regard to the supply of the Goods, Kingspan shall be entitled to obtain from any other person such quantity of the Goods as Kingspan is unable to supply and Kingspan shall be entitled to supply those goods to the Buyer and the Buyer shall not be entitled to reject those goods on the basis that they have not been manufactured by Kingspan. In such case, the Goods not manufactured by Kingspan shall also comply with the provisions under the Contract.
- 8.9 As a condition precedent to any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification the Buyer shall notify Kingspan within 7 days after discovery of the defect or failure. If the Buyer does not notify Kingspan accordingly, the Buyer shall not be entitled to reject the Goods and Kingspan shall constitute irrevocable acceptance of the Goods and shall have no liability for any such defect or failure, and the Buyer shall be bound to pay the Total Price as if the Goods have been in accordance with the Contract and any specification.
- 8.10 Buyer shall be entitled to ask, at its sole discretion, (i) for the repair of the Goods, (ii) for the substitution of the Goods, (iii) for a discount in the price; and (iv) for the Contract termination, based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Kingspan in accordance with these Conditions.
- 8.11 Except in respect of death or personal injury caused by Kingspan's negligence Kingspan shall not be liable to the Buyer for any indirect, special, incidental, economic or consequential loss or damage including, without limitation, loss or damage incurred as a result of loss of time, loss of savings, loss of data, loss of goodwill, loss of business or loss of profits which arise out of or in connection with the supply of the Goods or their use or sale by the Buyer, except as expressly provided in these Conditions and Kingspan's entire liability for any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage whatsoever, arising out of or in connection with the Contract or otherwise shall not in any event exceed the Total Price of the Goods in respect of any event or series of connected events.
- 8.12 Kingspan 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 failure to perform, any of Kingspan's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Kingspan's reasonable control.
- 9 Indemnity**
- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or sale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, Kingspan shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim against the Buyer provided that:
- 9.1.1 As a condition precedent to the operation of this indemnity the Buyer notifies Kingspan of the claim (or threatened claim) within five working days of the Buyer becoming aware (or five days of when the Buyer should reasonably have been aware) of the claims, whichever is earlier.
- 9.1.2 Kingspan is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.3 The Buyer shall give Kingspan all reasonable assistance for the purposes of any such proceedings or negotiations and shall comply with Kingspan's requirements and instructions; and
- 9.1.4 Kingspan shall be entitled to the benefit of, and the Buyer shall accordingly account to Kingspan for, all damages and costs (if any) awarded in favour of the Buyer.
- 10 Insolvency of Buyer**
- 10.1 This clause applies if:
- 10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 10.1.3 The Buyer ceases or threatens to cease, to carry on business; or
- 10.1.4 Kingspan reasonably believes that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then Kingspan shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Total Price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.
- 10.3 If any of the above mentioned events occur as outlined in clauses 10.1.1 – 10.1.3, then the Buyer shall inform Kingspan within 5 business days of such an event occurring. The Buyer is obliged to have adequate insurance run off cover in place for a minimum period of 6 years if any of the events as outlined in clauses 10.1.1 - 10.1.3 occur. If no such cover is in place when a liquidator is appointed then the liquidator is obliged to take out such cover.

## 11 Export Terms

- 11.1 In these Conditions "Incoterms" means the International Rules for the Interpretation of Trade Terms of The International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given in particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and Kingspan) apply not withstanding any other provision of these Conditions.
- 11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and the exportation from the country of manufacture and for the payment of any duties thereon.
- 11.4 The Buyer shall be entitled to attend the testing and inspection of the Goods by Kingspan at Kingspan's premises before transportation. Kingspan shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection or which are made after shipment, or in respect of any damage during transit.
- 11.5 Other than as expressly agreed by Kingspan, in writing, payment of all amounts due to Kingspan shall be made by irrevocable letter of credit opened by the Buyer in favour of Kingspan and confirmed by a bank in Spain acceptable to Kingspan.

