

TERMS AND CONDITIONS

1. INTERPRETATION – IN THESE CONDITIONS:

- 1.1 Buyer means the person, firm or company who accepts a quotation for the sale of the Goods, or whose order for the Goods is accepted by the Seller.
- 1.2 'Goods' means aluminium glazing products that the seller supplies to the buyer in accordance with a quotation, Buyer's orders, and/or Buyer's approval for manufacture.
- 1.3 'Seller' means Aire Valley Architectural Aluminium Ltd.

2. BASIS OF SALE

- 2.1 All orders are accepted on the following conditions unless expressly varied or amended by the Seller in writing.
- 2.2 These conditions (as modified in accordance with condition with 2.1 and together with the quotation and/or acceptance of order) embody the entire understanding of the parties and supersede any prior promised, representations, undertakings or implications. This condition shall not exclude any liability in respect of any statement made fraudulently by either party prior to the date of the contract.
- 2.3 A quotation for the sale of the Goods shall remain open for acceptance of the Buyer for a period of thirty days from the date of the quotation or for such alternative period as is stated on the quotation. (If any)
- 2.4 Any typographical, clerical or other error or omission in any sales literature, price list, quotation, order acknowledgement invoice or other information document issued by the Seller shall be subject to correction by the Seller without any liability on the part of the Seller.
- 2.5 It is the Buyer's sole responsibility to satisfy itself as to the specification of Goods ordered along with their descriptions, suitability for the purpose intended and/or performance required by the Buyer and acceptability or approval by any third party.
- 2.6 Any advice or recommendation given by the Seller is acted upon or followed entirely at the Buyer's own risk and the Seller shall not be liable for any such advice or recommendation.
- 2.7 These conditions do not create any right enforceable by any person other than the Buyer or the Seller.
- 2.8 The Buyer will have no right of set-off statutory or otherwise.

3. ORDERS

- 3.1 A contract is only concluded when the Seller despatches an acceptance of order to the Buyer. Any quotation in whatever form given to the Buyer is given subject to these conditions and does not constitute an offer to sell or supply.
- 3.2 All orders are accepted by the Seller subject to the delivery periods stated in the quotation
- 3.3 The Buyer is not entitled to rely upon any representation or statement made by the Seller's staff whether orally or in writing to supply the Goods in any lesser period of time than stated in the quotation unless it is in writing and signed by a Director or the Seller.
- 3.4 The order is accepted by the Seller subject to the availability of the Goods ordered. The Seller shall not be liable for any delays or non-delivery of such Goods.
- 3.5 The only Goods or work covered by a quotation are those specifically referred to in that quotation. By placing an order, the Buyer confirms that he has checked, approved and accepted the quotation including specifications, descriptions, model and all measurements where applicable.

4. VARIATIONS

- 4.1 The Buyer may vary their requirements as to detail and/or quantity of the Goods subject to agreement by the Seller and the following conditions: -
- 4.1.1 Any variation, deviation or alteration to the detail and/or quantity of the Goods supplied from those allowed for in the accepted quotation will be subject to price variations from that quoted for;
 - 4.1.2 Where the variation concerns the replacement of one detail with another one, then the delivery period shall be calculated from the date of the issue of the variation stated in the quotation, subject to the revised Goods ordered being available when required in the quantities needed;
 - 4.1.3 The full agreed price shall be paid to the Seller for any Goods manufactured to the original detail prior to the variation being issued, irrespective of whether the Goods are delivered to the Buyer or not;
 - 4.1.4 Where the variation solely relates to increased quantities then the Seller shall be paid at the agreed unit rates for the additional quantity of Goods concerned and any additional haulage cost if incurred.
 - 4.1.5 In addition to the above, the Seller is due payment of any administrative, production and/or stocking costs incurred from the variations issued by the Buyer.

5. CANCELLATION

- 5.1 Cancellations of an order or part of an order will not be accepted by the Seller once the Buyer has taken delivery of the Goods. Cancellations prior to delivery shall be subject to the remaining provisions of this clause.
- 5.2 Where a cancellation concerns the supply of product that constitutes less than 10% of the total order value, then the Buyer shall pay the Seller for all reasonable costs incurred by the Seller on designing/detailing and manufacturing the particular item up to the time of the cancellation.
- 5.3 If the cancelled item constitutes 10% or more of the total order value then the Buyer shall pay the Seller for all reasonable costs incurred by the Seller on designing/detailing and manufacturing the particular item up to the time of the cancellation along with the cost of all loss of manufacturing time and profit incurred. If the cancellation is replaced by an alternative item which, having regard to the delivery periods stated in the quotation, can be manufactured in the same time span allocated for the cancelled item, then the Buyer is only liable to pay the Seller for all reasonable costs incurred by the Seller on designing/detailing and manufacturing the particular items cancelled up to the time of cancellation.
- 5.4 If the Buyer enters into any voluntary arrangement with its creditors or (being an individual or a firm) becomes bankrupt or (being a company) becomes subject to an administration order, has a petition presented or an order made for its winding up, has a receiver, administrator or administrative receiver appointed over all or any part of its undertaking or assets, goes into liquidation or ceases or threatens to cease to trade, then without prejudice to any other remedy available to the Seller, the Seller shall have the right to cancel the contract or suspend further deliveries under the contract without any liability to the Buyer. If the Goods have been delivered but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

