

## **East Yorkshire Aluminium & Glass Limited**

### **Conditions of Sale (2018 Edition)**

#### **Part A. Consumer Terms and Conditions**

**The Terms in this Part A apply to contracts for our products and/or services concluded using our website, over the telephone or by email to consumers in circumstances where we have not had any face-to-face contact with you. Installation is not included. If you have had face-to-face contact with one of our representatives and they have provided you with a quote, please refer to the terms and conditions on the back of the quote.**

**If you are a business customer purchasing products and/or services our business terms and conditions in Part B apply.**

#### **Introduction**

These Sales Terms tell you information about us and the legal terms and conditions on which we sell any of our goods ("Products") and services to you.

These Sales Terms will apply to any contract between us for the sale of Products and/or services to you (each a "Contract"). Please read these Sales Terms carefully, and make sure that you understand them, before ordering any Products and/or services from us. These Sales Terms tell you who we are, how we will provide Products and/or services to you, how you and we may change or end the Contract, what to do if there is a problem and other important information. Please note that before placing an order you will be asked to agree to these Sales Terms. If you refuse to accept these Sales Terms, you must not order any Products from us.

You should retain a copy of these Sale Terms, or save them to your computer, for future reference.

We may amend these Sale Terms from time to time as set out in clause A5. Every time you wish to order Products and/or services from us, please check these Sale Terms to ensure that you understand the terms which will apply at that time. These Sale Terms were most recently updated on 22 March 2018.

You may only purchase Products and/or services from us if you are a consumer and at least 18 years old.

These Sales Terms, and any Contract between you and us, are only in the English language.

#### **A1. Information About Us**

A1.1 We operate the website [www.eygwindows.co.uk](http://www.eygwindows.co.uk) ("our website"). We are East Yorkshire Aluminium & Glass Limited, a company registered in England and Wales under company number 01230670. Our registered office and main trading address is Wiltshire Road, Dairycoates Industrial Estate, Hull, HU4 6QQ.

A1.2 If you wish to contact us for any reason, including because you have any complaints, you can contact us by writing to us at the above address, by telephoning our Customer Services team on 0800 181 888 or by e-mailing them at [info@eyggroup.com](mailto:info@eyggroup.com). A copy of our complaints handling policy is available on request by contacting our Customer Services team using the details provided above.

A1.3 If we have to contact you we will do so by telephone or by writing to you at the email address or postal address provided to us in your order.

## **A2. Our Products and Services**

A2.1 The description of the Products shall be as set out in our quotation.

A2.2 The images of our Products and descriptive matter of our services on our website and in our brochures and any samples of our Products in our showroom are for illustrative purposes only. Although we have made every effort to display our Products and describe our services accurately and, where applicable, ensure compliance with BS6206 Class A, we cannot guarantee that those images, samples and descriptions accurately reflect the precise nature and appearance of the Products and services. Your Products and services may vary slightly from those images and descriptions. **All double glazed units are manufactured with a black spacer bar as standard.**

A2.3 The packaging of the Products may vary from that shown on images on our website and in our brochure and displays.

A2.4 We recommend that, before placing an order for any Products and/or services, you check the suitability for purpose of the Products and/or services as described on our website and in our brochures and, where you wish to order a Product to be made by us to your measurements, ensure that those measurements are correct before providing them to us. Please see clause A13.4. We are not liable for any losses you suffer if you provide us with incorrect measurements. We recommend that you check your measurements with an appropriately qualified professional if you are unsure.

A2.5 The Contract does not include the installation of the Products. If you would like us to install any Products for you, please contact our Customer Services team using the contact details provided above. We can only provide installation services if one of our representatives has completed a technical survey and confirmed that we are able to provide such installation services. You can book a technical survey by contacting our Customer Services Team using the details provided above. If, following a technical survey, we agree to install any Products for you then you will be required to enter into a separate contract with us for the installation of the Products. If we do not agree to provide installation services or if we are unable to provide installation services for you then you must make your own arrangements for installation of the Products and any contract for installation of the Products will be between you and your chosen contractor. We shall not be liable for the act or omissions of any third party contractor(s) including any aspect of his or her workmanship.

## **A3. How a Contract Is Formed Between You and Us**

A3.1 Our quotation is not an offer to supply Products and/or services to you. It is an invitation for you to place an order for Products and/or services from us. If you wish to place an order for Products and/or services from us, please contact our Customer Services team on 0800 181 888 or email us at [info@eygroup.com](mailto:info@eygroup.com).

A3.2 After you place an order, you will receive an e-mail from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Acceptance will only take place when we confirm our acceptance of your order to you in writing.

A Contract between us will only be formed when we send you confirmation of acceptance in writing ("Contract Confirmation"). We reserve the right to refuse your order or to restrict the number of Products you may order.

- A3.3 If we are unable to accept your order - for example, because a Product is not in stock or no longer available, because we cannot meet any requested delivery or performance date, or because a credit reference we have obtained for you does not meet our minimum requirements - we will inform you of this and we will not process your order unless you and we otherwise agree. If you have already paid for the Products and/or the services the subject of that order, we will refund you the full amount (including any delivery costs charged) as soon as possible.
- A3.4 Any quotation given by us is given on the basis that no Contract will come into existence until we have confirmed our acceptance of your order in writing. Any quotation is valid for a period of three months only from its date, provided that we have not previously withdrawn it. We may reject an order which is only for part of the Products and/or the services the subject of the quotation.
- A3.5 We only deliver Products to, and provide services within mainland Great Britain. Unfortunately, we do not accept orders from or deliver Products or provide services to addresses outside mainland Great Britain.

#### **A4. Your Rights to Make Changes**

If you wish to make a change to the Product and/or services you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price or the Product, the timing of supply or performance or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

#### **A5. Our Rights to Make Changes**

- A5.1 We may amend these Sale Terms from time to time. Please look at the 'Introduction' section of these Sale Terms to see when these Sale Terms were last updated.
- A5.2 Every time you order any Products and/or services from us, the Sale Terms in force at the time of your order will apply to the relevant Contract between you and us.
- A5.3 We may revise these Sale Terms as they apply to any Contract between us from time to time to reflect any changes in relevant laws and regulatory requirements and to implement minor technical adjustments and improvements (such as minor changes to the Products to improve safety features). These changes will not affect your use of the Product or the quality of the Product provided.

