

# Terms & Conditions

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## I. INTERPRETATION

1.1 In these conditions the following words shall have the following meanings:-

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**"Conditions"** means these terms and conditions for sale of Goods and/or Services which are incorporated into and form part of the Order and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Seller.

**"Contract"** means the contract between the Seller and the Purchaser for the purchase and sale of the Goods and/or Services, comprising:-

- (i) the Seller's quotation (subject to the provisions of Clause 2) and the acceptance thereof by the Purchaser by way of the Order; or
- (ii) the Order and (subject to the provisions of Clause 2) the Seller's acceptance thereof, together with these Conditions and the documents (if any) incorporated by express reference on the face of the Order.

**"Goods"** means the Goods (including any instalment of the Goods or any parts of them) which the Seller is to supply in accordance with these Conditions.

**"Force Majeure Event"** means any event or sequence of events beyond any party's reasonable control and which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable and which prevents or delays any party from performing its obligations under the Contract 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. But excluding the Purchaser's inability to pay or circumstances resulting in the Purchaser's inability to pay

**"Order"** means the written order placed by the Purchaser for the supply of the Goods and/or Services.

**"Party"** means the Seller or the Purchaser and "Parties" means both of them.

**"Purchaser"** means the person, firm or company who accepts a quotation of the Seller for the sale of the Goods and/or Services or who places the Order for the Goods and/or Services.

**"Seller"** means Westbury Windows & Joinery Limited referred to on the face of the Order with whom the Contract is made by the Purchaser.

**"Services"** means the provision of work and/or other services which are the subject of the Contract.

**"Site"** means the address for delivery, that part of the address for delivery where the Goods are to be supplied, or where any Services are to be performed.

1.2 Any reference in these Conditions to any provision of a statute and any regulations made in pursuance thereof as from time to time modified or re-enacted, whether before, on or after the date of the Contract, so far as such modification or re-enactment applies or is capable of applying to any transaction entered into prior to completion of the Contract (so far as liability thereunder may exist or can arise) shall be construed as a reference to that provision or regulation as amended, re-enacted or extended at the relevant time and shall include also any past statutory provision or regulation (as from time to time modified or re-enacted) which such provision or regulation has directly or indirectly replaced.

1.3 The headings in these Conditions are for convenience only and shall be ignored in construing these Conditions and shall not affect their interpretation.

1.4 Words (including words defined in the Contract) importing the singular also include the plural and vice-versa where the context requires. The words "written" and "in writing" include any means of visible reproduction.

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## 2. BASIS OF THE SALE

2.1 The Seller shall sell and the Purchaser shall purchase the Goods and/or Services in accordance with any written quotation of the Seller which is accepted by the Purchaser, or any Order of the Purchaser which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms, conditions, arrangements, customs or practices. This is provided that any terms or conditions stipulated incorporated or referred to by the Seller in the written quotation (or in the Seller's written acceptance) that are inconsistent with or varies from these Conditions shall override these Conditions. These Conditions shall supersede any other express or implied, written or oral terms, arrangements, customs or practices unless the written quotation of the Seller specifically states otherwise.

2.2 The Seller reserves the right to vary these Conditions upon giving the Purchaser reasonable notice of its intention to do so. The Seller objects to any varying terms proposed by the Purchaser in its Order or any other document of the Purchaser. Such varying terms shall not become part of the Contract without the express written consent and signature of the authorised representatives of the Seller.

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### **3. ORDERS, SPECIFICATIONS AND CANCELLATIONS**

3.1 No Order shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Purchaser shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification).

3.3 The quantity, quality and description of any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Purchaser) or the Order (if accepted by the Seller). The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform to any applicable statutory requirements or, where the Goods and/or Services are to be supplied to the Purchaser's specification, which do not materially affect their quality or performance.

3.4 No Order which has been accepted by the Seller may be cancelled by the Purchaser except with the agreement in writing of the Seller and on terms that the Purchaser shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation. Depending on the total deposit received, the seller can retain a minimum value of 25%, which is subject to the amount of works completed to date & therefore the final value retained maybe higher. If a site survey has been completed, the seller reserves the right to retain the full deposit amount received from the purchaser.

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### **4. PRICE**

4.1 The price of the Goods and/or Services shall be the Seller's quoted price, or the price accepted in writing by the Seller. All prices quoted are valid for 90 days only, after which time they may be altered by the Seller without giving notice to the Purchaser.

4.2 The quoted prices are based upon the scope of the Services and/or Goods referred to in the Seller's offer. In the event of any variation in the scope of Services and/or Goods ordered, including delivery dates from that of the Seller's offer, the Seller reserves the right to vary the prices quoted.

4.3 Once the Purchaser has provided the Seller with written instruction to proceed to an order, the manufacture of the goods being supplied will be scheduled to meet the required completion/ delivery date stated at the time of order placement. The Seller has the right to apply additional costs if the project is delayed and production completion exceeds ninety days from the originally proposed date. Any project going past the 90-day period, will be subject to the Sellers current manufacture schedule and may result in the revised completion date having to be re-planned at the next available position. If a project is being delayed, the Purchaser is required to notify the Seller with sufficient notice.

