

TERMS AND CONDITIONS OF SALE

1.0 Definitions

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| 1.1 | "The company" | Means: Aztec Windows (Coventry) Limited |
| 1.2 | "The customer" | Means: the Customer of the Company. |
| 1.3 | "The contract" | Means: any contract for the sale of goods by the Company to the Customer. |
| 1.4 | "The goods" | Means: any goods forming the subject of this contract including parts and components of or materials incorporated in them. |
| 1.5 | "The normal delivery period" | Means: a period of 28 days |

2.0 Quotation

- 2.1 Quotations by the Company unless otherwise stated in them shall be open for acceptance within 30 days of the date of the Quotation.

3.0 Existence of Contract

- 3.1 No contract shall come into existence until the Customer's order (however given) is accepted by the Company's written acceptance.
- 3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.
- 3.3 No variation or amendments of the Contract shall be binding on the Company unless confirmed by it in writing.
- 3.4 This Contract contains the entire bargain between the Company and the Customer and in the event of any inconsistency between these terms and conditions and any other documentation between the parties in respect of the Goods these Terms and Conditions shall prevail.
- 3.5 Any description or illustrations in the Company's catalogues, price list or other advertising materials are intended merely to represent a general ideal of the goods and shall not form representations or be part of the Contract.
- 3.6 Any concession or waiver made by the Company at any time shall not prejudice the exercise of its rights hereunder.
- 3.7 The customer is deemed to have satisfied himself that the goods are suitable for the purpose and capable of performing the function and use to which it is intended to put them.
- 3.8 The Company reserves the right to correct any clerical errors made by its employees or in its sales literature, quotations, price lists or other documentation at any time.
- 3.9 Each of the clauses of the Terms and Conditions of Sale and every part thereof shall be separate and severable to the intent that if one clause or one part thereof shall be unenforceable the other clauses and the other parts of the clauses respectively shall be effective.
- 3.10 The exclusions and limitations contained in these Terms and Conditions of Sale only apply so far as permitted by the Supply of Goods (Implied Terms Act) 1973, The Consumer Credit Act 1974 and the Unfair Contract Terms Act 1977 or any other statute or amendment thereof or other there under.

4.0 Prices

- 4.1 Prices are ex-works at the price ruling at the date of despatch and exclude VAT.
- 4.2 The Company shall have the right in respect of any uncompleted portions of the Contract to adjust its price for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract.
- 4.3 Orders whose total invoice value is less than £180 are subjected to a minimum order surcharge of 10% which shall be quoted on request or on the Company's order acknowledgement.
- 4.4 Firm Quotations hold good only for the period quoted.
- 4.5 Orders required before the normal delivery period shall be subject to a 10% surcharge. This surcharge will be notified and written consent received before the order will be delivered. Failure to acknowledge acceptance of the surcharge in writing will be deemed as authority to accept our normal delivery period.

5.0 Payments

- 5.1 All invoices are payable without discount or set-off of any kind in pound sterling.
- a) In the case of cash customers – on delivery – and
- b) In the case of account customers on the last day of the month following delivery of the goods at the Customers' premises stated on the invoice. In no circumstances shall the Customer be entitled to any reduction or to withhold payment for any reason at all.
- 5.2 Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company if the Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice and shall pay interest on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on any daily basis at the rate of whichever shall be the higher of 15% p.a. or 5% P.A over the base rate from time to time quoted by The Bank of England plc and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- 5.2.1 Currently the rate of interest is set at 8% + the base rates (the official dealing rate of the bank of England). If the base rate was 5%, then the statutory interest ate would be 8% + 5% = 13%.
- 5.2.2 We understand and will exercise our statutory right to interest under the Late Payment of Commercial Debts (interest) Act 1998 if we are not paid according to agreed credit terms.
- 5.3 The Company shall be entitled to suspend or cancel further deliveries or other services under this and any other contract between the parties hereto:-
- 5.3.1 If any payment is overdue or
- 5.3.2 If the customer shall have failed to take delivery of any Goods.

