

Clement Windows Ltd Terms & Conditions

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1. GENERAL

1.1 “The Company” means Clement Windows Ltd. “The Customer” means the Person, Firm or Company from whom the Company accepts an order. “The Parties” means The Company and The Customer. “The Works” means the work specifically described in the Quotation and/or Order and acceptance to be carried out by the Company. The “Contract” means the Quotation, Order and these Terms and Conditions and further documents (if appropriate) expressly referred to therein, which collectively are the Contract.

1.2 Marginal notes and headings in these conditions do not form part of the conditions and are inserted for ease of reading only.

1.3 All product assertions contained in our catalogues, advertisements, other literature or price lists are for guidance only and are intended merely to give a general idea of the Goods, and are not included in the Works unless confirmed in writing by the Company prior to Quotation.

1.4 Any provisions of these conditions which in any way now, or subsequently, contravene the Law shall be deemed severable and shall not affect any other provisions herein.

1.5 This contract shall be subject to and shall be in accordance with the Law of England and shall be subject to the jurisdiction of the English Courts only, whereby any dispute shall be finally determined.

2. OFFER & ACCEPTANCE

2.1 All Quotations are made and all orders are accepted subject to these conditions. All other terms and conditions or warranties are excluded from the contract unless expressly agreed in writing by the Company.

2.2 No Quotation submitted by the Company shall constitute a binding contract unless and until it has been expressly agreed in writing by the Company.

2.3 Acceptance of any order by the Company shall be subject to investigation of the Customer’s credit status. The Company reserves the right to vary the payment terms under Clause 4 at any time on the basis of a revised credit rating and/or report.

2.4 In placing an order the Customer is deemed to acknowledge that there is no inclusion in the Contract of any warranty, description, condition, statement or any other representation contained in or arising from any prior correspondence, discussions, statements, or technical literature unless expressly included in the Quotation, Order and written acceptance thereof.

2.5 Quotations will remain open for acceptance for a period of 12 weeks from the date thereof.

2.6 The Company may withdraw any Quotation without penalty at any time up to it receiving a written acceptance or Order.

2.7 All orders to the Company must be in writing and accompanied by payment of a deposit if agreed.

3. PRICES

3.1 All prices are exclusive of VAT and unless specifically stated are based upon costs current at the time of Quotation.

3.2 Prices are fixed for a period of 12 weeks from the date of the Quotation, following which the works will be subject to variable price as set out below.

3.3 Where Quotations are based upon specifications, drawings, quantities and other information provided by the Customer they will be subject to re-measurement and the final account payable by the Customer shall be based upon the re-measurement. The Company reserves the right to adjust quoted prices in the event of significant variations in quantities.

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4. PAYMENT

- 4.1 Unless otherwise expressly agreed in writing the Company shall present accounts and/or applications for payment to the Customer which shall be paid in full within 30 days of the date of issue.
- 4.2 Unless provision is accepted by the Company for interim progress payments, accounts will be presented to the Customer immediately upon completion of the works as determined in accordance with Clause 11.
- 4.3 Where provision is accepted for progress payments such accounts will be presented to the Customer at intervals not exceeding one month. The first account will be presented not later than one month following commencement on site or if agreed, commencement of off-site works. The final account will be presented immediately upon completion of the Works as determined in accordance with Clause 11.
- 4.4 Accounts and/or applications for payment presented to the Customer by the Company shall comprise the total value of all work executed in accordance with the Contract including all variations, the value of all un-fixed goods and materials delivered to the site for use in the Works and increased costs and other sums payable under any other provision of the Contract.
- 4.5 The Company retains absolute discretion regarding quantities and dates of material deliveries.
- 4.6 Where goods and materials have been purchased or produced specifically for the Contract but cannot be delivered to site for reasons beyond the control of the Company the value of such goods and materials shall be included in accounts and/or applications for payment presented as provided under Clauses 4.3. and 4.4. The Company further reserves the right to charge the Customer for any resultant storage or additional handling costs.
- 4.7 In the event of default in payment by the Customer the Company shall be entitled without prejudice to any other rights or remedies to suspend all further operations on the Works under this or any other Contract between the Parties, including the suspension of any deliveries due to the Customer.
- 4.8 Any sum as it falls due shall carry interest at a rate specified by the Company on a daily basis until payment is received by the Company. Interest will be charged at Bank of England Base Rate at the time plus 8% in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.9 The Company also reserves the right to make a charge for all costs relating to the recovery of monies due. This is in addition to interest.
- 4.10 The Company reserves the right to charge 2% of the total amount on all credit card payments made by the Customer.