6. PRICE

- 6.1 The price of Goods shall be as per the Seller's quoted price accepted by the Buyer unless varied by condition 4 and 5 above.
- 6.2 Only where a fixed price period is stated in the Seller's quotation or confirmation order, does the Seller undertake to maintain the prices quoted for the stated fixed price period.
- 6.3 Where no such fixed price period is stated then the Seller reserves the right, by giving notice at any time before delivery to increase the price of the Goods to meet any increase in cost to the Seller due to any increase in the costs of labour, materials, manufacturing costs, foreign exchange fluctuation, government fiscal policies etc, or due to any delay caused by instructions and/or inadequate information provided by the Buyer.
- 6.4 The price of the Goods in quotation provided by the Seller is ex-works basis. Where the Seller agrees to deliver the Goods, the delivery price shall include for transport, packaging and insurance and to be to the nearest safe location.
- 6.5 The delivery price is for delivery on normal working day during normal working hours. All deliveries made at the Buyer's request on Public Holidays, Saturday and Sunday or at any other time outside working hours will incur an additional charge. When deliveries are made and no personnel are available to confirm receipt, delivery will be made at the entire risk of the Buyer.
- 6.6 The price of Goods is exclusive of any applicable value added tax, which shall be payable by the Buyer to the Seller in addition to the price.

7. PAYMENT

- 7.1 Unless otherwise agreed in writing by the Seller, or upon confirmation of a credit agreement, payment for the Goods must be made to the Seller prior to the despatch.
- 7.2 If credit terms are agreed, invoices are payable within 30 days of the invoice date. If any payment that is to be made by the Buyer to the Seller is overdue, interest will be chargeable on the sum due before and after judgement on a day to day basis at an annual rate of 8 percent above the Bank of England base rate from time to time applicable, until the sum due is paid.
- 7.3 Where the Buyer is in arrear with payments already due, the Seller reserves the right to delay or cancel further deliveries at the Seller's sole discretion without any liability to the Buyer on the Seller's part whatsoever and regardless of any agreement as to when such further deliveries are ordered.
- 7.4 If credit terms are agreed, the Seller will apply upon the Buyer a credit limit as stated in the Seller's quotation or otherwise agreed in writing. Notwithstanding the above stated payment period the Seller reserves the right to delay or cancel further deliveries at the Seller's sole discretion if such delivery would cause the credit limit to be exceeded without any liability to the Buyer on the Seller's part whatsoever and regardless of any agreement as to when such further deliveries are ordered.
- 7.5 The Seller reserves the right to refuse to execute any order if the arrangements for payment or the Buyer's credit are not satisfactory to the Seller and to suspend or discontinue delivery of any Goods or materials to any Buyer whose account is overdue for payment and/or has reached the above stated credit limit.
- 7.6 The Seller reserves the right to refuse payment to its suppliers if Goods are delivered and invoiced at an earlier date than requested on the purchase order (unless a variance is confirmed in writing or via email confirmation).

8. DELIVERY

- 8.1 Delivery dates quoted are approximate only, but shall be in accordance with the delivery programme stated on the quotation or as otherwise agreed in writing, subject to the Seller's rights to withhold or delay delivery as set out in these Conditions.
- 8.2 Where the Goods are delivered by instalments, the Buyer will not be entitled to treat the late delivery or non-delivery of any instalment as a repudiation of the contract as a whole.
- 8.3 The Seller reserves the right to deliver the Goods in instalments without any adjustment in the price.
- 8.4 If the Buyer fails to give delivery instructions to take delivery of specially manufactured Goods within 14 days of requested delivery date or where requested asap, of it being notified that the Goods are ready for delivery, the Seller shall (without prejudice to any other rights to remedies available to it) be entitled to store the Goods at a convenient place at the Buyer's expense.
- 8.5 If the Buyer fails to accept delivery of the specially manufactured Goods within 14 days of the requested delivery date or where requested asap, of it being notified that the Goods are ready for delivery, the materials, labour and margin thereof, elements of the contract will be invoiceable to the Buyer and subject to 30-day terms from that date, irrespective of delivery date thereafter. Installation works where applicable will be invoiced upon completions of works.
- 8.6 Where the Goods are stored by the Seller after an invoice has been issued as per clause 8.5 a vesting certificate will be issued in the name of the Buyer as to the ownership of the Goods once paid for.
- 8.7 The Seller does not undertake to deliver and load over roads or other grounds which the drivers of the Seller consider to be unsuitable. If a vehicle of the Seller or its carriers used in the performing of the contract with the Buyer delivers a load to a place situated off a public road, the Buyer is to be solely responsible for any accident or damage resulting in consequence.
- 8.8 When a Seller's or its carrier's vehicle delivers the Goods to a Buyer's premises or site, the Buyer is to ensure that the vehicle is unloaded promptly on arrival. If a vehicle is detained for an unreasonable period then the Seller reserves the right to make an extra charge for costs incurred in having the vehicle stood awaiting unloading.