#### **A6. Your Rights to End the Contract**

- A6.1 You may end the Contract for the reasons set out at clauses A6.1.1 to A6.1.4 below. In such circumstances, the Contract will end immediately and we will refund you in full for any Products and/or services which have not been provided or performed and you may also be entitled to compensation. The reasons are:

- A6.1.1 we have told you about an upcoming change to the Product, the services or these terms, or an error in the price or description of the Product and/or services you have ordered which you do not agree to (other than a change under clause A5.3);
  - A6.1.2 there is a risk that the supply of the Products and/or the performance of the services may be significantly delayed because of events outside our control;
  - A6.1.3 we have suspended supply of the Products and/or the performance of the services for technical reasons, or notify you we are going to suspend them for technical reasons, in each case for a period of more than 30 days; or
  - A6.1.4 you have a legal right to end the Contract because of something we have done wrong.
- A6.2 Exercising your right to change your mind (Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013). You may have a legal right to change your mind within 14 days and receive a refund. These rights, under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, are explained in more detail in these terms.
- A6.3 You do not have a right to change your mind in respect of:
- A6.3.1 any Products that are made to your specification or are clearly personalised (including but not limited to Products which are “made to measure”. Many of our Products are made to measure or personalised to fit your property and so will be excluded from the right to change your mind);
  - A6.3.2 services, once these have been completed, even if the cancellation period has not expired;
  - A6.3.3 any Products which become mixed inseparably with other items after their delivery; or
  - A6.3.4 any Products which are sealed goods that have become unsealed and are not suitable for return due to health protection or hygiene reasons.
- A6.4 How long you have to change your mind depends on what you have ordered and how it is delivered:
- A6.4.1 If you purchased services (and no Products) from us, you have 14 days from the date of the relevant Contract Confirmation (the date on which we write you to confirm our acceptance of your order). We will not provide such services (or any part of them) to you within the 14 day cancellation period unless you expressly instruct us in writing (which includes selecting an earlier date for providing the services at the time of placing your order). Please note that you shall lose your right to change your mind if you instruct us to provide or to begin providing the services within the 14 day cancellation period and we complete the provision of the services before the expiry of the 14 day cancellation period. If you cancel after we have started the services, you must pay us for the services provided up until the time you tell us that you have changed your mind.

- A6.4.2 If you have purchased Products from us and such Products do not fall within the exclusions set out in clause A6.3, you have 14 days after the day you (or someone you nominate) receives the Products, unless your Products are split into several deliveries over different days. In this case you have until 14 days after the day you (or someone you nominate) receive the last delivery to change your mind about the Products.
- A6.5 To cancel a Contract in accordance with your legal right to do so as set out in this clause A6, you just need to let us know that you have decided to cancel. Please email our Customer Services team at [info@eyggroup.com](mailto:info@eyggroup.com) confirming that you have decided to cancel and providing your name, home address, details of the order and, where available, your phone number and email address. Your cancellation notice will be effective from the date you send us the notice.
- A6.6 If you are exercising your right to change your mind, we will:
- A6.6.1 refund you the price you paid for the Products. However, please note we are permitted by law to reduce your refund to reflect any reduction in the value of the Products, for example, any reduction in value which has been caused by you handling the Products in an unacceptable way which would not be permitted in a showroom. If we refund you the price you paid before we are able to inspect the Products and later discover you have handled them in an unacceptable way, you must pay us an appropriate amount.
- A6.6.2 refund any delivery costs you have paid, although as permitted by law, the maximum refund will be the cost of delivery by the least expensive delivery method we offer (provided that this is a common and generally acceptable method). For example, if we offer delivery of a Product within three to five days at one cost but you choose to have the Product delivered within 24 hours at a higher cost, then we will only refund what you would have paid for the cheaper delivery option; and
- A6.6.3 where we are supplying a service only, we will refund you the price you paid for the service. However, please note that we are permitted by law to deduct from any refund an amount for the supply of the service for the period for which it was supplied, ending with the time when you told us you had changed your mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the Contract.
- A6.7 We will make any refunds due to you as soon as possible. If you are exercising your right to change your mind then:
- A6.7.1 in respect of any Product which we have not offered to collect, your refund will be made within 14 days from the day on which we receive the Product back from you or, if earlier, the day on which you provide us with evidence that you have sent the Product back to us; and
- A6.7.2 in all other cases, your refund will be made within 14 days of your telling us you have changed your mind.
- A6.8 If you end the Contract for any reason after the Products have been dispatched to you or you have received them, you must return them to us by allowing us (or our chosen delivery services provider) to collect them from you. Please call our Customer Services team on 0800 181 888 or e-mail them at [info@eyggroup.com](mailto:info@eyggroup.com) to arrange collection. If you end the Contract for any of the

reasons set out in clause A6.1 we will pay for the costs of return. In all other cases we will charge you the direct cost to us of collection. The costs of collection will be the same as our charges for standard delivery.

- A6.9 We will refund you on the credit card or debit card used by you to pay. If you used vouchers to pay for any Products or any services (whether in whole or in part) we may refund you in vouchers for the relevant part. If any Products have been purchased wholly or partly using a voucher code, we will only refund the sum that you actually paid for the relevant Products and will not refund the amount of any discount given as a result of the application of the voucher code.
- A6.10 Because you are a consumer, we are under a legal duty to supply Products and services that are in conformity with the relevant Contract. As a consumer, you have legal rights in relation to Products and services that are faulty, defective or not as described. These legal rights are not affected by your right of return and refund in this clause A6 or anything else in these Sales Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

#### **A7. Our Right to End the Contract**

- A7.1 We may end the Contract at any time by writing to you if:
- A7.1.1 a credit reference we have obtained for you does not meet our minimum requirements;
  - A7.1.2 you do not make any payment to us when it is due and you still do not make payment within seven days of us reminding you that payment is due;
  - A7.1.3 you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the Products and/or the services;
  - A7.1.4 you do not, within a reasonable time, allow us to deliver the Product to you or collect the Product from us; or
  - A7.1.5 you do not, within a reasonable time, allow us access to your premises to supply any services.
- A7.2 If we end the Contract in the situations set out in clause A7.1, we will refund any money you have paid in advance for Products and/or the services we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.

#### **A8. Product Delivery**

- A8.1 During the order process we will let you know when we will provide the Products to you and/or perform the services for you. Except where otherwise stated, our Products are delivered within 6-8 weeks of the Contract Confirmation.
- A8.2 Due to the nature of our Products, it will be necessary for somebody to be present in order for the Products to be delivered. All deliveries must be signed for. By placing an order you are authorising us to accept a delivery signature at your chosen delivery address. If no-one is

available at your stated delivery address to take and sign for delivery, we will leave a note informing you of how to rearrange delivery. If you do not re-arrange delivery after a failed delivery we will contact you for further instructions and may charge you for storage costs and further delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery we may end the Contract.

