

TERMS AND CONDITIONS OF SALE OF SPECIALIST BUILDING PRODUCTS LIMITED t/a WINDOW SYSTEMS DIVISION

The Customer's attention is particularly drawn to the provisions of clause 9.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.7.

Contract: the contract between the Supplier and the Customer for the sale and purchase of Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: has the meaning given to it in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods in whatever form.

Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: Specialist Building Products Limited registered in England and Wales with company number 01268689.

1.2 **Construction.** In these Conditions, the following rules apply :

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. GOODS

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

4.1 The Supplier shall deliver the Goods to the location set out in the Supplier's acceptance of the Order or such other location as the parties may agree (**Delivery Location**).

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Supplier will provide such assistance as is necessary for offloading Goods from the Supplier's (or carrier's) vehicle.

4.3 Delivery of Goods to destinations outside of the United Kingdom shall be made FOB as defined in Incoterms 2000.

4.4 Where it is agreed in writing that the Customer will collect the Goods from the Supplier's premises, delivery occurs when the Supplier notifies the Customer that the Goods are ready for collection.

4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.7 If the Customer fails to accept or take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.8 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.9 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.10 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.11 Title in stillage packaging remains vested in the Supplier. The Customer shall maintain such packaging in good order, shall make no modification to such packaging without the Supplier's agreement and adequate payment to the Supplier and shall make any such packaging available for collection within 5 Business Days of demand, at no cost to the Supplier. If the Customer fails to make such packaging available, the Supplier may charge for it or set off its value in accordance with clause 7.7.
- 5. QUALITY OF GOODS**
- 5.1 The Supplier warrants that, on delivery, the Goods shall
- conform with their description and any applicable Goods Specification; and
 - be free from material defects in design, material and workmanship;
- 5.2 Subject to clause 5.3, if:
- the Customer gives notice in writing within 30 days of discovery or when it should have reasonably discovered that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - the Supplier is given a reasonable opportunity of examining such Goods;
 - the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option, replace the defective Goods free of charge or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - the Customer alters or repairs such Goods without the written consent of the Supplier;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any replacement Goods supplied by the Supplier under clause 5.1.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and
 - give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- it does so as principal and not as the Supplier's agent; and
 - title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1 then, without limiting any other right or remedy the Supplier may have:
- the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - the Supplier may at any time:
 - require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. CHARGES AND PAYMENT**
- 7.1 The price for Goods shall be the price set out in the Supplier's published price list as at the date of delivery.
- 7.2 Where the price of the Goods in an Order is above £1,000 (or such other amount as notified by the Supplier) and delivery is by normal road transport to destinations in the United Kingdom, the price shall be inclusive of all costs and charges of packaging, insurance, transport of the Goods. If the price of the Goods is below £1,000 (or such other amount as notified by the Supplier), or for delivery outside of the United Kingdom or if the Customer stipulates a particular form of transport, the price of the Goods is exclusive of such costs, which shall be paid by the Customer when it pays for the Goods.

- 7.3 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (iii) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 7.4 The Supplier may invoice the Customer on or at any time after completion of delivery. The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice or as otherwise agreed; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 7.5 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the HSBC Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.8 Where, as a result of the Customer's payment method, any third party has the right to deduct any fee or other amount from such payment, the amount payable by the Customer shall be increased by such additional amount to ensure that, after such deduction, the Supplier will receive the same amount as it would have received in the absence of any such deduction. For the avoidance of doubt, as at the printing date of these Conditions, the Supplier's bank charges a fee of 3% on all payment made by credit card; all such payments made by the Customer must be grossed up by such percentage (or such other percentage from time to time notified by the Supplier to the Customer) in accordance with these Conditions.
- 8. TERMINATION AND SUSPENSION**
- 8.1 The Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer is unable to pay its debts as they fall due or has a receiver, administrator, administrative receiver or liquidator appointed or calls a meeting of its creditors or ceases for any other reason to carry on the business or in the reasonable opinion of the Supplier any of these events appears likely.
- 8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1 or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9. LIMITATION OF LIABILITY**
- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
- 10. FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means 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 suppliers or subcontractors.
- 11. GENERAL**
- 11.1 **Assignment and other dealings.**
- (a) Neither party may assign, transfer, charge or otherwise seek to deal with any of its rights or obligations under this

agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

(b) The Supplier reserves the right to employ agents and sub-contractors though will remain liable to the Customer in respect of any Services provided by such agents and sub-contractors.

- 11.2 **Notices.** Notices must be served either personally or sent by prepaid registered post to the address of the other party given in the Contract or to any other address as the parties may have notified during the period of the Contract. Any notice sent by prepaid registered post will be deemed to have been delivered 48 hours after sending. Any notice served personally will be deemed to have been delivered at the time the notice is left at the proper address. A notice required to be given under the Contract shall not be validly served if sent by email.
- 11.3 **Severance.** If any court of competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 11.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.
- 11.8 **Governing law.** The Contract shall be subject to and governed by English law and any disputes arising from or under it, including in relation to its formation, shall be subject to the exclusive jurisdiction of the English courts.