

# **CONDITIONS OF SALE**

## **1. GENERAL**

- (a) These conditions apply to all sales of goods by Apollo Windows Trade Store Ltd ("the seller") and shall prevail over any other terms or conditions or referred to in the Buyer's order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless such terms or conditions are specifically agreed in writing by the seller. The seller's agents shall not have authority to enlarge, vary or exclude any of these conditions. Any purported enlargement, variation or exclusion thereof shall be without effect unless specifically agreed to in writing by the Seller and Buyer.
- (b) No terms or conditions of any main building contractor or sub-contract shall affect these conditions whether or not the Seller has notice thereof.
- (c) The headings appearing above each condition are included for reference purposes only and shall not affect or limit the interpretation and effect of these conditions.

## **2. QUOTATIONS**

- (a) A quotation by the Seller shall constitute an invitation to treat and not an offer. The Seller may withdraw or amend any quotation at any time prior to the Seller's acceptance of the Buyer's order.

## **3. ESTIMATES OF QUANTITIES AND ADVICE AS TO FITNESS FOR PURPOSE**

- (a) Any estimate in respect of quantities needed or advice as to the suitability or fitness of any goods for any particular purpose given by the Seller or its servants or agents will be treated as without obligation or responsibility on the part of the Seller and the Buyer will be entirely responsible for ascertaining the quantities required and the suitability and fitness of the goods for their purpose.

## **4. PRICE**

- (a) Where price is not specified, this clause 4 shall apply. Subject to sub-clause (d) hereof, the price payable for the goods sold shall be that contained in the Seller's current price list at the time of dispatch, notwithstanding that this may differ from the price stated in any quotation by the Seller, unless the price quoted was not a list price at the time of quotation.
- (b) The Seller reserves the right to make such alterations to the price as it thinks fit.
- (c) Subject to sub-clause (d) hereof, if there is no price list for the goods sold, or if in the price quoted was not a list price current, at the time of quotation, then the price to be paid shall be the price specified in the quotation, provided that the order has been accepted within the period specified in the quotation.
- (d) In addition to having the right reserved by sub-clause (b) hereof, the Seller shall have the right at any time and without notice to revise the price payable for the goods sold to take account of increases in cost including (without) limitation costs of any goods or materials carriage labour or overheads the increase or impositions of any tax duty or other levy and any variation in exchange rate since the date of preparation of the current price list or (in case falling within sub-clause (c) hereof, acceptance of the order.
- (e) Unless otherwise agreed by the Seller in writing the Seller reserves the right to change the Buyer the cost of transportation of the goods to the destination requested by the Buyer.

## **5. TERMS OF PAYMENT**

- (a) If the payment terms are not set out, this clause 5 will apply. Credit amounts may be opened, subject to satisfactory credit references being obtained, in the Seller's sole discretion. Payment for goods supplied on a credit account shall become due and payable not later than the last day of the month following the month of the delivery of the goods. In the event of there being any default by the Buyer in making payment as aforesaid the entire balance of the said account shall be payable forthwith and the Seller shall be entitled to charge interest thereon in accordance with sub-clause (d) hereof.
- (b) For all other transactions, quotations shall be for cash with order. If cash is not paid with the order, the Seller shall have the right to require cash on delivery.
- (c) The Buyer shall not be entitled to withhold or sell off payment due to the Seller under the terms hereof whether in respect of any claim by the Buyer in respect of goods supplied by the Seller for any other reason which is contested or for which liability is not admitted by the Seller.
- (d) Without prejudice to the Seller's right to enforce payment, if the Buyer fails to make payment as hereinbefore provided the Seller shall be entitled to charge interest on any balance outstanding from the date the same became due for payment at the time being payable on High Court judgement debts pursuant to section 17 of the Judgement s Act 1838.
- (e) Interest shall become due and Payable pursuant to the foregoing clauses notwithstanding the fact that a portion of the account be subject to any dispute or query.
- (f) If in the case of any sale involving more than one delivery default is made in payment on the due date the Seller shall have the right forthwith to suspend any further deliveries until payment, or by notice in writing to terminate the contract entirely. Whether or not the same is severable.
- (g) If at any time the Buyer (being an existing credit account customer) being a company shall after its constitution or being a sole trader or partnership shall become incorporated or amalgamated with others it shall be the duty of the Buyer to give prior written notice to the Seller of the intended change (should the Buyer wish to continue credit account facilities following any intended change). Continuance of trading with the amalgamated entity or commencement of trading with a new entity shall be in the sole discretion and only deemed undertaken by the Seller if a written acknowledgement and acceptance is issued by the Seller's Credit Controller or Sales Director or Company Secretary.