A8.3 In order to provide any services we may require access to your property. If you do not allow us such access to perform the services (and you do not have a good reason for this) we may charge you additional costs incurred as a result. If, despite our reasonable efforts, we are unable to contact you to re-arrange access to your property we may end the Contract and clause A7.2 will apply.

A8.4 Delivery under a Contract shall be completed when we (or our chosen delivery services provider) delivers the Products subject of the relevant Contract to the address you gave us (which must be the address registered to the credit card or debit card account used to pay for the relevant Products). The Products will be your responsibility from that time. It is important that the address you provide us with is as accurate and detailed as possible and where necessary you provide us with any specific delivery instructions when placing your order. We do not accept any liability for any loss or damage to the Products once they have been delivered to the delivery address you have specified and/or in accordance with your instruction given when placing your order.

A8.5 You own the Products once we have received payment in full for them, including all applicable delivery charges.

A8.6 We are not responsible for delays outside our control. If our supply of the Products and/or performance of the services is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any Products and/or the services you have paid for but not received.

#### **A9. Service Delivery (this clause A9 is only applicable to Contracts for services only)**

A9.1 We will provide the services to you within the time period set out in your order.

A9.2 We will make every effort to complete the provision of the services on time. However, there may be delays due to an event outside our control. Please see clause A8.6 for information on what happens if there is a delay due to an event outside our control.

A9.3 We warrant that any services that we provide shall be provided with reasonable care and skill.

#### **A10. Price of Products and Services, Delivery Charges and Voucher Codes**

A10.1 The prices of the Products and/or services will be as set out in our quotation. We take all reasonable care to ensure that the prices of Products and/or services are correct at the time when the relevant information is entered onto the system and that any applicable voucher codes work as stated. However, please see clause A10.5 for what happens if we discover an error in the price of any Products and/or services which you have ordered or in the application of any voucher code.

- A10.2 The prices for our Products and services may change from time to time, but any changes will not affect any order you have already placed.
- A10.3 The price of each Product and service includes VAT (where applicable) at the applicable current rate chargeable in the UK for the time being. However, if the rate of VAT changes between the date of your order and the date of delivery, we will adjust the amount of VAT that you pay to the revised amount unless you have already paid for the relevant Products and/or services in full before the change in VAT takes effect.
- A10.4 The price of each Product does not include any delivery charges, which will be payable in addition. Our delivery charges will be as set out in our quotation.
- A10.5 It is always possible that, despite our efforts, some of the Products and services may be incorrectly priced and/or any voucher codes that we offer do not work correctly. We will normally check prices and any applied voucher codes before accepting your order. In the event that:
- A10.5.1 we discover an error in the price of any Products and/or services you have ordered (including but not limited to where the pricing error is obvious and unmistakable and could have reasonably been recognised by you as mispricing) we will contact you to inform you of the error and will give you the option of continuing to purchase the relevant Products and/or services at the correct price or cancelling your order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing.
- A10.5.2 any voucher code has been incorrectly applied, we will contact you to inform you of the error and will give you the option of continuing to purchase the relevant Products using the correctly applied voucher code (in which case you will be required to pay the outstanding balance) or cancelling the order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing.
- A10.6 We may send customers individual voucher codes by email or post from time to time. Any such voucher codes may only be applied to purchases made using the account in respect of which the voucher code was offered and registered. Voucher codes may be subject to certain conditions of use and/or restrictions (including specific dates between which they may be applied), which will be specified at the time of issue. Voucher codes have no monetary value and must not be sold or transferred to anyone else. Voucher codes cannot be used in conjunction with any other offer. Any breach of the specific terms of a voucher code may result in an order being rejected or an order being void.
- A10.7 We may also offer general promotional voucher codes which may apply in respect of any, or certain specified purchases made. Such promotional voucher codes may be subject to certain conditions of use and/or restrictions (including specific dates between which they may be applied), which will be specified at the time of issue. Promotional voucher codes have no monetary value and must not be sold or transferred to anyone else. Promotional voucher codes cannot be used in conjunction with any other offer. Any breach of the specific terms of a promotional voucher code may result in an order being rejected or an order being void.

## **A11. How to Pay**

- A11.1 You can pay for Products and services using a debit card or credit card. We accept the following cards: Barclaycard; Mastercard; Maestro, Visa and Amex. Card payments will be processed securely on our behalf by our payment services provider Cardnet.
- A11.2 Payment for Products and/or services (and all applicable delivery charges) shall be made by you in advance of you receiving the relevant Products and/or services. You will be charged upon receipt by us of your order.
- A11.3 We do not accept liability if the delivery of any Products or the performance of any services is delayed because you have provided us with incorrect payment details.
- A11.4 If it is not possible to obtain full payment for any Products or services using the payment details you have provided, we may reject your order. This does not affect your statutory rights.
- A11.5 If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 2% above the base lending rate of Lloyds Bank from time to time. The interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

## **A12. Warranty**

- A12.1 Subject to the exceptions set out below in this clause A12, we warrant that, on delivery and for the appropriate period set out below in clause A12.2 and clause A12.3, the Products shall be free from material defects.
- A12.2 Subject to clause A12.3, the warranty period for Products is five years from the date of delivery.
- A12.3 The warranty period for foiled and coloured Products, including woodgrain is five years from the date of delivery. The warranty period for hardware, working parts, handles, locks, friction stays, brown guttering and electrical goods is twelve months from the date of delivery.
- A12.4 The warranty in clause A12 does not apply to any defect in the Products to the extent such defect arises from:
- A12.4.1 fair wear and tear;
  - A12.4.2 wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party;
  - A12.4.3 failure by you or a third party to use the Products in accordance with the relevant user instructions including those available on our website;
  - A12.4.4 any alteration or repair by you or by a third party who is not one of our authorised repairers;