## 12 Disputes

- 12.1 If a dispute or difference arises under this Contract it shall be settled in accordance with the provisions of this clause.
- 12.2 When a dispute arises which one of the Parties requires to be settled in accordance with this clause that party shall give a notice in Writing to the other party stating the nature of the dispute and that the provisions of this clause are invoked.
- 12.3 Direct negotiation**
- 12.3.1 When a Party has given notice under clause 12.2 that a dispute has arisen both Parties shall attempt to settle the dispute amicably by direct negotiation before the commencement of mediation or arbitration. Within 28 days of the notice given under clause 12.2 representatives of both Parties shall meet to endeavour to settle the dispute. Both representatives shall have authority of the Part they represent to settle the dispute on the Party's behalf. The meeting may take place face to face or by way of telephone or video-conference or similar by agreement between the Parties. The status of the meeting shall be "without prejudice" unless and until agreement is reached between the representatives. Unless both Parties agree otherwise mediation may be commenced on or after the twenty eighth day after the day on which the notice under clause 12.2 was given, even if no attempt at direct negotiation has been madea.

## 12.4 Mediation

- 12.4.1 If a dispute or difference arises under this Contract which cannot be resolved by direct negotiations in accordance with clause 12.3 after a period of 28 days then either Party shall give a notice requiring the matter to be referred to mediation;
- 12.4.2 The Parties shall endeavour to settle the matter by mediation.

## 12.5 Arbitration

- 12.5.1 Provided that the Parties shall have attempted to settle the dispute in accordance with the procedure set out in this clause as a condition precedent to arbitration, and provided that at least 28 days shall have elapsed since the notice under clause 12.4.1 was given then any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with the latest version of the Act 60/2003, of December 23th, the Arbitration Law, or any law that amends or replaces it.
- 12.5.2 Neither Party may refer a dispute to arbitration unless:
- 12.5.2.1 The dispute has previously been referred to Mediation in accordance with clause 12.4; or
- 12.5.2.2 A period of 28 days has elapsed since the notice requiring mediation under clause 12.4.1 and there has been no mediation or there has been no settlement of the dispute at that mediation.

## Conduct of arbitration

- 12.5.3 Any arbitration shall be conducted in accordance with the latest version of latest version of the Act 60/2003, of December 23th, the Arbitration Law, or any law that amends or replaces it and the latest version of the Spanish Committee of International Chamber of Commerce Rates.

## Notice of reference to arbitration

- 12.5.4 Where either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration, identifying the dispute. The arbitration will be carried out by an arbitration tribunal with three arbitrators. Each party will appoint one arbitrator, who must be a practising lawyer, and those two arbitrators will designate de president of the arbitration tribunal, who must also be a practising arbitrator. If either party fails to appoint an arbitrator within 15 business days from the date de defendant received the notice of submission of the dispute to arbitration, or the two arbitrators appointed by the parties fail to designate a president of the arbitration tribunal within 15 business days from the date last arbitrator accepted the appointment, the president of the tribunal shall be appointed directly by the Spanish Committee of International Chamber of Commerce.

**Powers of Arbitrator**

12.5.5 The Arbitration Tribunal shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which should be paid by one Party to the other and to determine all matters in dispute which shall be submitted to him.

**Effect of award**

12.5.6 Subject to clause 12.5.7 the award of the Arbitrators Tribunal shall be final and binding on the Parties and shall have res judicata effect. Against the referred award, it will only be possible to exercise the action for annulment and, where appropriate, request revision in accordance with the provisions of Act 1/2000, of January 7th, Civil Procedure Act, for final judgments.

**Act 60/2003, of december 23th, the arbitration law**

12.5.7 The provisions of the latest version of the Act 60/2003, of December 23th, the Arbitration Law, or any law that amends or replaces it shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted. The seat of the arbitration shall be Barcelona (Spain).