5. TITLE OF GOODS

- 5.1 All goods and materials shall remain the property of the Company until the Company has received payment in full in accordance with accounts and/or applications for payment presented as provided under Clause 4, notwithstanding that the goods and materials have been delivered to the site or that they have been incorporate in the Works, the Company shall have the absolute right to recover such materials and goods where payment in full has not been received.
- 5.2 In the event that the Customer purports to have sold the materials and goods to a third party the proceeds of such a sale shall be paid into a separate Bank Account and kept intact until payment in full has been received by the Company from the Customer. It is expressly agreed that the Company shall have the right to trace its title to the materials and goods into any such sub-sales. The Company may also require the Customer to assign the right to receive payment arising from such sub-sales.

6. BANKRUPTCY OF CUSTOMER

- 6.1 If the Customer commits an act of Bankruptcy or makes arrangements with his or her creditors or being a Company enters into Liquidation, whether compulsory or voluntarily (other than the purpose of amalgamation or reconstruction) or if a receiver or manager is appointed of all or part of its assets or undertakings or he or she suffers any execution whether legal or equitable to be levied upon his or her property or obtained against him or her then the Company may without prejudice to any other rights or remedies by written notice forthwith determine this Contract and shall have the right to recover or to deduct from or set off against such amount otherwise due under this or any other Contract the amount of damage suffered loss and expense incurred by the Company by reason of such determination under this Clause.

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7. INFORMATION

7.1 The Company shall not be liable for the accuracy of any information provided by the Customer nor for any defects arising out of incorrect drawings, specifications, calculations, quantities, dimensions or instructions etc. so provided. The cost of rectifying such defects will be charged to the Customer in accordance with Clause 10.

7.2 The Customer shall indemnify the Company against all actions which may arise due to the carrying out of the Works in accordance with the information provided by the Customer where it is alleged that such information infringes a patent registered design, copyright or other exclusive right.

7.3 All drawings, specifications, calculations and other information supplied by the Company are supplied on the express understanding that copyright is reserved by the Company. Such information shall not be used by the Customer in any way except in connection with the Contract for which it is issued.

8. DRAWINGS

8.1 The Company shall provide the Customer on request and free of charge with copies of any drawings, sketches or calculations agreed to be necessary for completion of the Works. Such drawings, sketches or calculations shall be limited to the data essential to the manufacture and installation operations associated with the Contract.

8.2 All dimensions, datums, lines and other construction details shown on any drawings and sketches and any calculations provided by the Company shall be deemed to have been checked and accepted by the Customer for accuracy or discrepancy with all other drawn, written or site data or information. The Customer shall indemnify the Company from and against any defects and resultant actions or costs due to any such errors or discrepancies.

8.3 Only when drawing approval in writing has been received from the Customer by the Company will manufacture of the Order commence with any fiscal agreements having been confirmed to the Company's complete satisfaction.

9. PROGRAMME

9.1 Programmes for execution of the Works will be agreed by the Company based upon information provided by the Customer, Suppliers, Manufacturers and others.

9.2 Work is to be carried out during normal working hours in a single continuous visit. The Customer will be charged with any costs incurred where for reasons beyond the control of the Company overtime or extra visits prove necessary.