- A12.4.5 inclement weather where it would not be reasonable to expect the Product to withstand such weather without damage;
- A12.4.6 any defective or inadequate specification provided by you or on your behalf;
- A12.4.7 subsidence due to soil shrinkage, tree roots or underground workings (e.g. a mine);
- A12.4.8 the failure of foundations or structure where these have not been constructed by us;
- A12.4.9 discolouration or frost damage to brickwork or minor defects to plaster or brickwork due to settlement; or
- A12.4.10 any defect caused by warping, shrinkage, or expansion if such defect occurs more than six months after we have provided any installation services.
- A12.5 The warranty in clause A12 does not apply in respect of marks on glass which are not visible when viewed:
- A12.5.1 from a distance of more than 3000mm if the glass is toughened and laminated glass which is within the Glass and Glazing Federation Guidelines; or
- A12.5.2 2000mm in all other cases.
- A12.6 We give no guarantee, warranty or condition that the installation of the Product will eliminate or reduce condensation from your property as condensation is inevitable in any property which is not adequately ventilated.
- A12.7 We take all reasonable steps to preserve the appearance of the brass and lead used in Products but by their nature both brass and lead will tarnish when exposed to the atmosphere. The warranty in this clause A12 does not extend to brass or lead. We recommend that you regularly maintain such fittings to reduce as far as possible the effects of tarnishing.
- A12.8 All claims under this warranty must be made in writing and sent to East Yorkshire Aluminium & Glass Limited, Wiltshire Road, Dairycoates Industrial Estate, Hull, HU4 6QQ.
- A12.9 Following a claim under this warranty, if we are satisfied that the defect has arisen because of faulty workmanship or materials we will, at our option, repair or replace the Product or the faulty component free of charge. If the Product or component is no longer available we will supply the nearest suitable alternative. All works carried out under the warranty will be carried out between 8:00 and 16:30, Monday to Friday (excluding public holidays).
- A12.10 The warranties in this clause A12 are in addition to, and do not affect, your legal rights as a consumer in relation to any Products or services that are faulty, defective or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

### **A13. Our Liability**

- A13.1 If we fail to comply with these Sales Terms, we are responsible for any loss or damage you suffer that is a foreseeable result of our breach of these Sales Terms or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into the relevant Contract.
- A13.2 We only agree to supply our Products to you for domestic and private use. You agree not to use any of our Products or services for any commercial, business or resale purpose, and we have no liability to you for any loss of profit, loss of business, business interruption or loss of business opportunity.
- A13.3 We do not in any way exclude or limit our liability for:
- 13.3.1 death or personal injury caused by our negligence;
  - A13.3.2 fraud or fraudulent misrepresentation;
  - A13.3.3 any breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979 or section 17 of the Consumer Rights Act 2015 (title and quiet possession);
  - A13.3.4 any breach of the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 or sections 9 to 11 and 13 of the Consumer Rights Act 2015 (description, satisfactory quality, fitness for purpose and samples);
  - A13.3.5 defective products under the Consumer Protection Act 1987; or
  - A13.3.6 any other matter in respect of which we cannot exclude or limit our liability by law.
- A13.4 You are responsible for ensuring that any measurements and other information which you provide us with are correct. We shall not be liable for any losses or damage suffered by you where any of the Products are not suitable for your purposes as a result of incorrect or inadequate measurements or other information provided by you or any failure by you to provide relevant information.
- A13.5 We shall not be liable for any losses or damage suffered by you which arise because you, or any contractor engaged by you to install any Products, fail to follow any instructions provided by us or supplied by the relevant manufacturer as to the storage, installation, use and/or maintenance (including but not limited to cleaning) of the Products.

#### **A14. Use of Personal Data**

- A14.1 We will process your personal information for the purposes of us performing our obligations under the Contract. Where we extend credit to you for the Products and/or services we may pass your personal information to credit reference agencies and they may keep a record of any search that they do.
- A14.2 For further information on how we may use your personal information please refer to our Privacy Policy. You can find our Privacy Policy on our website via the following link: <https://>

www.eygwindows.co.uk/privacy-policy. Copies are also available in our stores. You can also request us to provide you with a copy of our Privacy Policy by telephoning our Customer Services team on 0800 181 888 or by e-mailing them at info@eyggroup.com.

#### **A15. Other Important Terms**

- A15.1 When we refer, in these Sales Terms, to “in writing”, this will include e-mail.
- A15.2 We may transfer our rights and obligations under any Contract to any third party, but this will not affect your rights or our obligations under these Sales Terms.
- A15.3 You may only transfer your rights or your obligations under a Contract to another person if we agree in writing. However, if our Product is installed at your property and you subsequently sell such property, our guarantee at clause A12 (“Warranty”) will automatically transfer to the new owner of your property and any subsequent owners. We may require the person seeking to rely on the guarantee to produce a letter or chain of letters transferring the benefit of the guarantee to them. We will be happy to provide such a specimen letter.
- A15.4 Each Contract is between you and us. No other person shall have any rights to enforce the terms of any Contract except as detailed in clause A15.3 in respect of our guarantee.
- A15.5 Each of the clauses set out in these Sales Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable (whether in whole or in part), the remaining clauses (or the relevant part) will remain in full force and effect.
- A15.6 If we fail to insist that you perform any of your obligations under these Sales Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- A15.7 Please note that these Sales Terms are governed by English law. This means each Contract for the purchase of Products and/or services, and any dispute or claim arising out of or in connection with it, will be governed by English law. You and we both agree that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident of Scotland you may also bring proceedings in Scotland.

#### **MODEL CANCELLATION FORM**

*(Complete and return this form only if you wish to withdraw from any Contract)*

To: East Yorkshire Aluminium & Glass Limited

Wiltshire Road, Dairycoates Industrial Estate, Hull, HU4 6QQ

info@eyggroup.com

I/We [\*] hereby give notice that I/We [\*] cancel my/our [\*] contract of sale of the following goods [\*]/for the supply of the following service [\*],

Ordered on [\*]/received on [\*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[\*] Delete as appropriate

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## **Part B. Business Terms and Conditions**

**The Conditions in this Part B only apply to business customers and do not apply to consumers. If you are a consumer purchasing products and/or services using our website, over the telephone or by email to consumers in circumstances where we have not had any face-to-face contact with you our consumer terms and conditions in Part A apply.**

### **B1. Interpretation**

B1.1 In these Conditions the following words shall have the following meanings:

<b>Buyer</b>	the person, firm or company who purchases Goods and/or Services from Supplier.
<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
<b>Conditions</b>	the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between Supplier and Buyer.
<b>Contract</b>	the contract between Supplier and Buyer for the supply of Goods and/or performance of the Services in accordance with these Conditions.
<b>Contract Price</b>	the price for the supply of the Goods and/or performance of the Services the subject of the Contract
<b>Force Majeure Event</b>	has the meaning given to it in Condition B16.
<b>Goods</b>	any goods agreed in the Contract to be supplied to Buyer by Supplier (including any part or parts of any Order for Goods).
<b>Goods Specification</b>	any specification for the Goods, including any relevant plans, drawings and measurements submitted by Buyer or produced by Supplier (as applicable).
<b>Installation Services</b>	the installation of any Goods by Supplier for Buyer as detailed in the Order
<b>Order</b>	Buyer's order for the supply of Goods and/or performance of the Services, as set out overleaf.
<b>Services</b>	the Surveying Services and/or Installation Services (as applicable)
<b>Site</b>	the address where the Goods will be delivered and/or the Services will be performed as set out the Order
<b>Supplier</b>	East Yorkshire Aluminium & Glass Limited registered in England and Wales with company number 01230670, or any subsidiary or associated company which supplies Goods to and/or performs Services for Buyer.

