

## **WINDOW WAREHOUSE TERMS AND CONDITIONS OF SALE**

### **Basis of contract**

1. These Terms and Conditions will apply to the purchase of the goods detailed in our quotation (**Goods**) by the buyer (**you**) from Window Warehouse Ltd a company registered in England and Wales under number 1986467 whose registered office is at Fitzherbert Road, Units 1-3, Hampshire, PO6 1SQ (**we or us**).
2. These Terms and Conditions, together with our quotation, form the terms of the contract for your purchase of Goods from us (**Contract**), to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
3. Our quotations are valid for 30 days unless we notify you that the quotation is withdrawn (in writing or otherwise). We may provide you with an updated quotation on request if the quotation is withdrawn or expires.
4. The Contract will be formed on the earlier of:
  - a) your acceptance of the quotation (by signing an order acknowledgement or other indication of acceptance); and
  - b) the date of any delivery of the Goods (which shall be deemed acceptance),and will constitute the entire agreement between us and you.

**Your attention is particularly drawn to the limitation of liability and indemnity provisions in clauses 44 to 48.**

### **Interpretation**

5. A "business day" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
6. The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.
7. Words imparting the singular number include the plural and vice-versa.

### **Goods**

8. The Goods will materially conform with the description and/or specification set out in our sales documentation. Any statement, promise or other representation about the Goods by us is intended as a guide only.
9. We may make changes to the description and/or specification of the Goods which are required to conform to any applicable safety, statutory or regulatory requirements.
10. If Goods are made to your design, specification and/or instruction, then the suitability and accuracy of that design, specification and/or instruction will be your responsibility and we remind you that the provisions of clause 48 apply.

### **Price**

11. The price of the Goods shall be the price set out in the quotation, or, if no price is quoted, the price set out in our published price list in force as at the date of delivery (Price).
12. If the cost of the Goods to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, we have the right to increase the Price to reflect the increase in our costs prior to delivery by giving you **5** business days' notice.

13. The price for delivery/transportation will be confirmed on ordering when you confirm the delivery address.
14. The Price is inclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.
15. Published prices are not a contractual offer to sell goods which is capable of acceptance.

### **Cancellation and alteration**

16. We may alter the description and/or specifications of goods set out in our sales documentation without notice.
17. If you wish to cancel an order, you must make a written request to us.
18. You may only cancel an order with our agreement, which shall only be given on the condition that all costs and expenses incurred by the company at the time of cancellation, including the loss of any profit, shall be paid by the customer on demand by the company.

### **Payment**

19. We will invoice you for the amounts due to us either:
  - a) on or at any time after delivery of the Goods (whether or not delivered in instalments); or
  - b) where the Goods are to be collected by you or where you wrongfully do not take delivery of the Goods, at any time after we have notified you that the Goods are ready for collection or we have tried to deliver them.
20. You must pay the outstanding balance within [14] days of the invoice date or as otherwise agreed in writing between us.
21. You must make payment even if delivery has not taken place and/or title in the goods has not passed to you.
22. If you do not pay by the due date for payment, we will suspend any further deliveries to you and without limiting any of our other rights or remedies for statutory interest, charge you interest at the rate of [3]% per annum above the base rate of the Bank of England per day on the amount outstanding until you pay in full.
23. All payments must be made in £GBP unless otherwise agreed in writing between us.
24. You must pay all amounts due under these Terms and Conditions in full without any deduction or withholding except as required by law and you are not entitled to assert any credit, set-off or counterclaim in order to justify withholding payment of any such amount in whole or in part.

### **Delivery**

25. We will arrange for the delivery of the Goods to the address specified in the quotation or to another location with our written agreement.
26. If a delivery address is not specified, you must collect the Goods from our premises.
27. Any time given for delivery is approximate only and although we shall endeavour to deliver the goods before the time given for delivery, time of delivery is not of the essence.
28. We will not be liable for any delay in delivery of the Goods that is caused by a circumstance beyond our control or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

29. We shall not be liable for any loss, costs, damage or expense incurred by you whether directly or indirectly by reason of our failure to comply with any delivery time given and further you shall have no right to cancel any order given to us or refuse to accept delivery of the Goods.
30. If you do not take delivery of the Goods we may, at our discretion and without prejudice to any other rights:
  - a) store or arrange for the storage of the Goods and will charge you for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and / or
  - b) make arrangements for the redelivery of the Goods and will charge you for the costs of such redelivery; and/or
  - c) after 10 business days, resell or otherwise dispose of part or all of the Goods and charge you for any shortfall below the amount due to us under the Contract and the price of the Goods after reselling or disposal in accordance with this clause 30.c).
31. If redelivery is not possible, we will notify you and you must collect the Goods from our premises. We will charge you for all associated costs including, but not limited to, storage and insurance.
32. We shall be entitled to deliver Goods by instalments, which will be invoiced and paid for separately and in accordance with the payment section (clause 19 – 24). Each instalment is a separate contract. Any delay in delivery or defect in an instalment will not entitle you to cancel any other instalment.