9.3 The Customer shall provide the Company with at least 10 working days notice in writing to commence on site, or at least 10 working days notice in writing to re-commence in the event of interrupted operations.

9.4 Where the Company carries out variations to the Contract Works under Clause 10, any previously agreed programme will be adjusted accordingly. Should the original Contract Programme period require extension due to variations the cost so incurred by the Company shall be charged to the Customer.

9.5 If the commencement, progress or completion of the Works is materially affected by any act, omission or default of the Customer, his servants or agents or other sub-contractors, or his client or Others outside the control of the Company, then any costs so incurred by the Company shall be charged to the Customer.

10. VARIATIONS

10.1 Variations by the Customer to the Contract Works will only be accepted by the Company if such variations are reasonable and do not substantially change the scope of the Works.

10.2 No work shall be omitted by the Customer from the Contract if that omission is with the intention of placing work with others.

10.3 Variations are required to be issued in writing by the Customer. If the Customer issues verbal instructions the Company may confirm the details of them in writing to the Customer whereupon they will be deemed to constitute accepted variations to the Contract.

10.4 Variations will be priced, where it is reasonable to do so, on the Basis of the Contract prices. If this is not reasonable they will be priced as day work charges calculated in accordance with the 'Definition of

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Price Costs of day work carried out under a Building Contract' (current editions published by the R.I.C.S and B.E.C) with percentage additions as follows:

Labour + 160%
Materials + 25%
Plant + 20%

10.5 Where variations require significant drawing office work the Company reserves the right to charge the Customer with the resultant costs in addition to the valuations of variations under any other provision of the Contract.

10.6 If compliance with an accepted variation substantially changes the conditions under which any other work shall be carried out, it shall be treated as if it had also been the subject of a variation and shall be valued accordingly.

10.7 Whilst every endeavour will be made to complete any accepted variation, the Company cannot accept any costs that may occur outside of the agreed completion date.

11. COMPLETION

11.1 Any dates for completion shall not apply unless confirmed in writing by the Company. The Company's written time records will be relied on for confirmation of when completion has taken place.

11.2 In the event of the carrying out of the Works being delayed by reason of force majeure, exceptionally adverse weather conditions, loss or damage occasioned by the insured risks, civil commotion, strikes or lock-out, the requirement to carry variations to the Works, or any matter outside and/or beyond the control of the Company, then the time and/or period for the carrying out and/or completion of the Works shall be extended by whatever period of time is fair and reasonable.

12. STATUTORY NOTICES

12.1 The Customer shall ensure that all Notices are given and all permissions sought and granted to satisfy the requirements of statutory bodies, local authorities and the like. The Customer shall indemnify the Company from and against all action arising out of failure to comply with such requirements and shall be liable for any resultant costs incurred by the Company.

13. HEALTH & SAFETY/FACTORIES ACTS ETC

13.1 The Company will for its part comply with the requirements of the Factories Acts, Health & Safety at Work Acts and any other statutory regulations for the time being in force so far as they apply to the agreed scope of the Works. The Customer will for its part comply with these regulations so far as they apply to any provisions of this Contract.

14. LOSS, DAMAGE OR INJURY

14.1 The Customer shall be liable for the replacement cost of any materials, whether or not properly incorporated in the Works that have been damaged, stolen, lost or destroyed by any persons or cause whatsoever other than by the Company or any of its employees.

14.2 Save where the Company is legally proved to have failed to exercise reasonable care in the performance of the Contract and such failure results in death or personal injury the Company shall not be liable in respect of claims arising by reason of death or personal injury in connection with the Contract.

14.3 Any liability for negligence or breach of statutory or legal duties by any of the Company's employees will only be accepted by the Company where such negligence or breach of duty is directly connected to the performance of the Contract.

14.4 Under no circumstances whatsoever shall the Company be liable for consequential loss, loss of profits or damage to property.