<b>Supplier Materials</b>	has the meaning given in Condition B9.1.11.
<b>Surveying Services</b>	survey of the Site and production of a Goods Specification by Supplier for Buyer.

B1.2 Words in the singular include the plural and vice versa.

**B2. Basis of contract**

B2.1 These Conditions cancel and supersede any earlier conditions of sale of Supplier and shall govern the Contract to the exclusion of any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order, specification or other document, or which are implied by trade, custom, practice or course of dealing, and Buyer waives any right which it might have to rely on such terms or conditions.

B2.2 No variation to these Conditions or any representation about the Goods and/or Services shall have effect unless expressly agreed in writing and signed by a duly authorised representative of Supplier.

B2.3 Each Order for Goods and/or Services by Buyer from Supplier shall be deemed to be an offer by Buyer to purchase Goods and/or Services subject to these Conditions.

B2.4 No Order placed by Buyer shall be deemed to be accepted by Supplier until Supplier has confirmed acceptance of the Order or (if earlier) Supplier delivers the Goods or performs the Services for Buyer.

B2.5 Any quotation is given on the basis that no contract will come into existence until Supplier has confirmed acceptance of Buyer's Order or (if earlier) delivers the Goods or performs the Services. Any quotation is valid only for all the Goods and/or the Services referred to in the quotation for a period of three months from its date, provided that Supplier has not previously withdrawn it. Supplier may reject an Order which is for only part of the Goods and/or the Services the subject of a quotation. Supplier will reject an Order if Supplier is unable to obtain satisfactory credit references for Buyer for the value of the Contract.

B2.6 Supplier may notify to Buyer a credit limit for purchasing Goods and Services from Supplier. Supplier shall be entitled to change such credit limit or remove Buyer's credit terms at any time upon giving notice to Buyer.

**B3. Description**

B3.1 Any samples, drawings, descriptive matter or advertising issued by Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and Supplier shall be entitled to correct any error without liability to Buyer.

B3.2 Supplier reserves the right to change the Goods Specification and/or the Services after acceptance of Buyer's Order provided that such change does not materially alter the characteristics of the Goods and/or the Services (as applicable).

B3.3 The sale of the Goods shall not be a sale by sample.

**B4. Delivery of Goods**

B4.1 The Supplier shall deliver or arrange delivery of the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location"). Buyer shall unload the Goods on delivery unless the Delivery Location is the Supplier's premises in which case the Buyer shall load the Goods at the Delivery Location.

B4.2 Delivery of the Goods shall be completed when the Goods arrive at the Delivery Location.

B4.3 Any date specified by Supplier for delivery of the Goods is an estimate only and time for delivery shall not be made of the essence by notice. Where Supplier agrees to change the specification or quantity of Goods ordered Supplier shall be entitled to adjust the delivery date accordingly. If no date for delivery has been so specified, delivery will be within a reasonable time. For information only, the manufacture period in respect of the Goods is typically six to eight weeks from receipt of all information requested by Supplier from Buyer.

B4.4 Subject to the other provisions of these Conditions, Supplier shall not be liable for any loss (including but not limited to loss of profit and consequential loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle Buyer to terminate or rescind the Contract.

B4.5 If for any reason Buyer will not take delivery of any of the Goods, the Contract Price shall become immediately due and payable and risk in the Goods will pass to Buyer. Supplier may store the Goods until actual delivery and Buyer will be liable for all related costs and expenses (including without limitation demurrage, storage and insurance). Without prejudice to Supplier's right to recover from Buyer any sums due to Supplier, if Buyer has not collected or taken delivery of the Goods within 14 days from the date upon which the Contract Price became due and payable Supplier may dispose of the Goods in such manner as Supplier may determine.

**B5. Shortfalls and Non-Delivery**

B5.1 The quantity of any consignment of Goods as recorded by Supplier upon despatch from Supplier's place of business shall be conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

B5.2 Supplier shall not be liable for any non-delivery of Goods unless written notice is given to Supplier within three Business Days of the estimated date of delivery supplied by Supplier.

B5.3 Supplier shall not be liable for any shortfall in the delivery of Goods unless written notice is given to Supplier within three Business Days of delivery.

B5.4 Any liability of Supplier for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

B5.5 Any liability of Supplier for any shortfall in the delivery of the Goods shall be limited to making up the shortfall within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**B6. Risk and Ownership**

B6.1 The Goods shall be at the risk of Buyer from the time of delivery.

B6.2 Ownership of the Goods shall not pass to Buyer until Supplier has received in full in cash or cleared funds:

B6.2.1 all sums payable in respect of the Goods; and

B6.2.2 all other sums which are or which become payable to Supplier from Buyer on any account including any interest on such sums,

in which case title to the Goods shall pass at the time of payment of all such sums.

B6.3 Until ownership of the Goods has passed to Buyer, Buyer shall:

B6.3.1 store the Goods (at no cost to Company) separately to other goods of Buyer or any third party in a way that they remain readily identifiable as Supplier's property;

B6.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

B6.3.3 maintain the Goods in satisfactory condition insured for their full price from the date of delivery against all risks and hold the proceeds of insurance on trust for Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;

B6.3.4 notify Supplier immediately if it becomes subject to any of the events listed in Conditions B14.1.2 to B14.1.4; and

B6.3.5 give Supplier such information relating to the Goods as Supplier may require from time to time.

B6.4 Subject to Condition B6.5, Buyer may resell or use the Goods before ownership has passed to Buyer solely on the condition that any sale or use shall be on Buyer's own behalf in the ordinary course of Buyer's business. If Buyer resells the Goods before ownership has passed to Buyer, any such sale shall be at full market value and Buyer shall deal as principal (not as Supplier's agent) when making such sale. In such circumstances, title to the Goods shall pass from Supplier to Buyer immediately before the time at which resale by Buyer occurs.

B6.5 Buyer's right to possession, use and resale of the Goods before ownership has passed to Buyer shall terminate immediately and all sums shall become due and payable immediately and Buyer agrees that Supplier shall have the right to rescind or terminate the Contract and/or to suspend any further deliveries under the Contract if any of the following events, or Supplier reasonably believes that any of the following events will, happen:

- B6.5.1 Buyer is affected by any of the events specified in Conditions B14.1.2 to B14.1.4; or
- B6.5.2 Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Supplier and Buyer, or Buyer suspends or ceases to carry on all or a substantial part of its business.
- B6.6 Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Supplier.
- B6.7 Supplier may at any time require Buyer to deliver up all Goods in Buyer's possession which have not been resold or irrevocably incorporated into another product.
- B6.8 Buyer grants Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.
- B6.9 Where Supplier is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer shall be deemed to have sold all goods of the kind sold by Supplier to Buyer in the order in which they were invoiced to Buyer.
- B6.10 On termination of the Contract, howsoever caused, Supplier's (but not Buyer's) rights contained in this Condition B6 shall remain in effect.