#### **Inspection and acceptance of Goods**

33. You must inspect the Goods on delivery or collection.
34. If you identify any damages or shortages, you must inform us in writing within **[3]** days of delivery, providing details.
35. Other than by agreement, we will only accept returned Goods if we are satisfied that those Goods are defective and, if required, have carried out an inspection.
36. Subject to clauses 34 and 35, you may return the Goods and we will, as appropriate, repair, or replace, or refund the Goods or part of them.
37. We will be under no liability or further obligation in relation to the Goods if:
  - a) if you fail to provide notice as set above; and/or
  - b) you make any further use of such Goods after giving notice under the clause above relating to damages and shortages; and/or
  - c) the defect arises because you did not follow our oral or written instructions about the storage, commissioning, installation, use and maintenance of the Goods; and/or
  - d) the defect arises from normal wear and tear of the Goods; and/or
  - e) the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by you, your employees or agents or any third parties.
38. You bear the risk and cost of returning the Goods.
39. Acceptance of the Goods will be deemed to be upon inspection of them by you and in any event within **[3]** days after delivery.

#### **Risk and title**

40. The risk in the Goods will pass to you on completion of delivery whether in part or full. Title to the Goods will not pass to you until we have received payment in full (in cash or cleared funds) for:
- a) the Goods; and
  - b) any other goods or services that we have supplied to you in respect of which payment is due.
41. Until title to the Goods has passed to you, you must (a) hold the Goods on a fiduciary basis as our bailee; and (b) store the goods separately and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and (c) keep the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
42. As long as the Goods have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy we may have, we can at any time require you to deliver up the Goods on request and, if you fail to do so promptly, we or an appropriate third party at our direction may enter any of your premises or of any third party (and whose permission you shall procure, if required) where the Goods are stored in order to recover them.

### **Termination**

43. We can terminate the sale of Goods under the Contract where:
- a) you commit a material breach of your obligations under these Terms and Conditions;
  - b) you are or become or, in our reasonable opinion, are about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
  - c) you enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with your creditors; or
  - d) you convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of your affairs or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency.

### **Limitation of liability**

44. Nothing in these Terms and Conditions will exclude or limit our liability for death or personal injury caused by our negligence; for fraud or fraudulent misrepresentation; breach of the terms implied by section 12 of the Sale of Goods Act 1979; or for any matter for which it would be unlawful for us to exclude or limit our liability.
45. Subject to clause 44, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
46. Subject to clause 44:
- a) if we do not deliver the Goods, our liability is limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods;
  - b) our total liability will not, in any circumstances, exceed the total amount of the Price payable by you; and

- c) we will not be liable (whether caused by our employees, agents or otherwise) in connection with the Goods, for:
  - i) any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
  - ii) any indirect, special or consequential loss, damage, costs, or expenses; and/or
  - iii) any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
  - iv) any losses caused directly or indirectly by any failure or breach by you in relation to your obligations; and/or
  - v) any loss relating to the choice of the Goods and how they will meet your purpose or the use by you of the Goods supplied.
- 47. We cannot guarantee the exclusion of naturally occurring defects in the Goods and the materials used therein, including but not limited to:
  - a) the optical phenomenon occasionally seen as interference colour bands known as 'Brewster's fringes'; and
  - b) spontaneous breakage known as 'Nickel Sulphide inclusions',(each a "Natural Defect") and accordingly we shall not be liable to the Customer for any loss arising from any Natural Defect (including the cost of any replacement Goods or subsequent remedial works), save where such liability cannot be excluded by law.

### **Indemnity**

- 48. You shall indemnify us on demand and keep us indemnified from and against all liabilities, costs, expenses, damages, losses, actions, claims, proceedings and demands (including costs of defending legal proceedings), arising out of or in connection with:
  - a) any Goods designed, assembled, produced and/or supplied to the specific design, specification, instructions and/or order by you, including, but not limited to, any actual or alleged infringement of a third party's intellectual property rights); and
  - b) the manufacture, fabrication and/or installation of any products which incorporate the Goods by you (and/or any third party at your direction), including but not limited to actual or alleged infringement of a third party's intellectual property rights.

### **Communications**

- 49. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
- 50. Notices will be deemed to have been duly given:
  - a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - c) on the fifth business day following mailing, if mailed by national ordinary mail; or
  - d) on the tenth business day following mailing, if mailed by airmail.

51. All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

**Circumstances beyond the control of either party**

52. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

**No Waiver**

53. No waiver by us of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

**Severance**

54. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

**Third party rights**

55. No one other than a party to the Contract shall have any right to enforce any of its terms.

**Law and jurisdiction**

56. This Agreement shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.