4.4 In the event the Purchaser requires additional Goods or additional works which are not included within the quotation or the Order, the Seller shall provide the Purchaser with prices for these Goods/services. Unless the Purchaser notifies the Seller to the contrary, the prices for the additional Goods/services will be deemed to be accepted and will form part of the price referred to in clause 4.1 and of the Contract. Any variations to the contract will be costed independently and depending on the time between the original order and the additional items, the cost and lead time may vary.

4.5 VAT will be added to all prices at the applicable rate.

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### **5. TERMS OF PAYMENT**

5.1 The Seller shall be entitled to invoice the Purchaser for the price of the Goods and/or Services on or at any time after delivery of the Goods and/or the performance of the Services. If the Goods are to be collected by the Purchaser or the Purchaser fails to take delivery of the Goods, refuses to allow or call for the performance of the Services at the time contemplated by the Contract. The Seller shall be entitled to invoice the Purchaser for the price at any time after the Seller has notified the Purchaser that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods and/or performance of the Services.

5.2 Unless otherwise agreed by the Seller in writing, payment will be due by the Purchaser at the following stages:-

**For the supply of the Goods only:**

- a. 50% of the total value of the Order on acceptance by the Seller
- b. 50% of the total value of the Order prior to the delivery of the Goods

5.3 If the Purchaser fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the Contract or suspend any further deliveries and/or Services to the Purchaser;

5.3.2 appropriate any payment made by the Purchaser to such of the Goods and/or Services (or the Goods and/or Services supplied under any other contract between the Purchaser and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Purchaser);

5.3.3 charge the Purchaser interest on the amount unpaid on a daily basis at the rate of eight per cent (8%) per annum above base rate of Handelsbanken Bank, from the due date until payment in full is made.

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## **6. DELIVERY**

6.1 Delivery of the Goods/and or Services shall be made by the Seller delivering the Goods to the Site, or the completion of the Services.

6.2 Partial delivery/performance of Goods and/or Services ordered is permissible. Where the Goods or Services are to be delivered/performed in instalments, each delivery/performance shall constitute a separate contract and failure by the Seller to deliver/perform any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.

6.3 For the delivery/provision of Goods and/or Services at a Site, the Purchaser shall at its own costs and expense, take all necessary measures, to prepare the Site and ensure that the Seller's personnel are able to commence work immediately upon their arrival at the Site and further ensure that work proceeds in an uninterrupted manner.

6.4 Subject to the Purchaser granting the Seller such reasonable access to the Site as the Seller shall require for the delivery/provision of the Goods and/or Services, the Seller shall commence at the Site on the scheduled date and shall inform the Purchaser when such work is completed. The Purchaser shall accept (and in default shall be deemed to accept) the Goods and/or Services on the date that the Seller informs it that the Goods and/or Services have been delivered/performed.

6.5 If the Purchaser fails to take delivery of the Goods within three Business Days of the Seller notifying the Purchaser that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the contract

(i) delivery of the Goods shall be deemed to have been completed by 9.00am on the third Business Day after the day on which the Seller notified the Purchaser that the Goods were ready, and

(ii) the Seller shall store the Goods until delivery takes place, may charge the Purchaser for all related costs and expenses (including insurance). The Seller accepts the storage of Goods free of charge to a maximum period of six weeks past the completion date. If the storage of Goods is required to exceed the six-week period, a cost of 1% of the total order value per week, will be applied to the contact from the first business day of week seven. All storage is subject to prior agreement depending on space available at the current time.

6.6 If the Purchaser has not taken delivery of the Goods within 10 Business Days from the day on which the Seller notified the Purchaser that the Goods were ready for delivery, the Seller has the right to resell or otherwise dispose of part, or all of the Goods unless the above storage arrangement has been agreed prior.

6.7 Once the Goods have been delivered by the Seller, the Purchaser has 48 hours to notify the Seller of any defects or damage. Once the 48 hour period has passed, it is deemed that the purchaser accepts all Goods as delivered and any defects or damage reported at this time, or thereafter, may come at additional expense to the Purchaser.

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## **7. TITLE AND RISK**

7.1 Risk of damage to or loss of the Goods shall pass to the Purchaser at the time of delivery or, if the Purchaser fails to take delivery of the Goods, the time when the Seller 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, title in the Goods shall not pass to the Purchaser until the Seller has received in cash or cleared funds payment, in full, of the price of the Goods and all other Goods agreed to be sold by the Seller to the Purchaser for which payment is then due.

7.3 Until such time as title in the Goods passes to the Purchaser, the Seller shall be entitled at any time to require the Purchaser to deliver up the Goods to the Seller and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods. Until such time, as in accordance with this provision, the Goods shall not be pledged or given as security or resold by the Purchaser and the Purchaser undertakes to store the Goods in its premises separately from its own Goods or those of any other person and in a manner which makes them readily identifiable as the Seller's Goods.

7.4 Liability for the loss of property/possessions and the risk of accidental damage to any of the Goods of any kind provided by the Seller shall at all times remain with the Purchaser except where such damage or loss has resulted from the gross negligence of the Seller.