**B7. Quality of the Goods**

- B7.1 Subject to the exceptions set out below in this Condition B7, Supplier warrants that, from the date of delivery (where the Contract is for the supply of Goods only) or from the date of installation (where the Contract includes Installation Services) and for the appropriate period set out below in Conditions B7.2 and B7.3, the Goods shall be free from material defects.
- B7.2 Subject to this Condition B7, the warranty period is:
- B7.2.1 five years in respect of all Goods which are UPVC and aluminium Goods and one year in respect of the working parts of those Goods;
- B7.2.2 six months in respect of all Goods which are hardwood Goods (which includes wooden frames into which double glazed units are fitted);
- B7.2.3 five years in respect of all Goods which are double glazed units (which, for the avoidance of doubt, does not include any wooden frames into which the double glazed units are fitted);
- B7.2.4 five years in respect of all Goods that are Fascias and Soffits; and
- B7.2.5 12 months in respect of all Goods that are gutters or electrical goods.

- B7.3 Where the Contract is for or includes any Goods which are manufactured by a third party, Buyer shall have the benefit of any warranty given to Supplier in respect of those Goods where it is possible for Supplier to assign the benefit of such warranty to Buyer.
- B7.4 The warranty in Condition B7 does not apply to any defect in the Goods to the extent such defect arises from:
- B7.4.1 fair wear and tear;
  - B7.4.2 wilful damage, abnormal storage or working conditions, accident, negligence by Buyer or by any third party;
  - B7.4.3 failure by Buyer or a third party to use the Goods in accordance with the relevant user instructions including those available on Supplier's website;
  - B7.4.4 any alteration or repair by Buyer or by a third party who is not one of Supplier's authorised repairers;
  - B7.4.5 inclement weather where it would not be reasonable to expect the Goods to withstand such weather without damage;
  - B7.4.6 defective or inadequate Goods Specification (unless such Goods Specification has been produced by Supplier pursuant to any Surveying Services performed by Supplier for Buyer);
  - B7.4.7 subsidence due to soil shrinkage, tree roots or underground workings (e.g. a mine);
  - B7.4.8 the failure of foundations or structure where these have not been constructed by Supplier;
  - B7.4.9 warping, shrinkage, or expansion of the foundations, structure or media supporting and/or surrounding the Goods; or
  - B7.4.10 discolouration or frost damage to brickwork or minor defects to plaster or brickwork due to settlement of the Goods once they have been installed.
- B7.5 The warranty in Condition B7 does not apply in respect of marks on glass which are not visible when viewed:
- B7.5.1 from a distance of more than 3000mm if the glass is toughened and laminated glass and is within the Glass and Glazing Federation Guidelines; or
  - B7.5.2 2000mm in all other cases.
- B7.6 Supplier gives no guarantee, warranty or condition that the Goods will eliminate or reduce condensation as condensation is inevitable in any property which is not adequately ventilated.
- B7.7 Supplier will take all reasonable steps to preserve the appearance of the brass and lead used in the Goods but by their nature both brass and lead will tarnish when exposed to the atmosphere.

The warranty in Condition B7 does not extend to brass or lead. Supplier recommends that such fittings are regularly maintained to reduce as far as possible the effects of tarnishing.

B7.8 All claims under the warranty in Condition B7 must be made in writing and sent to East Yorkshire Aluminium & Glass Limited, Wiltshire Road, Dairycoates Industrial Estate, Hull, HU4 6QQ.

B7.9 Following a claim under the warranty in Condition B7, if Supplier is satisfied that the defect has arisen because of faulty workmanship or materials Supplier will:

B7.9.1 where the Contract is for the supply of Goods only, at its option, repair the Goods or provide replacement Goods or components free of charge. Unless otherwise agreed in writing, Supplier shall not perform any removal services or other services in respect of the defective Goods or perform Installation Services or any other services in respect of the replacement Goods or components; or

B7.9.2 where the Contract is for the supply of Goods and Installation Services in respect of those Goods, at its option, repair or replace the Goods or the faulty component free of charge. If Supplier is replacing the Goods or the faulty component, Supplier shall, unless otherwise agreed in writing, remove the defective Goods and perform Installation Services in respect of the replacement Goods or components.

If the Goods or component is no longer available Supplier will supply the nearest suitable alternative. All works carried out under the warranty will be carried out on Business Days only between 8:00 and 16:30.

## **B8. Services**

B8.1 Where Supplier has agreed to provide Surveying Services, Supplier will contact Buyer to arrange for one of Supplier's technical surveyors to undertake a survey at the Site. Supplier will produce a Goods Specification for Buyer's approval following the survey. If:

B8.1.1 the survey reveals that any additional work will be required to supply the Goods and/or perform the Services Supplier reserves the right to increase the Contract Price to reflect any increased costs to Supplier. If Buyer is unwilling to pay the increased Contract Price, Buyer may terminate the Contract by notice in writing to Supplier within 5 Business Days of notice from Supplier of the increased Contract Price. In such circumstances, Supplier shall return any deposit paid by Buyer in respect of the Goods, save that Supplier may retain a sum from the deposit equivalent to the Supplier's charges for the Surveying Services;

B8.1.2 pursuant to the Surveying Services, Supplier discovers that it is unable to supply the Goods and/or perform the Installation Services Supplier may terminate the Contract with immediate effect by notice in writing to Buyer. If Supplier terminates the Contract pursuant to this Condition B8.1.2, Supplier shall return any deposit paid by Buyer in respect of the Goods, save that Supplier may retain a sum from the deposit equivalent to the Supplier's charges for the Surveying Services.

B8.2 Where Supplier has agreed to provide Installation Services, Supplier will notify Buyer when the Goods are ready for installation, following which Supplier will require a minimum period of two

weeks notice in writing from Buyer of the date(s) on which Buyer would like Supplier to perform the Installation Services. Following receipt of written notice from Buyer Supplier will, subject to these Conditions, agree the date(s) on which Supplier will perform the Installation Services.

- B8.3 Unless otherwise agreed by Supplier in writing, Services shall be performed by Supplier between 8:00 and 16:30 on Business Days only.
- B8.4 Supplier shall use reasonable endeavours to meet any performance dates for the Services agreed in writing by the parties but any such dates shall be estimates only which are subject to design, approval and manufacture periods in respect of the Goods and time shall not be of the essence for the performance of the Services.
- B8.5 Supplier warrants to Buyer that the Services will be performed using reasonable care and skill.