6.0 Title

- 6.1 For the purpose of section 12 of the Sales of Goods Act 1979 the Company shall transfer only such title or rights in respect of the Goods as the Company has and if the Goods are purchased from a third party shall transfer only such title or rights as the party had and has transferred to the Company.
- 6.2 Notwithstanding the earlier passing of risk title in the Goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them has been paid in full.
- 6.3 Until title passes the Customer shall hold the Goods as bailee for the Company and shall store or mark them so that they can, at all times, be identified as the property of the Company.
- 6.4 The Company shall be entitled at any time before title passes to repossess and dismantle (without being liable for any damage caused by so doing) and to use or sell all or any of the Goods and so terminate (without any liability to the Customer) the Customer's right to use, sell or otherwise deal in them and for that purpose or determining what if any Goods are held by the Customer and inspecting them to enter any premises of the Customer.
- 6.5 Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Vendor's money.
- 6.6 The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer.
- 6.7 The Customer shall not be entitled to pledge or in any way charge by way of any security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so then all money owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) become immediately due and repayable.

7.0 Risk Delivery and Performance

- 7.1 Goods are delivered to the Customer then the Company makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent whoever pays his charges) at the Company's premises or other delivery point agreed by the Company.
- 7.2 Risk in the Goods passes when they are delivered to the Customer.
- 7.3 The Company may at its discretion deliver the Goods by instalments in any sequence.
- 7.4 Where the Goods are delivered by instalments each instalment shall be deemed to be the subject of a separate contract and no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.
- 7.5 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of Goods ordered.
- 7.6 Any dates quoted by the Company for the delivery of the goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates.
- 7.7 If the Customer fails to take delivery of the Goods or any part of them on the due date and fails to provide any instructions documents licences consents or authorisations required to enable the Goods to be delivered on the due date the Company shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then risk in the Goods shall pass to the Customer delivery shall be deemed to have taken place and the Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from its failure.
- 7.8 The Company shall not be liable for any penalty loss, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

8.0 Despatch and Delivery

- 8.1 Any despatch or delivery dates named by the Company is given and intended as an estimate only and is not to be of the essence of the Contract. The Customer shall nevertheless be bound to accept the Goods ordered whether available on or after the date named. The Company shall not be liable in any way in respect of late despatch or delivery howsoever caused nor shall such failure to despatch be deemed to be a breach of the Contract. Where the Customer is to supply specifications, drawing instructions and materials the same shall be supplied in reasonable time to enable the Company to despatch within the period stated. Goods may be sent carriage forward by rail or by other means at the Company's discretion unless otherwise stated.

9.0 Design and Delivery

- 9.1 If technical developments necessitate design changes the Company reserves the right to effect such changes without prior notice.

10.0 Claims Notification

- 10.1 Any claim for non-delivery of any Goods shall be notified in writing by the Customer to the Company within ten days of the Company's invoice.
- 10.2 Any claim that any Goods have been delivered damaged or not of the correct quantity or do not comply with their description or are allegedly defective shall be notified by the Customer to the Company within seven days of their delivery.
- 10.3 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.
- 10.4 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall if so requested in writing by the Company promptly return any Goods the subject of any claim and any packing securely packed and carriage paid to the Company for examination.
- 10.5 The Company shall have no liability with regard to any claim which the Customer has not complied with the provisions of this condition.
- 10.6 The acceptance by the Company of a claim shall not entitle the Customer to cancel the remainder of the order (if any).

11.0 Scope of Contract

Under no circumstances shall the Company have any liability of whatever kind for:

- 11.1 Any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer otherwise than in accordance with the instructions or advice of the Company, or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Company
- 11.2 Any Goods which may have been adjusted, modified or repaired otherwise than by the Company.
- 11.3 The suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company.
- 11.4 Any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company
- 11.5 Any descriptions, illustrations, specification figures as to performance drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues price lists or elsewhere since they are merely intended to represent a general ideal of the Goods and not to form part of the Contract or be treated as presentations.
- 11.6 Any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not giving in writing in response to a specific written request from the Customer before the Contract is made.
- 11.7 Any variations in the quantities or dimensions of any goods or changes of their specifications or substitution of any materials or components if the variation or substitution does not materially affect characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.