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## **8. WARRANTY AND GUARANTEE**

8.1 The Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship under normal use and service, and that it will perform the Services where required with reasonable care and skill.

8.2 The Purchaser is referred to the Company's Care and Installation document provided on purchase of the Goods which sets out the terms of the warranty cover, including exclusions.

8.3 The Seller shall be under no obligation to offer a warranty or be under no liability whatsoever:-

8.3.1 in respect to any defect in the Goods arising from any drawing, design or specification supplied by the Purchaser;

8.3.2 in respect to any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval or improper or inadequate maintenance by the Purchaser;

8.3.3 if the total price for the Goods or the Guaranteed Goods has not been paid by the due date for payment;

8.3.4 If the Purchaser permits persons other than the Company's authorised representatives to effect any replacement of parts maintenance adjustments or repairs to the Goods.

8.3.5 for any delay in the delivery or installation of the Goods or the Guaranteed Goods if such delay arises or results from variation of the Contract pursuant to Clause 2.2.

8.4 Any claim by the Purchaser which is based on any defect in the quality or condition of the Goods or Guaranteed Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Purchaser) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the alleged defect or failure, failing which the Seller shall not be liable under the Guarantee provided in Clause 8.1 herein.

8.5 Where any valid claim in respect to any of the Goods or Guaranteed Goods, which is based on any defect in the quality or condition of the Goods or the Guaranteed Goods or their failure to meet specification, is notified to the Seller in accordance with these Conditions. The Seller's sole liability shall be to repair or replace the Goods or Guaranteed Goods (or the part in question) free of charge at the Seller's sole discretion, or refund the Purchaser the price of the Goods or the Guaranteed Goods (or a proportionate part of the price).

8.6 The Seller shall not be liable under the Guarantee provided in Clause 8.1 herein if the Purchaser permits persons other than the authorised representative of the Seller to effect any replacement of parts, maintenance, adjustments or repairs to the Goods or the Guaranteed Goods.

8.7 The benefit of this Guarantee shall apply only to the Purchaser and may only be assigned or transferred with the written consent of the Seller.

8.8 The Seller shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or the Guaranteed Goods, if the delay or failure was due to force majeure. For the purposes of this clause, force majeure shall mean any unforeseen event beyond the reasonable control of the Seller such as, but not limited to any act of God, act of government or any authorities, hostilities between nations, war, riot, civil commotions, civil war, insurrection, blockades, import or export regulations or embargoes, rainstorms, national emergency, earthquake, fires, explosion, flooding, hurricane or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings due to any such events. If any delay in performing, or any failure to perform the Contract is caused by the delay of a subcontractor of the Seller, and is beyond the control and without the fault or gross negligence of the Seller, the Seller shall incur no liability for such delay.

8.9 Save for the remedies available to the Purchaser under these Conditions, the Seller shall not be liable to the Purchaser under this Contract in any way whatsoever. Without prejudice to the foregoing, in no event shall the Seller be liable for incidental, indirect or consequential damages of any kind.

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## **9. TERMINATION AND/OR SUSPENSION OF WORKS**

9.1 The Seller shall be entitled to (i) cancel the Contract or suspend any further deliveries, works or the Services under the Contract without any liability to the Purchaser, and (ii) request immediate payment, negating any previous agreement or arrangement to the contrary if the Goods and/or Services have been delivered or completed and not paid for; and (iii) retain any security given or monies paid by the Purchaser and apply the said security or monies against the assessed loss and damages, if any, suffered by the Seller, in the event that the Purchaser is in breach of any of the Conditions within the Contract;

9.2 Termination of the Contract by the Seller shall not discharge the Purchaser from any existing obligation accrued due on or prior to the date of termination.

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## **10. INTELLECTUAL PROPERTY**

Any registered design or trademark or trade name or copyright in any drawings or documents prepared by the Seller, or in the Goods or Services provided pursuant to the Contract will, at all times, belong to the Seller and there shall be no infringement by the Purchaser.

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## **11. COMPLIANCE WITH LAWS AND REGULATIONS**

11.1 The Purchaser shall be solely responsible for complying with all relevant planning and building regulations or other legal requirements in order to obtain necessary consents, licences, permits or authorities which may be required in connection with any Services carried out by the Seller. The specification of the Goods being provided will be stated on the quotation documents, but it is the responsibility of the Purchaser to make sure the details being provided form compliance with their specific project requirements and building regulations.

11.2 The Seller takes no responsibility for the issue of relevant notices under the Party Wall Act 1996, or for obtaining agreements or settling disputes. Although the Seller may provide guidance on a Party Wall matter, it is not a Party Wall surveyor and the Purchaser must appoint an independent specialist to resolve issues relating to such a matter.

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**12. Notice**

Any notice required to be given by either party to the other shall be served by delivery at or sending the same by registered post or recorded delivery or other means in permanent written form to the last known address of the other party and any receipt issued by the postal authority shall be conclusive evidence of the fact and date of posting of such notices.

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**13. Law**

The Contract and these Conditions will be construed in accordance with the laws of England and Wales.