**B9. Customer's obligations**

B9.1 Buyer shall:

B9.1.1 ensure that the terms of its Order are complete and accurate. Supplier shall not be liable to Buyer if the terms of its Order are not complete or accurate.

B9.1.2 where the Goods Specification is submitted by Buyer, ensure that the Goods Specification is complete and accurate. Buyer acknowledges and agrees that Supplier shall rely on the Goods Specification and will not undertake a Site visit to verify the Goods Specification. Supplier shall not be liable to Buyer if the Goods Specification is not complete or accurate. If: (i) Supplier becomes aware of any error or omission in respect of the Goods Specification or if the Goods Specification is not complete and accurate in all material respects ("Specification Error"); and/ or (ii) Supplier is unable to perform the Installation Services as a result of the Specification Error, without limiting or affecting any other right or remedy available to Supplier:

- (a) Supplier reserves the right to increase the Contract Price to reflect any increased costs to Supplier resulting from correcting the Specification Error; and/or
- (b) if it is not possible for Supplier to perform the Installation Services as a result of the Specification Error, Supplier may terminate the Contract with immediate effect by notice in writing to Buyer. If Supplier terminates the Contract pursuant to this Condition B9.1.2(b) Buyer shall pay to Supplier all costs incurred by Supplier in performing its obligations in the Contract up to the date of termination.

This Condition B9.1.2 shall not apply where Supplier has produced the Goods Specification pursuant to Condition B8.1;

B9.1.3 co-operate with Supplier in all matters relating to the Services;

B9.1.4 provide Supplier with free, uninterrupted access to fully and properly prepared working areas as may be required by Buyer to perform the Services;

- B9.1.5 ensure the suitability of any sub-surfaces, openings and any other areas where the Goods are to be installed at the Site are fit for purpose, are to the correct dimensions and are complete in all respects. If Supplier notifies Buyer of any remedial work which must be carried out by Buyer, Buyer shall complete such remedial work before Supplier performs any Installation Services. If Buyer fails to complete such remedial work within any timeframes set by Supplier then, without limiting or affecting any other right or remedy available to it, Buyer may terminate the Contract with immediate effect by notice in writing to Supplier and Buyer shall pay to Supplier all costs incurred by Supplier in performing its obligations in the Contract up to the date of termination;
- B9.1.6 ensure that any employees of Buyer who the parties have agreed in writing will be made available at the Site will be made available at the Site on the dates and times agreed by the parties;
- B9.1.7 provide Supplier, its employees, agents, consultants and subcontractors, with access to the Site, office accommodation and other facilities as reasonably required by Supplier to perform the Services;
- B9.1.8 provide Supplier with such information and materials as Supplier may reasonably require in order to perform the Services, and ensure that such information is complete and accurate in all material respects;
- B9.1.9 unless otherwise agreed in writing, obtain and maintain all necessary licences, permissions and consents (including, but not limited to, any applicable planning permissions and building consents) in respect of the Site which may be required for the performance of the Services by Supplier before the date on which the Services are to start;
- B9.1.10 comply with all applicable laws, including health and safety laws;
- B9.1.11 where Supplier is required to store materials, equipment, documents and other property of Supplier ("**Supplier Materials**") at the Site in order to perform the Services, keep such Supplier Materials in safe custody at Buyer's own risk, maintain Supplier Materials in good condition until returned to Supplier, and not dispose of or use Supplier Materials other than in accordance with Supplier's written instructions or authorisation; and
- B9.1.12 comply with any additional obligations as set out in the Order and the Goods Specification.
- B9.2 If Supplier's performance of any of its obligations under the Contract is prevented or delayed by an act or omission by Buyer or failure by Buyer to perform any relevant obligation ("**Customer Default**"):
- B9.2.1 without limiting or affecting any other right or remedy available to it, Supplier shall have the right to suspend performance of the Services until Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays Supplier's performance of any of its obligations;

B9.2.2 Supplier shall not be liable for any costs or losses sustained or incurred by Buyer arising directly or indirectly from Supplier's failure or delay to perform any of its obligations as set out in this Condition B9.2; and

B9.2.3 Buyer shall reimburse Supplier on written demand for any costs or losses sustained or incurred by Supplier arising directly or indirectly from the Buyer Default.

## **B10. Charges and payment**

B10.1 Unless otherwise agreed in writing by Supplier, the Contract Price shall be the price in force at the date of acceptance of Buyer's Order. The Contract Price shall be exclusive of value added tax (where applicable) and delivery charges (where applicable), which sum Buyer shall pay at the same time.

B10.2 Supplier shall be entitled at any time prior to delivery of the Goods and/or performance of the Services to increase the Contract Price to reflect any increase in the cost of the Goods and/or Services to Supplier after acceptance of Buyer's Order which is due to factors beyond Supplier's reasonable control including, without limitation, currency exchange rate fluctuations, increases in taxes and duties and any other increase incurred by Supplier in respect of the Goods and/or Services.

B10.3 Supplier reserves the right to adjust the Contract Price to reflect any alteration to the Goods Specification agreed between Supplier and Buyer after acceptance of Buyer's Order.

B10.4 Supplier may require Buyer to pay a deposit before it commences manufacture of the Goods.

B10.5 If the Contract is for the supply of Goods only, subject to Condition B10.10 and unless otherwise agreed in writing by the parties, Supplier shall invoice the Customer for the Contract Price (or the balance of the Contract Price where Buyer has paid a deposit) on or at any time after completion of delivery of the Goods and Buyer shall pay such invoice immediately on delivery.

B10.6 If the Contract is for the supply of Goods and Installation Services, Supplier shall, subject to Condition B10.10 and unless otherwise agreed in writing by the parties, invoice Buyer for the Contract Price (or the balance of the Contract Price where Buyer has paid a deposit) on completion of the Installation Services and Buyer shall pay such invoice within 30 days from the date of the invoice, save that if the performance of the Installation Services extends into more than one calendar month, Supplier may invoice Buyer monthly in respect of the Installation Services performed in each month as the matter progresses and, subject to Condition B10.10, Buyer shall pay such invoices within 30 days from the date of the relevant invoice.

B10.7 If the Contract includes Surveying Services Supplier shall, subject to Condition B10.10 and unless otherwise agreed in writing by the parties, invoice Buyer on completion of the Surveying Services and Buyer shall pay such invoice within 30 days from the date of the invoice,

B10.8 Time for payment shall be of the essence. No payment shall be deemed to have been received until Supplier has received cleared funds.

