

Swadlincote Window Co. Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Company" shall mean Swadlincote Window Co. Limited its successors and assigns or any person acting on behalf of and with the authority of Swadlincote Window Co. Limited.
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, customer order form, sales order, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, customer order form, sales order, work authorisation or any other forms as provided by the Company to the Customer.
- 1.5 "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 4 of this contract.

2. Application of these terms and conditions to consumers

- 2.1 Where the Customer buys Goods as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Defects, Returns, Warranties, and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

3. Acceptance

- 3.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 3.4 The Customer undertakes to give the Company at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

4. Price And Payment

- 4.1 At the Company's sole discretion the Price shall be either:
- (a) As indicated on a sales order provided by the Company to the Customer in respect of Goods supplied; or
 - (b) As indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
 - (c) The Company's quoted Price (subject to clause 4.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
- 4.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
- 4.3 At the Company's sole discretion a non-refundable deposit may be required.
- 4.4 For any outstanding balance, payment shall be on delivery of the Goods.
- 4.5 At the Company's sole discretion, payment for approved Customers shall be made by instalments in accordance with the Company's payment schedule.
- 4.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by cheque, or by credit / debit card, (plus a surcharge of two and a half percent (2.50%) of the Price), or by direct bank transfer (BACS), or by any other method as agreed to between the Customer and the Company.
- 4.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

- 5.1 At the Company's sole discretion delivery of the Goods shall take place when:
- (a) The Customer takes possession of the Goods at the Company's address; or
 - (b) The Customer takes possession of the Goods at the Customer's address or other address nominated by the Customer (in the event that the Goods are delivered by the Company or the Company's nominated carrier); or
 - (c) The Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 5.2 At the Company's sole discretion the costs of delivery are:
- (a) Included in the Price; or
 - (b) In addition to the Price; or
 - (c) For the Customer's account.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.6 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

7. Title

- 7.1 It is the intention of the Company and agreed by the Customer that ownership of the Goods shall not pass until:
- (a) The Customer has paid all amounts owing for the particular Goods; and
 - (b) The Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 7.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) Where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
 - (b) Until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) The Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) If the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - (e) The Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
 - (f) The Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
 - (g) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
 - (h) The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) Until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

8. Site Access and Health and Safety

- 8.1 The Customer shall ensure the Company has clear and free access to the work site at all times to enable them to deliver and install the Goods, including site storage and access for the Company's employees and contractors to welfare facilities including, but not limited to, toilets, water and electricity supply.
- 8.2 It is the intention of the Company and agreed by the Customer that any work sites shall comply with all occupational health and safety regulations, and the Company's employees and contractors shall comply and implement the Company's health and safety practices.

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9. Damages

- 9.1 The Company shall not be liable for any loss or damage to the site (including, but not limited to, damage to existing tiling on sills and walls around doors and openings, pathways, concreted or paved or grassed areas) unless due to the negligence of the Company.
- 9.2 The Customer shall indemnify the Company against damage howsoever caused to any third party's property (including, but not limited to neighbours) unless due to the negligence of the Company.

10. Underground services and site conditions

- 10.1 Prior to the Company commencing installation of the Goods, (unless specified otherwise in the quotation or sales order) the Customer shall be responsible for ascertaining and providing to the Company all information relating to the applicable sub-surface ground and/or site conditions necessary for the Company to install the Goods. The Customer shall also identify any underground mains and services including, but not limited to, electrical, gas, sewer and pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
- 10.3 If the Customer requests the Company to engage a service locator, then this shall be in addition to the Price.
- 10.4 Unless specified otherwise in writing in advance by the Company, installation of the Goods and Price does not include the Company:
- (a) Dealing with any obstruction (whether man made or naturally occurring) encountered; or
 - (b) Dealing with or preventing heave or lateral movement of subsoil, movement caused by (including, but not limited to) landslip, inherent deep underground or landfill instability, mineshafts, galleries, quarries, caverns, ground or artesian water, aggressive chemicals, or any other inherently unfavourable ground conditions; or
 - (c) Dealing with or preventing pollution or contamination howsoever and wheresoever occurring.

11. Defects

- 11.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing or repairing the Goods.
- 11.2 No Goods shall be accepted for return except in accordance with clause 11.1 above.
- 11.3 During the delivery and installation of the Goods, the Company may make minor modifications to the original dimensions in order to ensure best fit of the Goods. In such an event, the Customer indemnifies the Company against any consequences caused as a result of any differences in dimensions between the quotation and the actual finished installed Goods.