## **6. DELIVERY**

- (a) Delivery dates mentioned in any quotation or acceptance form or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates, nor shall time be of the essence of any contract.
- (b) Where delivery to site is undertaken by the Seller it is on the understanding that there is a suitable road to the point on site where delivery is requested. If no such road exists delivery will be made to the nearest access point to which the opinion of the Seller's driver vans can safely proceed and unload.
- (c) All necessary labour and equipment required to unload material promptly shall be supplied by the Buyer and the Seller's drivers shall not take responsibility for unloading.
- (d) If the Buyer refuses or fails to take delivery of the goods tendered in accordance with the Contract the Seller shall be entitled to immediate payment in full for the goods tendered. The Seller shall be entitled to store at the risk of the Buyer any goods which the Buyer refuses or fails to take delivery and the Buyer shall in addition to the purchase price pay all costs of storage and any additional cost or carriage incurred as a result of such refusal or failure.

- 7. **RISK** The risk in the goods shall pass to the Buyer upon delivery

## **8. TITLE TO GOODS**

Until the Seller has received the payment in cleared funds of all sum outstanding on all accounts.

- (I) Ownership of the goods shall remain in the Seller. The Buyer shall hold the goods as bailee on behalf of the Seller and in fiduciary capacity for the seller.
- (II) The Buyer has a right to sell and deliver the goods to third parties in the ordinary business, acting towards such third parties as a principle and not as the Seller and pay them into a separate bank account clearly demoting as containing money deposited for the benefit of the Seller. The Buyer shall also ensure that such a bank account is never overdrawn. Upon request by the Seller, the Buyer shall supply the seller with the details of any sub-sale and shall assign to the Seller any claim or right of action it may have against a sub-purchaser.
- (III) The Buyer shall store the goods in such a way as to clearly show the Seller's ownership of them.
- (IV) The Buyer shall notify the Seller immediately upon demand by the Seller of the place or places where the goods are situated.
- (V) The Buyer shall afford to the Seller access to the goods during all normal business hours whether they are upon land occupied or owned by the Seller or its customers and the Buyer shall deliver the goods up to the Seller as its requests and allow the Seller to remove the same. For this purpose the Buyer hereby grants an irrevocable right and licence to the Seller's servants or agents to enter upon the said land with or without vehicles during normal business hours.

