

## THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.4

### 1. Interpretation

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

**the Customer:** the person(s), firm or company whose details are set out overleaf;

**the Company:** Trade Windows Direct Limited;

**Contract:** the contract for the purchase of the Goods, incorporating these Conditions;

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4;

**Goods:** those goods itemised in the Order Form overleaf

**Order Form:** the form set out overleaf.

- 1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these conditions headings will not affect the construction of these conditions.

### 2. Application Of Terms

- 2.1 Subject to any variation under condition 2.3 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the contract. Nothing in this condition will exclude or limit the company's liability for fraudulent misrepresentation.
- 2.4 Each order on an Order Form or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- 2.6 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### 3. Description

- 3.1 The Goods will be manufactured and supplied to the measurements and specifications set out in the Order Form, it is the Customer's responsibility to confirm that these measurements are correct.
- 3.2 Measurements given by surveyors should be confirmed by the Customer, and will not be checked by the Company.
- 3.3 All measurements should be submitted in metric measures and the Company accepts no responsibility for any mistakes that make occur as a result of having to convert sizes from imperial measurements.
- 3.4 Under its policy of continued improvement or in any event of non-availability of sold out parts, the Company reserves the right to alter, change or amend without notice the specifications of its products at any time. All samples, drawings and demonstration models are intended to show a typical example of the Company's products and the materials used. The Goods supplied may vary in detail to the demonstration models, however the quality and general specification will not be affected.
- 3.5 Whilst the Company will endeavour to manufacture the Goods to exact measurements, all measurements will be subject to the industry standard  $\pm 5$ mm tolerance.

### 4. Delivery

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
- 4.2 With the exception of full conservatory kits, delivery to the Customer will be subject to an additional charge.
- 4.3 The Customer shall collect the Goods within 7 days of the Company giving it notice that the Goods are ready for collection.
- 4.4 In the event of the Company delivering the Goods, then any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 4.5 If for any reason the Customer will not accept delivery of any of the Goods or collect the Goods when they are ready for delivery or collection:
- risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);
  - the Goods will be deemed to have been collected/delivered; and
  - the Company may store the Goods until delivery/collection whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 5. Non-Delivery

- 5.1 The Customer shall confirm on collection or, where the Company delivers on delivery, that the Goods as itemised on the Order Form overleaf are all present.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 7 days of the date when the Goods were delivered.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

### 6. Risk/Title

- 6.1 The Goods are at the risk of the Customer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- the Goods; and
  - all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.4 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

### 7. Price

- 7.1 The price for the Goods shall be that set out in the Order Form overleaf, and the total price shall be inclusive of VAT.
- 7.2 The price for the Goods shall be exclusive of all costs or charges in relation to delivery (except in the case of full conservatory kits) all of which amounts the Customer will pay in addition when it is due to pay for the Goods.

### 8. Payment

- 8.1 Acceptance of the order by the Company is subject to the payment of a deposit of 50% of the purchase price on the signing of the Order Form.
- 8.2 If the Customer cancels the Contract before the Company has issued the notice referred to in 4.3 then unless the Company is in breach of contract, the Company have the right to refuse or to retain all or part of your deposit as a contribution towards any losses or costs the Company suffers as a result of the cancellation.
- 8.3 The balance of the purchase will be due prior to collection by or delivery to the Customer and the Company shall not be bound to deliver the Goods or release them for collection until all outstanding accounts have been settled.
- 8.4 Time for payment shall be of the essence.
- 8.5 No payment shall be deemed to have been received until the Company has received cleared funds, all cheques and money orders should be made payable to Trade Direct Windows Limited.
- 8.6 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 8.7 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.8 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. Where the Customer is a business, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

### 9. Quality

- 9.1 The Company warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 12 months from the date of delivery/collection, the Goods will:
- be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - The Company shall not be liable for a breach of the warranty in condition 9.1 unless:
    - the Customer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 14 days of the time when the Customer discovers or ought to have discovered the defect; and
    - the Company is given a reasonable opportunity after receiving the notice of examining such Goods
  - The Company shall not be liable for a breach of the warranty in condition 9.1 if:
    - the Customer makes any further use of such Goods after giving such notice; or
    - the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
    - The defect arises as a result of sub-standard installation by the Customer; or
    - the Customer alters or repairs such Goods without the written consent of the Company.
- 9.4 Subject to conditions 9.2 and 9.3, if any of the Goods do not conform with the warranty in condition 9.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if the Company so requests, the Customer shall allow the Company access to the Customer's premises to view the defective Goods.
- 9.5 Where the Company chooses to replace any defective product pursuant to clause 9.4 above which has already been installed, the Company will not be responsible for the costs of removing the defective product

- 9.6 If the Company complies with condition 9.4 it shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods.
- 9.7 Where any Goods are replaced by the Company under clause 9.4 above, the original defective Goods will belong to the Company. Any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.

### 10. Indemnity and Limitation Of Liability

- 10.1 Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- any breach of these conditions;
  - any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- for death or personal injury caused by the Company's negligence;
  - under section 2(3) Consumer Protection Act 1987;
  - for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - for fraud or fraudulent misrepresentation.
- 10.4 Subject to conditions 10.2 and 10.3:
- the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the contract price; and**
  - the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.**
  - the Company shall not be liable to the Customer for any loss or claim resulting from substandard installation of the Goods by the Customer.**

10.4 Nothing in this clause 10 will affect or limit the customer's statutory rights.

### 11. Assignment

- 11.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.2 The Company may assign the Contract or any part of it to any person, firm or company.

### 12. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

### 13. General

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any clause, sub-clause or provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.4 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

### 14. Communications

- 14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission to the address of the respective party as set out in the Order Form overleaf.