B10.9 All sums payable to Supplier under the Contract shall become due immediately upon termination of the Contract despite any other provision.

B10.10 Any issues relating to an invoice must be communicated to Supplier within seven days of the date of the invoice.

B10.11 Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.

B10.12 If Buyer fails to pay Supplier any sum due pursuant to the Contract then, without prejudice to any other right or remedy which Supplier might have against Buyer, Supplier shall be entitled to suspend performance of Supplier's obligations under the Contract or under any other contract between Supplier and Buyer and/or charge Buyer interest 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 Bank of England accruing on a daily basis until payment is made, whether before or after any judgment. Alternatively, Supplier shall be entitled to charge Buyer interest and compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended. In addition to interest, Supplier shall be entitled to recover from Buyer such legal costs as are incurred in the recovery of sums due and owing to Supplier.

B10.13 Supplier may at any time set off any liability of Buyer to Supplier against any liability of Supplier to Buyer, whether such liability is present or future, liquidated or unliquidated, under the Contract or otherwise.

#### B10.14 Credit Accounts

B10.14.1 Credit accounts may only be opened at Supplier's discretion and are subject to:

- a) Supplier obtaining a signed account application form from Buyer; and
- b) Supplier obtaining satisfactory references in respect of Buyer.

B10.14.2 If Supplier has agreed to operate a credit account for Buyer, such credit account shall be governed by these Conditions and the terms of the account opening form or such other terms as are notified by Supplier to Buyer.

B10.14.3 Supplier may set a maximum amount of credit allowable and may, in its absolute discretion, withdraw credit facilities at any time and without explanation.

B10.14.4 Buyer agrees that Supplier may obtain references as to Buyer's financial status. Any change to Buyer's financial status must be notified in writing to Supplier immediately.

### **B11. Intellectual property rights**

Buyer shall not use Supplier's name, logo or other intellectual property rights in advertising or publicity without Supplier's prior written consent.

## **B12. Confidentiality**

B12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Condition B12.2.

B12.2 Each party may disclose the other party's confidential information:

B12.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Condition B12; and

B12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

B12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **B13. Limitation of Liability**

**BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS B13.2 to B13.4.**

B13.1 Nothing in these Conditions shall limit or exclude Supplier's liability for:

B13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

B13.1.2 fraud or fraudulent misrepresentation;

B13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

B13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

B13.1.5 any other matter which it would be illegal for Supplier to exclude or attempt to exclude its liability.

B13.2 Subject to Condition B13.1, Supplier shall not be liable to Buyer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

B13.2.1 loss of profits;

B13.2.2 loss of sales or business;

B13.2.3 loss of agreements or contracts;

B13.2.4 loss of anticipated savings;

B13.2.5 loss of use or corruption of software, data or information;

B13.2.6 loss of or damage to goodwill; or

B13.2.7 any indirect or consequential loss.

B13.3 Subject to Condition B13.1, Supplier's total liability to Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising in connection with the performance or contemplated performance of the Contract, shall be limited to the lower of:

B13.3.1 where the Contract is for the supply of Goods only, the price of the Goods the subject of the claim; or

B13.3.2 where the Contract is for the supply of Goods and Services, the aggregate sum of:

(a) the price of the Goods the subject of the claim; and

(b) the price of the Installation Services under the Contract pro rated to reflect the value of the Installation Services performed by Supplier in respect of the Goods the subject of the claim.

B13.4 Subject to Condition B13.1, in no circumstances shall Supplier's total liability to Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising in connection with the performance or contemplated performance of the Contract exceed the Contract Price.

B13.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

B13.6 This Condition B13 shall survive termination of the Contract.

#### **B14. Termination**

B14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

B14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

B14.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

B14.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

B14.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

B14.2 Without affecting any other right or remedy available to it, Supplier may terminate the Contract with immediate effect by giving written notice to Buyer if Buyer fails to pay any amount due under the Contract on the due date for payment.

## **B15. Consequences of termination**

B15.1 On termination of the Contract:

B15.1.1 Buyer shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest and, in respect of Services performed and Goods supplied but for which no invoice has been submitted, Supplier shall submit an invoice, which shall be payable by Buyer immediately on receipt;

B15.1.2 Buyer shall return all of Supplier Materials and any Goods which have not been fully paid for. If Buyer fails to do so, then Supplier may enter Buyer's premises and take possession of them. Until they have been returned, Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

B15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

B15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **B16. Force majeure**

B16.1 **"Force Majeure"** means an event beyond the reasonable control of Supplier, which prevents Supplier from complying with any of its obligations under the Contract, including but not limited to:

B16.1.1 acts of God, inclement weather, flood, lightning, storm, drought, earthquake, tidal waves, or other natural disaster;

B16.1.2 epidemic or pandemic;

B16.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, invasion, rebellion, revolution, insurrection, imposition of sanctions, embargo, or breaking off of diplomatic relations;

B16.1.4 nuclear, chemical or biological contamination or sonic boom;

B16.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

B16.1.6 collapse of buildings, fire, explosion or accident;

B16.1.7 any labour or trade dispute, walk out, go slows, strikes, industrial action or lockouts;

B16.1.8 non-performance by suppliers or subcontractors; and

B16.1.9 interruption or failure of utility service.

B16.2 Supplier reserves the right to defer the date of delivery of the Goods and/or performance of the Services or to terminate the Contract or to reduce the volume of the Goods ordered by Buyer (without liability to Buyer and without prejudice to Supplier's right to recover all sums owed to it by Buyer in respect of Goods delivered, Services performed and cost incurred prior to the date of such deferment, termination or reduction) if Supplier is prevented from or delayed in the carrying on of its business due to Force Majeure as defined in Condition B16.1.

## **B17. General**

B17.1 Buyer shall not assign the Contract or any part of it without the prior written consent of Supplier, save that if Buyer sells the Site where the Goods are installed, the warranty in Condition B7 will transfer to the new owner of the Site and any subsequent owners. Supplier may require the party seeking to rely on the warranty to produce a letter or chain of letters transferring the benefit of the warranty to them.

B17.2 Supplier shall be entitled to assign the Contract or any part of it to any person, firm or Supplier.

B17.3 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.

B17.4 Failure or delay by Supplier in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

B17.5 Any waiver by Supplier of any breach of, or any default under, any provision of the Contract by Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

B17.6 Each right or remedy of Supplier under the Contract is without prejudice to any other right or remedy of Supplier whether under the Contract or not.

B17.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

B17.8 Subject to Conditions B17.1 and B17.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.

B17.9 Nothing in the Contract excludes the statutory rights of consumers.

B17.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts.