

Vantage Window Systems Ltd

Terms of Business – 1st March 2009

These Terms of Business replace all Terms of Business issued before the current date.



1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: VANTAGE WINDOW SYSTEMS LIMITED (Co. No. 06583433).

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

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

Installation: Installation of the Goods agreed to be undertaken as part of the original order from the Buyer and confirmed by the Company by an order confirmation.

Subsequent Installation Work: Any installation agreed to be carried out by the Company in respect of the Goods which does not form part of the original order from the Buyer and is agreed following confirmation of an order for the Goods.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them)

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall 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 Buyer 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 shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer 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 Buyer.

2.6 The Buyer shall 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 shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

2.8 These conditions replace all conditions issued before the current date.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation, invoice or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company'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 and this is not a sale by sample.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's premises as notified to the Company in writing or otherwise at the time of placing the order.

4.2 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 shall be within a reasonable time.

4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits,

loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered and the contractual obligations of the Company under the contract thereby performed; and
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

4.6 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company and the carrier employed by the Company from time to time of the non-delivery within 3 working days of the date when the Goods would in the ordinary course of events have been received.

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 against any invoice raised for such Goods.

6. CANCELLATION OF ORDERS

6.1 Cancellation of an order must be notified in writing to the Company as soon as possible and in any event before confirmation of the order following a quotation. Where the Company, in its absolute discretion, agrees that an order may be cancelled the Company reserves the right to claim from the Buyer any loss the Company has suffered as a result of that cancellation, for which the Buyer gives a full indemnity. In addition the Company may charge, and the Buyer agrees to

pay, administrative costs and restocking charges equivalent to 20% of the value of the cancelled order.

6.2 In the event of the Buyer altering the requirements of the order after instructions have been received by the Company the Company reserves the right to amend the delivery time and to charge for any loss incurred as a result of the alterations.

6.3 Goods made to special order cannot be cancelled.

7. INSTALLATIONS

7.1 It shall be at the absolute discretion of the Company as to whether any installation of the Goods is carried out by it or any of its workers, employees or subcontractors.

7.2 The Buyer understands and agrees that the terms of this agreement relate exclusively to supply of the Goods except where there is a prior agreement for Installation to be carried out, such agreement to be evidenced by confirmation of the order by the Company specifying that Installation is to take place. Installation of the Goods shall be carried out by the Company with a reasonable degree of skill and care. Whilst the Company shall use all reasonable endeavours to carry out any Subsequent Installation Work or assist in any Subsequent Installation Work with a reasonable degree of skill and care, it cannot be held responsible and excludes liability for any damage or loss whether direct or indirect (including any consequential loss or damage) resulting from said Subsequent Installation Work.

7.3 The Buyer agrees to indemnify the Company against any claims arising in connection with clause 7.2

7.4 For the avoidance of doubt, the Buyer shall be responsible for the safety of any employee, worker or subcontractor of the Company and the safekeeping of any materials or property of the Company during the installation process.

8. RETENTIONS

8.1 Should any retention of payment for the Goods be agreed by the Company (at its absolute discretion) pending satisfactory Installation of the Goods, such retention shall:

- a) not exceed the cost of installation to be communicated to the Buyer by the Company ; and/or
- b) not exceed 10% of the value of the Goods; and
- c) be payable in full within 7 days of satisfactory installation of the Goods.
- d) For the avoidance of doubt no retention of payment shall be permitted in respect of any Subsequent Installation Work.

