

Highseal Manufacturing Company

Quality windows, doors and conservatories to the trade

Terms & Conditions of Sale

1.Parties

1.1 The parties to these conditions of sales are Fairshare Group Limited T/A Highseal Manufacturing ("the Company") and the purchasers of the goods to which these conditions apply ("the Customer"). All transactions as between the Company and the customer are as between principle and are subject to the following expressed Terms and Conditions.

2.Variations

2.1 The contract between the Company and the Customer cannot be varied or excluded unless such variations, alteration or exclusion is agreed between the parties in writing and signed by the parties to be bound.

3.Waiver

3.1 Any concession, latitude or waiver allowed by the company at any time shall only apply to the extent specifically covered by such concession, latitude or waiver and shall not prevent the company exercising its full rights under the contract and the Terms and Conditions.

4.Acceptance / Cancellation of Orders

4.1 The contract between the Company and the Customer shall only become binding upon the written confirmation of acceptance of any orders by the Company and all quotations or tenders made and price or product supplied by the Company shall be treated as invitations to treat only.

4.2 The Company reserves the right to accept or refuse orders. The Company also reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of the customer's commitments with the Company not being met. The Company reserves the right to refuse, modify or re-negotiate orders in the event of changes to HM Governments trade policy pertaining to imports, tariffs, surcharges quotes or procedure. The Company in the aforementioned circumstance then the Customer shall be liable to indemnify the company against loss, costs (including the cost of all labour and materials used and overheads incurred, damages, charges and expense arising out of the orders and the cancellation thereof (the company giving credit for the value of any such materials sold or utilised for other purposes)

4.3 Where the company accepts order for the goods or materials of a type, size or quality not normally produced by the Company, the company will use all reasonable endeavours to execute the order, but if it proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance thereof, in which event the Customer will only be liable to pay for the part actually delivered.

4.4 The customer has a 7 day period after signing a contract in which to cancel it, without penalty, in writing. This cancellation period only applies to contracts signed as a result of an unsolicited call or visit. This does not apply when an order has been signed off, on a supply basis only.

5.Representation

5.1 No representation shall bind the company unless the same shall have been put into writing by a Director of the Company.

5.2 All illustrations, drawings and general descriptions accompanying any quotation from the Company or contained in the Company's price lists, advertisements or other literature or otherwise provided to the customers are intended for the general guidance only and shall not be binding by the Company and are only approximate indications of the type, size or colour of the goods quoted for and sales of such goods shall not be by reference thereto.

6.Carriage and Packaging

6.1 Unless expressly stated by the Company all prices quoted are ex. Works and carriage is not included. Many of the products are free of charge of delivery and a cost will be indicated at order stage if not.

6.2 The packaging of the goods is at the sole discretion of the Company who shall have the right to pack goods in such manner and with such materials as it thinks fit.

7.Price

7.1 All prices shall be exclusive of Value Added Tax and any other taxes from time to time in force and shall be such prices stated by the company.

7.2 Prices shall be subject to variation at the sole discretion of the Company at any time.

8.Payment by Account Customers

8.1 An account Customer is a person who shall have applied to the company to become an Account Customer and shall have been appointed as such in writing by the Company and shall have received an Account Customer Number. All references to the customer in the clause 8 shall be reference to the customer as an account customer.

8.2 Upon dispatch of ordered goods the Company will invoice the Customer immediately. The total invoice value must be paid by the Customer to the Company within 30 days of delivery of the goods which are the subject matter of the invoice in question unless a different payment period has been agreed in writing.

8.3 Should full payment on invoices from the Company not be received by the Company within the required payment period, the Company will reserve the right to charge interest on overdue accounts at the rate of 2% per month. The Company reserves the right where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any delivery or instalments as aforesaid to suspend delivery of any order or any part of instalment without liability until payment or satisfactory security for payment has been provided.

9.Payment by Non Account Customers

9.1 A Non Account Customer is any person who has not been appointed an Account Customer. All references to the customer in his clause (9) shall be reference to the customer as a Non Account Customer.

9.2 Unless otherwise agreed by the Company the full prices (including Value Added Tax and delivery charges) of goods ordered by the Customer not holding an account shall be payable upon placement of an order with the Company and any received without such payment shall not be considered to be valid.

10.Collection

10.1 If the recovery of any sums outstanding from the Customer to the Company is passed to a debt collection agency the Customer shall pay the Company's cost incurred on an indemnity basis in instruction the said debt collection agency and all legal and other costs ancillary thereto.

11.Delivery

11.1 Delivery shall take place at the Customers premises or such other actual location of which the Customer shall have previously notified the Company in writing.

11.2 The Company will use its best endeavours to complete on any delivery dates stipulated but such dates are only estimated and the Company will not be liable to the Customer of any loss, damage, injury, penalty, claim or any other matter of

whatsoever nature arising from any delay in delivery time for delivery shall not be the essence.