12. Guarantee

- 12.1 As a member of FENSA, the Company is obliged to offer a further insurance backed guarantee where one has not been provided. Based on the information provided by the Company, the Customer shall, at their own discretion, choose whether or not to purchase this guarantee, which is in addition to the Price. This clause constitutes that offer. Details of IBG provider are available from the Company.
- 12.2 Subject to the conditions of guarantee set out in clause 12.4 the Company guarantees that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within the time limit as noted in clause 12.3, (time being of the essence) then the Company will either (at the Company's sole discretion) repair the defect or remedy the workmanship.
- 12.3 The period of guarantee for workmanship shall be stated on the customer order form or any other form. If no time is stated then the time limit shall be five (5) years from the date of delivery.
- 12.4 The conditions applicable to the guarantee given by clause 12.2 are:
- (a) The guarantee shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) Failure on the part of the Customer to properly maintain any Goods; or
 - (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or
 - (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) Fair wear and tear, any accident or act of God.
 - (b) The guarantee shall cease and the Company shall thereafter in no circumstances be liable under the terms of the guarantee if the workmanship is repaired, altered or overhauled without the Company's consent.
 - (c) In respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.
- 12.5 The Company does not provide a guarantee or take responsibility in the event of condensation occurring on or around the Goods, howsoever caused.
- 12.6 The Company shall be under no liability in respect of minor blemishes or imperfections on or in any glass Goods that are not guaranteed by the glass manufacturer, nor shall the Company replace any glass cracked or broken after installation. The Customer acknowledges toughened safety glass is liable to inherent imperfections and may be subject to distortion of the otherwise flat surface arising from the manufacturing process and is unavoidable.
- 12.7 The "Visual quality standard for installed insulating glass units constructed from flat transparent glass" as published by the Glass and Glazing Federation will be referred to in any dispute over glass quality. It will be available on request.
- 12.8 To the extent permitted by statute, no guarantee is given by the Company as to the quality or suitability of the Goods for any purpose and any implied guarantee is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 12.9 For Goods not manufactured by the Company, the guarantee shall be the current guarantee provided by the manufacturer of the Goods. Whilst the Company shall honour such guarantee the Company shall not be bound by nor responsible for any term, condition, representation or guarantee other than that which is given by the manufacturer of the Goods.
- 12.10 The periods of guarantee of supplied components are limited to:
Frames: Ten Years
Hardware: Seven Years
Double Glazed units: Five Years.
- 12.11 Any guarantee issued by the Company may be transferred to a third party subject to a satisfactory inspection of the Goods by the Company (or their representative) and an administration fee (as determined by the Company) paid to the Company.

13. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982

- 13.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 13.2 Notwithstanding clause 13.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.

14. Intellectual Property

- 14.1 Where the Company has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 14.2 The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order.

15. Default & Consequences of Default

- 15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment; or
- 15.2 The Company may charge interest on overdue invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 15.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 15.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 15.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) Any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Security And Charge

- 16.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

17. Cancellation

- 17.1** The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2** In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
- 17.3** Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will not be accepted once production has commenced.

18. Data Protection Act 1998

- 18.1** The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:
- (a) Collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- (b) To disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Customer on publicly accessible credit reporting databases.
- 18.2** The Company may also use information about the Customer to monitor and analyse its business. In this connection the Customer authorises the Company to disclose personal information to agents or third parties engaged by the Company.
- 18.3** The Customer consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 18.4** Where the Customer is an individual the authorities under (clause 18.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 18.5** The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.

19. Limitation of Liability

- 19.1** The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by the Company of these terms and conditions.
- 19.2** In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages and the Company's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.
- 19.3** The Customer shall indemnify the Company (who shall be under no liability whatsoever) against any costs associated with any damage caused by the weight of the Goods (including, but not limited to any base wall).
- 19.4** For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict the Company's liability to any person for death or personal injury to that person resulting from the Company's negligence.

20. Customer's Disclaimer

- 20.1** The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

21. General

- 21.1** If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2** which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of England and Wales. These terms and conditions and any contract to
- 21.3** The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.
- 21.4** The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.5** The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. Except where the Company supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
- 21.6** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.7**