9. RISK/TITLE

9.1 The Goods are at the risk of the Buyer from the time of delivery.

9.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and

- (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 9.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 9.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 9.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.
- 9.6 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.
- 9.7 The Buyer 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 or installed in order to inspect them, or, where the Buyer's right to possession or title has terminated or failed to pass due to non-payment or whatever reason, to recover them. In the event that installation of the Goods has already taken place notwithstanding ownership in the Goods remaining with the Company, the Company shall be entitled to take such reasonable measures as may be necessary to remove and recover the Goods.
- 9.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 9.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
- 10. PRICE**
- 10.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's invoice. Any price lists, quotations or catalogues should be taken as guidance only. The prices current at the date of despatch shall prevail over any quotation, price list or catalogue. However the Company shall use all reasonable endeavours to ensure that the Buyer is notified of any price changes prior to despatch of the Goods.
- 10.2 The quoted price for the Goods shall be exclusive of any value added tax which will be added to the invoice upon delivery of the Goods.
- 10.3 The Company reserves the right to adjust the quoted price to the price ruling on the date of despatch without notice.
- 10.4 In the event that the Buyer requests that the Goods are to be supplied zero rated for VAT purposes, and such representation by the Buyer whether knowingly or unknowingly is found to be false or contravenes any current regulation or statutory requirement, the buyer agrees to indemnify the Company against any loss sustained, direct, consequential or otherwise, as a result of such representation.
- 11. PAYMENT**
- 11.1 Subject to condition 11.5, payment of the price for the Goods is due in pounds sterling in accordance with the terms specified on the relevant invoice. Should no specific terms as to payment appear on the Invoice, payment in full shall be due on delivery.
- 11.2 Should the rendering of any invoice have the effect of causing the Buyer's credit limit to be exceeded (such limit to have been notified to the Buyer in writing) the total amount of all outstanding invoices shall be payable upon delivery of the Goods in full, irrespective of any contradictory statement appearing on an invoice.
- 11.3 Time for payment shall be of the essence.

- 11.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 11.5 All payments payable to the Company under the Contract shall become due immediately on the termination of the Contract.
- 11.6 The Buyer shall make all payments due under the Contract in full without any deduction, save for any deductions required to be made under the Construction Industry Scheme (CIS), whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 11.7 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank Plc, subject to a minimum of 8% interest payable on any overdue amount, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.8 Any failure by the Buyer to make payment in accordance with the terms herein for the Goods shall result in the Company being entitled to: -
- (a) Withhold all future deliveries to the Buyer in respect of any other order placed for any other goods; and
 - (b) Withdraw all credit facilities previously afforded to the Buyer or which are already in place immediately without notice; and
 - (c) Demand immediate settlement of all invoices raised by the Company in respect of all other goods pursuant to other orders placed by the Buyer irrespective of any clause herein to the contrary or any other time scale for payment communicated to the Buyer in respect of those goods.
- 12. QUALITY**
- 12.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 12.2 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - (b) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.
- 12.3 The Company shall not be liable for a breach of the warranty in condition 12.2 unless:
- (a) the Buyer 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 2 working days of the date of delivery of the Goods; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 12.4 The Company shall not be liable for a breach of the warranty in condition 12.2 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
 - (b) the defect arises because the Buyer failed to follow the Company'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; or
 - (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 12.5 Subject to condition 12.3 and condition 12.4, if any of the Goods do not conform with the warranty in condition 12.2 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 Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.
- 12.6 If the Company complies with condition 12.5 it shall have no further liability for a breach of the warranty in condition 12.2 in respect of such Goods.
- 12.7 The Buyer is solely responsible for ensuring that the specification of the Goods ordered conforms to all statutory or regulatory requirements applicable in respect of the Buyer's proposed use of the Goods, whether or not such proposed use was communicated to the Company, and the Buyer indemnifies the Company against all losses whether direct, indirect, consequential or otherwise arising therefrom.
- 13. LIMITATION OF LIABILITY**
- 13.1 Subject to condition 4, condition 5 and condition 12, 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 Buyer in respect of:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 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.
- 13.3 Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.
- 13.4 Subject to condition 13.2 and condition 13.3:
- (a) 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 the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill 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.
- 14. ASSIGNMENT**
- 14.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 14.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 15. 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 Buyer (without liability to the Buyer) 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 60 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 16. GENERAL**
- 16.1 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.
- 16.2 If any 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.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 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.
- 17. COMMUNICATIONS**
- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 17.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.