9. RISK AND OWNERSHIP

- 9.1 The Goods shall remain the property of the Seller until the Seller has received in cash or cleared funds payment in full of the price of the Goods.
- 9.2 Until such time as the property in the Goods passes to the Buyer, the Buyer:
 - 9.2.1 Shall hold the Goods as bailee for the Seller;
 - 9.2.2 Shall not pledge or charge the Goods;
 - 9.2.3 Shall store, protect and insure the Goods separately from the Buyer's other Goods;
 - 9.2.4 Shall permit the Seller to enter upon any premises of the Buyer or third party where the Goods are situated to repossess the Goods;
 - 9.2.5 Shall indemnify the Seller against all loss and damage to the Goods from whatsoever cause occurring.

10. LIABILITY

- 10.1 The Seller warrants that the Goods shall at the time of delivery be free from defects in workmanship and materials and shall comply with the specifications set out in its quotation.
- 10.2 The Buyer and Seller both acknowledge that glazing is fragile and can easily be damaged. Accordingly, the Seller's sole liability in respect of any breach of the above warranty or for any loss of or damage to the Goods shall be as follows:
- 10.2.1 In the absence of the Seller's representatives on site at the time of delivery, the Buyer is responsible for checking the Goods on delivery. The Buyer must notify the Seller of any defects in the Goods in writing within seven days of the date of delivery;
- 10.2.2 The Seller shall repair or replace their own defective Goods notified to it under clause 10.2.1 at its own expense and within the replacement period specified on its quotation as follows: Limited to the original scope of works of the Seller.
- 10.2.2.1 If the defect was caused by the Seller prior to delivery;
- 10.2.2.2 If the Goods were damaged by the Seller during delivery (If the Seller delivered the Goods)
- 10.2.2.3 If the Goods were damaged by the Seller during loading onto the Buyer's vehicle (If the Buyer collects the Goods) provided that the Buyer or his nominated carrier notified the Seller of such damage prior to leaving the Seller's premises. Save as set out in this clause the Seller does not accept any liability whatsoever for any damaged or defective Goods.
- 10.3 If the Goods are damaged whilst in the Buyer's possession, control or ownership the extent of the Seller's liability is to repair or replace the Goods at reasonable cost to be paid by the Buyer within the replacement period stated in the quotation or as otherwise agreed by the Seller in writing. If the Goods have to be replaced then the replacement cost charged by the Seller will be the agreed unit costs of the Goods plus the cost of haulage and Value Added Tax.
- 10.4 Except as provided in condition 10.1 and Section 12 of the Sale of Goods Act 1979 :-
- 10.4.1 All conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods are expressly excluded to the fullest extent permitted by law; and
- 10.4.2 The Seller shall not under any circumstances be liable in contract, tort, statute or otherwise for any direct, indirect or consequential loss or for increased costs or expenses, or loss of profit, business, contracts, revenues or savings howsoever arising which may be suffered by the Buyer (Except in respect of death or personal injury caused by the Seller's negligence).
- 10.5 If, notwithstanding the above provisions of this condition, the Seller is found liable for any loss or damaged suffered by the Buyer, that liability shall in no event exceed the price of the Goods except in respect of death or personal injury caused by the Seller's negligence on which no limit is placed.

11. FORCE MAJEURE

11.1 The Seller does not accept responsibility for failure to supply or for delay in supplying any materials or Goods which may be due directly or indirectly to any act of God, war, invasion, riot, civil commotion, military or usurped power, any legislation, Government Order, equipment or spare parts effecting the production or transit of such materials, any cause of circumstances beyond the Seller's control, or any abnormal conditions arising from any of the foregoing causes.

12. SAFETY

12.1 Where the Goods are issued on a supply only basis, the Buyer shall have the sole responsibility for the measurements, design, erection and installation of the Goods. The Buyer undertakes that he will ensure compliance with any instructions where provided by the Seller for the purpose of ensuring a safe and proper installation of the Goods.

13. INTELLECTUAL PROPERTY

13.1 The Buyer acknowledges that the Seller retains ownership of any intellectual property rights in the Goods.

14. LAW

14.1 The Contract shall in all respects be constructed and operate as an English Contract and in conformity with English Law.