11.3 The Company shall be entitled to deliver goods by instalments.

11.4 The Company reserves the right to withhold delivery of goods to the Customer at any time when the Customer is exceeding or upon delivery would exceed any credit limit with the Company either in relation to such goods or otherwise.

11.5 A delivery or collection note signed on behalf of the Customer or duly authorised agent or either of them is deemed to be absolute evidence of delivery or collection of the goods specified therein.

11.6 Where the cancellation or postponement of a delivery causes the Company any loss, damage or consequential cost then the Company shall be entitled to charge the customer such reasonable sums as to recover said costs.

12.Demurrage

12.1 Where the unloading of goods for any reason delayed the customer shall indemnify the Company in respect of any loss or damage which it sustains in consequence thereof.

13.Storage Charges

13.1 If the Customer should for any reason fail to take delivery of goods within fourteen days of written notice from the Company that the same are ready for delivery :-

13.2 The risk in such goods shall thereupon pass to the Customer

13.3 The Company shall be entitled to charge a reasonable sum for the storage thereof.

13.4 Payment for such goods shall be made as if the same had been delivered fourteen days after receipt by the Customer of such notice.

14.Claims and Damages

14.1 The Customer shall upon delivery examine the goods and promptly (but in any event within the four working days of delivery) notify the Company in writing of any apparent damages, defect or shortage.

14.2 In default of the written notification referred to in clause 14.1 the Company shall be deemed conclusively to have properly performed its obligations under the contract.

14.3 The Company shall not be liable or held responsible for any damages, costs, charges or expenses awarded against or any liabilities incurred by the Customer arising out of any infringements of any patent belonging to third parties.

14.4 In the event of a claim, settlement will be limited to the value of goods defectively processed and will no way extend to consequential loss however caused.

14.5 All goods must be stored by the Customer in suitable conditions and the Customer will not be liable to the Customer for any defects brought about by the Company storing the goods in unsuitable conditions.

14.6 All goods supplied to the Customer may not be returned without the Customer's written consent. The Company reserves the right to refuse goods so returned.

15.Title and Risk

15.1 The risk with the goods shall pass to the Customer on delivery and the Customer should insure the goods accordingly.

15.2 The legal and beneficial property in the goods shall in the Company and shall not pass to the Customer until full purchase price of all goods comprised in the contract has been paid to the Company.

15.3 So long as the property in the goods remains vested in the Company the Customer shall keep goods in bailes and shall insofar as may be possible store them in such a way that are identifiable as the property if the Company and separate from all other goods in the Customers possession.

15.4 The Customer until otherwise notified by the Company or on the happening of any of the events set in the clause 15.6 ("specified Events") may in the ordinary course of business set all the Goods and pass property to them ("the sale") subject to the conditions ("the conditions") set in clause 15.5.

15.5 If any goods to which title is retained by the Company under these provisions are sold or respected to be sold by the Customer shall hold the proceed of sales on Trust absolutely for the company in a separate bank account from the Customer's normal trading accounts and shall pay therefrom to the company with or without demand by the company such Monies as are necessary to discharge the customer's current liability to the Company.

15.6 In the event of a breach by the customer of its obligation under clause 15.5 the Company shall have the right to trace the proceeds of the sale into any other Monies with which they may have been mixed and the customer shall indemnify the Company on a full indemnity basis, loss, damage, cost or expenses incurred in such tracing.

15.7 If any goods which these Terms and Conditions apply are resold by the Customer then title to those goods shall pass on to the person buying from the Customer. In all cases, title to the goods shall remain the Company: the provision shall also apply to further persons who may in turn purchase the goods.

15.8 Until the resale by the buyer, they shall have the right to reclaim possession of the goods at any time and determine the Customer's right to sell the goods for the purpose of this clause the Company shall have the right to enter on any premises or land in the ownership or possession of the Customer and remove the goods and the Customer against loss, damage, costs or expenses so arising including in particular, without limitation, loss, damage, costs or expenses in respect of third party claims.

15.9 If any goods to which title is retained by the Customer are "mixed" with or incorporates into any other property or made into any other property or made into or incorporated into any substance whatsoever by manufacturing or any other process then title to the resulting or final product shall belong to the Company and these provisions shall apply so that resulting or final product and the proceeds of sale thereof in the same way they would apply to the original goods supplied by the Company.

The specified events are :-

15.10 The giving of any notice to the Customer that a Receiver, Manager, Administrative Receiver or Administrator of or over Customer assets or any part thereof or that a petition to wind up the Customer is to be or has been presented or that an application for an administration order is due to be or has been made or of any notice of a resolution to wind up the Customer.