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15. DEFECTS LIABILITY

15.1 In lieu of any warranty implied by Law the Company will make good by replacement or, at the Company's option, by repair any defects in the Works carried out by the Company which become apparent within 12 months from the Date of Completion notified under Clause 11 provided that:

a) The Company agrees that such defects are due solely to faulty materials or workmanship by the Company.

b) The materials and goods involved were manufactured by the Company.

c) All payments applied for and due under Clause 4 have been received by the Company.

15.2 The above shall be the limit of the Company's liability and the Company will not in any circumstances be liable for any losses, damages or expenses directly or indirectly incurred by the Customer as a result of such defects.

15.3 Where materials not manufactured by the Company are installed by the Company in the Works the liability of the Company shall be limited to the installation of such materials which shall be deemed to have been specified by the Customer so that no warranties whatsoever as to their fitness for any purpose shall be given or implied by the Company. The Company will on request assign to the Customer such rights as it may have against the Supplier and/or Manufacturer.

16. WARRANTY

16.1 The Customer shall register a claim within the warranty period within one month after the Customer discovered or ought to have discovered the defect in writing to the Company.

16.2 At its sole discretion the Company shall determine whether to repair the Product in situ, to make a replacement delivery or to reimburse the Customer.

16.3 Under no circumstances should the Customer alter or repair any goods supplied by the Company without written confirmation from the Company, this will deem the Warranty invalid.

16.4 Unless otherwise decided by the Company the Customer shall be responsible for repairing minor repairs to the Product for example replacement gasket, weather seals etc.

16.5 If the Company offers a replacement for an existing Product with a new Product of the same kind, type and quality, if at the time when the complaint is made the Product is no longer in Production or it is not made in exactly the same version, the Company shall be entitled to replace it with a similar Product.

16.6 The Company reserves the right to make a charge if a site visit concerning 'Warranty work' is necessary at the investigation stage. If the Company accepts liability the charge will be refunded to the Customer.

16.7 Under no circumstances is the warranty transferable except when expressly agreed by the Company in writing. For this to occur there will be a charge decided by the Company.

16.8 The use of some pointing and sealing materials may when in contact with surface coatings on our Products have a corrosive and destabilising effect. It is the client's duty to avoid this and we cannot be held responsible for any damage that may result.

16.9 All warranties are valid from date of invoice.

17. CANCELLATION

17.1 In the event of cancellation any deposits may be forfeited as a result of costs incurred by the Company.

17.2 Where a written order has been received by the Company from the Customer and that order is then terminated for whatever reason by the Customer, the Customer accepts that the Company has an express right to pursue the Customer for any reasonable costs the Company may have incurred plus any loss of profit. These costs will be liable for VAT in the usual way. Payment will be due to the Company within 7 days of the Customer cancelling the order.

17.3 In the event of cancellation by the Customer any costs incurred by the Company will be deducted from the deposit and the net balance (if there is any) returned to the Customer. The Company reserves the right to pursue any other costs it might have incurred.

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18. DELIVERY

18.1 Due to the bespoke nature of our Product range unless confirmed by the Company in writing all delivery/installation dates are provisional and subject to change

18.2 On delivery of a defective Product the matter must be brought to the attention of the Company within 48 hours, after 48 hours no claims will be considered.

18.3 Under no circumstances must a known defective Product be installed. If it is installed the Company will not be responsible for any of the costs that result from it having to be removed for remedial work to be carried out.

18.4 The Customer will be entitled to one delivery per order unless otherwise agreed in writing. Should the Customer require this to be arranged differently we reserve the right to payment of additional charges.

19. DISPUTES

19.1 In the event of any dispute or difference between the Customer and the Company residential occupiers arising under the Contract either Party may refer the dispute or difference to adjudication.

19.2 The rules for any adjudication will be as set out in the Housing Grants, Construction & Regeneration Act 1996. Part II, Construction Contracts.

19.3 In the event of either Party to a dispute or difference being dissatisfied with the Decision of any Adjudicator either Party may, following compliance with any Decision arising from that adjudication, refer the dispute or difference to arbitration.

19.4 Where pursuant either to Clause 19.1 or 19.3 either party requires the dispute or difference to be referred to adjudication/arbitration, then the referring Party shall serve on the other Party

1. in the case of an adjudication a notice in writing setting out in summary the nature of the redress being sought and making application to the nominating body for the appointment of an adjudicator within seven (7) days.

and

2. in the case of an arbitration a notice in writing setting out in summary the nature of the matter in dispute and giving the other party 14 days to concur in the appointment of an Arbitrator. In the event of failure to agree on an arbitrator, the Party seeking the arbitration then to make application to the nominating body for the appointment of an arbitrator within seven (7) days.

In either case the person to be appointed on the request of either Party, to be appointed by the President for the time being of the nominating body, which nominating body is to be the Royal Institution of Chartered Surveyors.

19.5 Nothing stated herein shall prejudice any other rights and remedies available to the Company.

CONDITIONS APPLICABLE TO THE SUPPLY AND FIXING OF WINDOWS

20. SCOPE OF THE WORKS

The scope of the Works shall be limited to the items included and specifically described in the Quotation, order and variations accepted in writing by the Company under the provisions of the Contract, but the following operations are included in whole or part as deemed necessary by the Company.

- a) Site assembly of units.
- b) Offering units into prepared openings
- c) Bedding units on cill with mastic.
- d) Attaching lugs to frame.
- e) Plumbing, adjusting and wedging in position.
- f) Screwing frame or lugs to prepared fixings.
- g) Where specified external pointing with approved sealant to a gap of specified size and tolerance.

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21. ATTENDANCES

The following attendances and services will be provided by the Customer free of charge to the Company as considered necessary by the Company for the Completion of Works within the agreed programme.

21.1 GENERAL ATTENDANCE

- a) Suitable clear access to site and working areas from the agreed commencement date.
- b) Storage of materials and plant in a safe and secured, covered location.
- c) Use of welfare facilities and sanitary accommodation.
- d) Labour, plant and equipment for receiving and unloading materials and placing in storage and for distributing materials to working areas, including craning and/or hoisting where necessary.
- e) Scaffolding and other equipment necessary for access and safety purposes to comply with current Health and Safety legislation. Scaffolding and the like to be suitable for the type of work and to be erected, moved, altered/adapted and re-erected as necessary.
- f) Supply of electricity for lighting and power to required voltage (110v 15amp unless otherwise advised) with socket outlets within 15 metres of each working face.
- g) Clearing away and removal from site of all rubbish arising from the Works.
- h) Protection of all completed and uncompleted work from damage by preceding or following trades or any other occurrence beyond the control of the Company.

22. SPECIAL ATTENDANCES AND SERVICES

- a) Provision of datum levels at not more than 15 metre intervals and true grid lines on each floor/level.
- b) Preparation of builders openings, accurate in size, position, straightness, square-ness and level, to enable units to be fixed with a maximum 6mm clearance between units and building surround.
- c) Cutting, drilling and tapping holes. Provision of cast-in fixings where required.
- d) Making good, forming when required, waterproof cement filler between frame and brick or concrete, raking out, grouting in rag-bolts.
- e) Removal of any temporary protective coatings, wrappings, labels, stickers and the like
- f) Cleaning down finished work on completion.
- g) Provision of curbs, etc.
- h) Removal of glazing bars (where factory fixed) and fixing glazing beads unless glass and glazing forms part of the Contract.
- i) Provision of all wiring-up where electrical controls are involved.
- j) All glass labels will be removed on installation.

23. OPERATING & MAINTENANCE MANUAL

23.1 A condition of the Customer accepting the Company's Quotation is that the Customer has read and fully accepts the Product performance information listed in the Company's Operating and Maintenance Manual. No claims will be considered by the Company in respect of performance characteristics listed in the Operating and Maintenance Manual.