**9. SELLERS LIABILITY**

- (a) The Seller does not exclude liability for death or personal injury to the extent that it results from the negligence of the Seller, its servants or agents.
- (b) The Seller accepts liability for any breach on its part of any undertaking as to the title implied by section 12 of the Sale of Goods Act 1979 or by Section 8 of the Supply of Goods (Implied Terms) Act 1973.
- (c) The Seller does not accept liability for shortages of delivered unless Buyer notifies the Seller of any claim for short delivery of the goods within 2 working days of the delivery to the Buyer or to the Buyer's instructions. In such circumstances the Seller's liability shall be restricted to making good the shortage.
- (d) The Seller agrees to repair or replace free of charge any goods which, in the opinion of the Seller, are defective due to a manufacturing fault, but only if the same is reported to the Seller in writing (5) working days of the delivery of the goods to the Buyer or Buyer's order, but the Seller will be responsible for the cost of removing any defective goods from any place where they are installed or affixed ( or for making good the said place after removal) or for the cost of installing or affixing in such place any repaired or replacement goods unless the same shall have been previously agreed in writing.
- (e) Save as foreshaid, all liability for any representations whether oral or in writing and all guarantees, conditions or warranties whether exposed or implied by statute, common law or otherwise is hereby excluded, and the Seller shall not be liable for any loss (including consequential loss), damage or delay or expense of any kind whatsoever and howsoever caused (including negligence of the Seller it's servants or agents).
- (f) Save as to the matters set out in (a) and (b) above, the Buyer acknowledges and agrees that he is able to if he wishes) to insure against the risk of any loss (including consequential loss), damage or delay or expense of any kind whatsoever and howsoever caused (including by the negligence of the Seller it's servants or agents).
- (g) If the Buyer is dealing as a consumer as defined by section 12 of the Unfair Contract Terms Act 1977 the Seller does not exclude liability for obligations arising under sections 13, 14 and 15 of the Sale of Goods Act 1979 or under section 9, 10 and 11 of the Supply of the goods (Implied Terms) Act 1973 as those statutory provisions have been amended by the sale of Goods Act 1994.
- (h) Where fine or special tolerance are required in the goods supplied beyond those generally accepted in the building trade, no liability will attach to the Seller unless such fine tolerances are notified in writing to the Seller at the time of order and the Seller has acknowledged in writing that it is prepared to accept such order.
- (i) The Buyer shall indemnify the Seller against any liability which the latter may incur (whether as a result of or in connection with court proceedings or under the terms of a bona fide out of court settlement) as a result of a claim against the Seller under Part 1 of the Consumer Protection Act 1987 in respect of an alleged defect in the goods.
- 10. MEASURES** The Seller shall have the option to Supply all or any goods in either metric or imperial sizes in the nearest equivalent measure and goods may be changed into metric measure allowing for conservation.
- 11. CANCELLATIONS OF ORDERS** The Seller may at its sole discretion accept or reject the return of any order once such has been accepted by the Seller. The Seller will in no circumstances accept the cancellation of an order for goods which are to be specially made or obtained once such an order has been accepted by the Seller nor will any allowance be made in respect of such goods where they are subsequently returned.
- 12. RETURN OF GOODS** The Seller may at its sole discretion accept or reject the return of any goods which have been incorrectly ordered in the event that the Seller decides to accept the return of such goods, such acceptance shall be upon such terms as the Seller may determine and in particular the Seller nor will any allowance be made in respect of such goods where they are subsequently returned.
- 13. FORCE MAJEURE CLAUSE** The Seller shall be under no liability for any loss ( including consequential loss), damage or delay or expense or any kind whatsoever caused wholly or in part by Act of God, outbreak or civil war commotion, government policies or restrictions or control, including restrictions of export and import or other licenses, trade or industrial disputes of whatever nature, whether or not such dispute involves the Seller, its servants or agents, or by any other contingency whatsoever which is beyond the control of the Seller.
- 14. BUYERS BANKRUPTCY OR INSOLVENCY** If the Buyer makes a proposal for or enters into a scheme or arrangement or a composition with his or its creditors or fails to comply with a statutory demand for the repayment of a debt within the time therein allowed, or if (where the Buyer is an individual or where the Buyer is a partnership, in the case of any individual partner) an application is made to the court Part VIII of Insolvency Act 1986 for an interim order for the purpose of a voluntary arrangement or an order is made for the administration of his estate pursuant to part VI of the County Courts Act 1984 or a bankruptcy petition relating to him is presented to the court, or he is adjudged bankrupt, or if (where the Buyer is a company) a petition for an administration order is presented to the court pursuant to Part II of the insolvency Act 1986 or the Buyer passes a resolution or the court makes an order that it shall be wound up (otherwise than for the purpose of amalgamation or the reconstruction) or a receiver is appointed of any of the assets or undertaking of the Buyer or circumstances arise which entitle the court to make a winding up order or (whether the Buyer is a company, a partnership or an individual) the Buyer takes or suffers any similar action in consequence of debt, the Seller may stop any goods in transit and suspend further deliveries and may forthwith determine the contract without prejudice to the continuation of all the Seller's rights hereunder and to any existing claims.
- 15. NON-WAIVER OF RIGHTS** Failure by either party to the contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any times or times thereafter.
- 16. NOTICES** Any notices hereunder shall be in permanent readable form and shall be properly delivered if addressed to the party concerned at its principle place of business or last known address.
- 17. SEVERABILITY** If any provision of these conditions is held by any competent authority to be unlawful, invalid or unenforceable in whole or in part of the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby and shall continue to be valid and enforceable to the full extent permitted by law.