15.11 The Customer commits any act of bankruptcy, becomes insolvent, dies or becomes mentally incapacitated.

15.12 The Customer makes arrangement with its creditors generally.

15.13 The Customer becomes insolvent or appears to be unable to pay a debt pursuant to sections 123 and 268 of the insolvency Act 1986

15.14 Any distress or execution is levied on any property or assets the Customer

15.15 The Customer is unable to pay its debts as they fall due.

15.16 On receipt of written notice from the Company under the clause 15.4 or on the

happening of any specified events, the Customer's right to resell the goods shall cease and the Customer shall immediately deliver the goods, property in which is then reserved to or vested in the Company to such address as the Company shall specify default of which, or in alternative the Company shall have the right to enter on any premises or land in the ownership or possession of the Customer and remove the goods and the Customers shall indemnify the Company on a full indemnity basis against all loss, damage, costs or expenses so arising in particular without limitation, loss, damage, costs or expenses in respect of third party claims.

15.7 No provisions of the Terms and Conditions shall prejudice the Company's right to exercise any alternative remedy whatsoever in default of payment by the customer or any other breach of contract.

16.Termination

16.1 Save as here in appears the Customer shall have no right to cancel the whole or any part of the contract and if not withstanding this clause, the customer shall support to cancel the whole or any part of the contract, the Company may, by notice in writing to the customer, elect to treat the contract as repudiated and the customer shall thereupon be liable to pay the Company by the way of liquidated damages a sum equal to all the expenses incurred by the Company in connection with the contract including an appropriate amount in respect of administrative overheads, costs and losses or profit.

16.2 The Company's reasonable estimate of the expenses incurred by it on reputation by the Customer as referred to in clause 16.2 shall be final and binding on the parties.

16.3 If the Company for whatsoever cause is unable to make delivery of the goods on the delivery date set out in the contract or the Company is unable to perform any of its obligations under the contract, the Company may, by notice in writing to the customer, terminate the contract or suspend the contract without liability for any loss or damage thereby incurred by the Customer.

16.4 If the Customer shall not comply with any of its obligations hereunder or upon the occurrence or any of the specified events set out in the clause 15.6 the Company shall have the right to terminate the contract forthwith but without affecting any other claim, right or remedy it may have hereunder against the customer.

16.5 The Company may as its option cancel the contract in relation to future deliveries

16.6 The price of all goods delivered to the Customer to date and all expenses incurred by the Company in performance or part performance of this or any other contract with the Customer and sums due to it from the Customer on this or any other order account shall immediately become due and payable from the buyer to the Company.

16.7 The Company has the right to cancel any other contract with the Customer

16.8 The Company shall have the right, without notice, to enter upon the Customers premises and remove any goods and materials which are the property of the Company, all such rights to be without prejudice to the Company's right to recover the amount due to the Company for goods delivered to date and loss sustained.

17.Displays

17.1 The Customer shall be responsible to pay to the Company for the cost of any displays supplied by the Company to the Customer

18.Force Majeure

18.1 Insofar as the performance of the Contract by the Company may be affected by any strike, any lack of available transport or materials, any restriction regulation or degree by any local or municipal authority or government department or by any strike, commotion or riot, Act of God or for any other cause or reason whatsoever nature beyond the Company's control (which shall be construed without the eusden generis rule) the Company may elect at its absolute discretion either:-

18.2 To terminate contract or

18.3 To proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events of circumstances shall prevail.

19.Advice

19.1 The Company shall be under no liability whatsoever in any advice it has been given or view's it has expressed whether or not such advice is given or such view is expressed at the Customer's request.

19.2 Any suggestions or recommendations by the company for a person to act as an installer of the goods are made in good faith but without any responsibility on the part of the Company for the purchase whatsoever.

20.Consents

20.1 It shall be the responsibility for the Customer (and not of the Company) to obtain all consents necessary for the installation and the storage of any goods and to satisfy himself that the installation and storage of such goods in accordance with the provisions of any relevant by-laws, regulations or statutes.

21.Severability

21.1 Should any of the Terms and Conditions be found by a court or other competent authority to be void or unenforceable such provisions shall be deemed to be deleted from the Terms and Conditions and the remaining Terms and Conditions shall continue in full force effect.

22.Notices

22.1 Save as herein before otherwise provided, any notice required or permitted to be given by the Customer under the Terms and Conditions shall be in writing addressed to the Company and its trading address shown on the head of this contract. Any notice required or permitted to be given to the Company to the Customer under the Terms and Conditions shall be in writing, addressed to the Customer at the address shown for the Customer herein.

23.Miscellaneous

23.1 Clause headings are for reference only and do not affect the construction of the Terms and Conditions or any contract which they relate.

23.2 To the extent of any conflict between the Terms and Conditions of the Customer either on the Customer order form or otherwise, the Terms and Conditions herein contained shall take precedence. The Company shall not be bound by the Customer's Terms and Conditions or any of them unless expressly agreed in writing by a Director of the Company.

23.3 Except where the context otherwise requires words herein denoting the singular including the plural and vice versa; words denoting any one gender include all genders and words denoting persons include corporations and vice versa.

23.4 For the purpose of these Terms and Conditions and the word "person" shall mean an individual or a body corporate or unincorporated or a partnership.

24.Property Law

24.1 The Terms and Conditions and the contract to which they relate shall be construed according to English Law and the parties hereby submit to the non-exclusive jurisdictions of the Courts of England and Wales

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