12.0 Breach

If the customer:

- 12.1 Makes default in or commits any breach of its obligations to the Company hereunder or
 - 12.2 Is involved in legal proceedings in which its solvency is involved or
 - 12.3 (being a Company) commences liquidation or
 - 12.4 Ceases or threatens to cease to trade or if serious doubt arises as to the Customers solvency
- then and in any such case the Company shall immediately become entitled (without prejudice to its other claims and rights under this Contract) to suspend further performance of this Contract for such time as is shall in its absolute discretion think fit or (whether or not notice of such suspension shall have been given) to treat the Contract as wrongfully repudiated by the Customer and forthwith terminate the Contract. The Company will notify the Customer of the exercise of its option to suspend or terminate this Contract within a reasonable time of its becoming aware of the fact or default on the Customer's part giving rise to the Company's right under this condition.

13.0 Extent of Liability

- 13.1 The Company shall have no liability to the Customer (other than liability for death or personal injury resulting from the Company's negligence) for any loss or damage or any nature arising from any breach of any express or implied warranty or conditions of the Contract or for any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance of or failure to perform the Contract except in accordance with this condition.
- 13.2 If the Customer establishes that any Goods have not been delivered, have been delivered damaged, are not of the correct quality or do not comply with their description the Company shall at its option replace with similar goods any Goods which are missing, lost, damaged or do not comply with their description, allow the Customer credit for their invoice or repair any damaged Goods.
- 13.3 If the Customer establishes that any Goods are defective the Company shall at its option replace with similar goods or repair any defective Goods, allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.
- 13.4 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.

- 13.5 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.
- 13.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Goods by any person other than the Company.
- 13.7 The Company shall not be liable where any Goods, the price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods will if available be supplied by the Company at the prices ruling at the date of despatch.
- 13.8 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods.

14.0 General

- 14.1 The Company may sub-contract the performance of the Contract in whole or in part.
- 14.2 The Contract is between the Company and the Customer as principals and shall not be assignable by the Customer without the express written consent of the Company.
- 14.3 The Company shall have a lien on all the Customer's property in the Company's possession or all sums due at any time from the Customer and shall be entitled to use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such sums on twenty-eight days notice in writing to the Customer. Upon accounting to the Customer for any balances remaining after payment of any sums due to the Company and the costs of sale or disposal the Company shall be discharged of any liability in respect of the Customer's property.
- 14.4 The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract of any other agreement with the Company or becomes insolvent, has a receiver appointed of its business or is compulsorily or voluntarily wound up or the Company bona fide believes that any of those events may occur and in case of termination shall be entitled to forfeit any deposit paid.
- 14.5 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall indemnify the Company from and against all claims, costs, expenses and liabilities of any nature in connection with them including any claim whether actual or alleged that the design or specification infringes the rights of any third party.
- 14.6 All tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information, patentable or un-patentable copyright and registered designs arising from the execution of any orders shall become the property of the Company.
- 14.7 The Contract and its subject matter are confidential and shall not be disclosed or used for any unauthorised purpose

15.0 Cancellation

- 15.1 Orders for Goods which have to be made especially for the Customer will be charged in full unless written notice of cancellation is received not later than two weeks before the expected delivery date quoted in the Company's order acknowledgement and manufacture of them or any components for them as has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time prior to the Goods being allocated to the Contract but if a cancellation notice is received after the Goods have been allocated to the Contract then a packing and handling charge will be payable by the Customer.

16.0 Force Majeure

- 16.1 The Company shall not be liable for any failure in the performance of any of its obligations under the Contract or this agreement or deed caused by factors outside its control.

17.0 Law and Construction

- 17.1 The Contract shall be governed by English Law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding the Contract except to the extent that the Company invokes the jurisdiction of the courts of any other country.
- 17.2 The headings of conditions are for the convenience of reference only and shall not affect their interpretation of the courts of any other country.

18.0 Notices

- 18.1 Any notice to be given under the Contract shall be in writing and telexed sent by facsimile transmission or forwarded by first class pre-paid registered or recorded delivery letter post to the receiving party at its business address at last notified in writing to the other party and shall be deemed to have been given on the date of the telex or facsimile transmission or on the day following that on which the notice was posted.