**13 General**

- 13.1 Kingspan is a member of the group of companies whose holding company is Kingspan Group Plc, having its registered office at Dublin Road, Kingscourt, Co. Cavan, Ireland and accordingly Kingspan may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of Kingspan.
- 13.2 Any notice required to be given to the Buyer under these Conditions shall be in writing addressed to the Buyer at its registered office or principal place of business or last notified email address.
- 13.3 Any notice required to be given to Kingspan shall be in Writing addressed to Kingspan Insulation, S.A.U, whit its registered office at Carretera Comarcal C-65, KM 16 – Poligono Industrial El Trust, 17244, Cassà de la Selva (Girona), or any other address notified in Writing by Kingspan to the Buyer.
- 13.4 No waiver by Kingspan of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.5 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 thereby.
- 13.6 The Contract shall be governed by the laws of Spain.

**14 Confidential Information**

- 14.1 The Buyer and Kingspan shall enter into all agreements that shall be necessary to set forth the terms and conditions applicable to Confidential Information.

**15 Protection of Personal Data**

- 15.1 Kingspan is a company extremely concerned about the privacy, confidentiality and security of the Buyer's personal information. When selling and purchasing the Goods in accordance with these Conditions the personal data of the Buyer is being processed. Therefore, Kingspan is committed to process such data in compliance with the applicable data protection regulations. Specifically, Kingspan will comply with the legal provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (General Data Protection Regulation, hereinafter, "GDPR"), as well as to the legal provisions of the Organic Law 3/2018, of 5 December, on the Protection of Personal Data and Guarantee of Digital Rights (hereinafter "LOPDGDD"), and of any other rules that may be promulgated in the future on this matter and that replace or complement them.
- 15.2 Kingspan guarantees that all personal data and information provided shall be processed with confidentiality and security in order to avoid any alteration or loss of such data, and always in accordance with Kingspan's Privacy Policy. For more information on the processing of personal data, please see the Privacy Policy.
- 15.3 In the event that the Buyer receives or has access to personal data owned by Kingspan, these data will be processed in accordance with the provisions of the GDPR and the LOPDGDD, as well as any other rules that may be promulgated in the future on this matter and that replace or complement them.

**16 Compliance with Anti-Bribery & Corruption Laws**

- 16.1 The Buyer shall and shall procure that persons associated with it or other persons who are involved in any way with this Contract shall:
- 16.1.1 Comply with all applicable laws, statutes and regulations including but not limited to anti-bribery and anti-corruption legislation as specifically outlined in the Act 10/2010, of April 28th, on the prevention of money laundering and terrorist financing.
- 16.1.2 Not engage in any activity, practice or conduct which would constitute an offence the Act 10/2010, of April 28th, on the prevention of money laundering and terrorist financing if such activity, practice or conduct had been carried out in the Spain;
- 16.1.3 Comply with Kingspan's Anti- Bribery & Corruption Policy as currently in force and any update thereof a copy of which can be found at <http://www.kingspan.com>.

- 16.1.4 Maintain in place throughout the term of this Contract adequate policies and procedures under Act 10/2010, of April 28th, on the prevention of money laundering and terrorist financing and inform Kingspan immediately in writing in the case of any breach, investigation of prosecution thereunder;
- 16.1.5 Promptly report to Kingspan any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of this Contract; and
- 16.1.6 Immediately notify Kingspan in writing if a foreign public official becomes an officer or employee of the Buyer or acquires a direct or indirect interest in the (and the Buyer warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract).
- 16.2 Any breach of any of the terms of this Clause shall be a material breach in terms of the Contract.
- 16.3 The Buyer shall indemnify Kingspan against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, Kingspan as a result of any breach of this Clause by the Buyer or any persons associated with it in connection with the performance of this Contract.
- 16.4 Any breach of this Clause by the Buyer or by anyone employed by the Buyer or acting on behalf of the Buyer (whether with or without the knowledge of the Intermediary) or the commission of any offence by the Buyer or by anyone employed by the Buyer or acting on the Buyer's behalf under the Act 10/2010, of April 28th, on the prevention of money laundering and terrorist financing, in relation to this Contract or any other contract with Kingspan, shall entitle Kingspan to terminate the Contract and recover from the Buyer the amount of any loss resulting from such termination.

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## Spain

**Kingspan Insulation, S.A.U**

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