

FOLDING SLIDING DOORS LIMITED – DOORS – TERMS AND CONDITIONS OF SALE

1 Definitions

In these Conditions, the following definitions apply:

Company means Folding Sliding Doors Limited (registered in England and Wales with company number 4267386), trading as 'The Folding Sliding Door Company'.

Conditions means the terms and conditions set out in this document.

Contract means the contract between the Company and the Customer for the sale and purchase of the Goods and Services in accordance with these Conditions.

Customer means the person or firm who purchases the Goods (or any part of them) and Services from the Company. A **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

Goods means the goods (or any part of them) set out in the Order.

Managing Director means the managing director of the Company from time to time.

Order means the Customer's order for the Goods and Services, as set out in the completed Order Form submitted to the Company.

Order Form means the Company's standard order form provided to the Customer.

Services means the services (if any) to be provided by or on behalf of the Company as set out in the Order.

Subject to the provisions of these Conditions, phrases defined in the 2000 edition of Incoterms have the same meaning when used in these Conditions.

2 Application

- (i) These Conditions shall apply without modification and to the exclusion of all and any other conditions including any appearing in any quotation, form of acceptance, delivery form or other document or letter emanating from the Customer to the Company unless otherwise agreed by the Managing Director in writing.
- (ii) The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Contract which is not set out in the Contract.
- (iii) Nothing in these Conditions shall restrict the rights of a Customer dealing as a consumer.
- (iv) Where the Customer comprises two or more persons the liability of those persons under these terms shall be joint and several.

3 Acceptance of orders

- (i) All Orders are placed and accepted by the Company only under and subject to these Conditions.
- (ii) Save where credit is given to the Customer by the Company, Orders are only accepted with the appropriate cleared payment in full and a correctly completed Order Form.
- (iii) In instances where credit is given to the Customer by the Company, such Orders are then additionally subject to satisfactory references.

4 Prices

- (i) Prices quoted or agreed by the Company are unless otherwise agreed in writing:
 - exclusive of Value Added Tax or any other applicable tax, duty or levy;
 - be calculated in pounds sterling;
 - given only as indications made in good faith and are subject to variation or withdrawal without notice. In any event, a quotation shall only be valid for a period of fourteen days from its date of issue;
 - exclusive of delivery, carriage and insurance charges; and
 - variable at the Company's discretion to account for fluctuations after the date of the Order but before despatch in (without limitation) costs, labour, material prices and/or service charges to the Company via exchange rate fluctuation or otherwise.
- (ii) Errors and omissions by the Company in importing the agreed terms into the written quotation shall entitle the Company either to submit to the Customer a revised quotation including if applicable a quotation for any works or materials not in contemplation when preparing the preceding quotation and this preceding quotation shall have no effect or to proceed with the existing quotation at the Company's sole option.

5 Payment

- (i) Subject to clause 5(ii) full payment for the Order shall be made prior to the delivery date agreed between the Company and the Customer, this shall be cleared funds; cheque payments shall allow an extra five days for funds to clear.
- (ii) Where credit is given to the Customer by the Company (and unless otherwise agreed in writing by the Company), all Customer accounts shall be paid in full without any deduction whatsoever by the last working day of the month following the month of the Order, and all monies received by the Company shall be applied to accounts outstanding in the Company's books by order of age (starting with the oldest).
- (iii) All payments shall be calculated and paid in pounds sterling by reference to the relevant currency exchange rate of the Company's bank as at the date of the Order.
- (iv) If payment has not been made in accordance with this clause 5, the Company shall be entitled to (a) rescind any discount offered making the original full price of the product payable and (b) recover from the Customer interest, payable at the rate then applicable under the Late Payment of Commercial Debts (Interest) Act 1998 on any outstanding balance until the actual date of payment. These rights shall exist without prejudice to any other right(s) of the Company.
- (v) The Company reserves the right at any time at its discretion to demand security for or vary the terms and method of payment, for continuing with or delivering the Goods or Services in satisfaction of the Order, notwithstanding any subsisting agreement to provide credit to the Customer. The Company shall notify the Customer in writing of such variations.
- (vi) Should the Customer fail to make any payment on the due date then the Company shall be entitled to cancel any subsisting supply contract with or suspend any further deliveries to or collections by the Customer and also appropriate any payments made by the Customer for such other materials, goods or services supplied to the Customer under any contract as the Company may think fit notwithstanding any purported appropriation by the Customer. The Company shall not incur any liability to the Customer in respect of such cancellation or suspension and this right shall exist without prejudice to any other right of the Company.

6 Right of set-off

Any sum payable by the Company to the Customer on any account may at any time be offset by the Company, at the Company's sole discretion, against any sums payable by the Customer to the Company.

7 Cancellation

If the Customer:

- being a company, has a petition presented for its winding up or any administration or passes a resolution for voluntary winding up otherwise than for the purpose of *bona fide* amalgamation or reconstruction or enters a scheme of arrangement or voluntary arrangement of compound or makes any proposals to or enters into any arrangement with his creditors or has a receiver or manager or administrative receiver appointed over all or any part of its assets; or
- being a natural person or firm, has a petition presented for his or its bankruptcy or becomes bankrupt or insolvent or enters into any arrangement with his or its creditors or makes or has made an application for interim order in connection with a proposal to creditors or voluntary arrangement; or
- commits a material breach of this Contract, including (without limitation) breach of the Company's assigned credit limit for the Customer, receipt of an adverse credit status report of the Customer by the Company or withdrawal of the Company's credit insurance cover for the Customer,

then the Company shall be entitled to treat the Contract as being at an end and/or suspend any further deliveries under the Contract or any other arrangement between the parties. If the Goods have been delivered and/or Services supplied but in either case are not paid for, the price shall become due immediately regardless of any previous agreement to the contrary.

8 Delivery

- (i) Any statements made by the Company as to the time or date for delivery of the Goods or supply of the Services for completion of any work are an approximate estimate based on trading conditions at that time.
 - (ii) The Company may deliver or complete any Order in stages or instalments and each such delivery shall constitute a separate contract. Delivery shall be made to the place(s) and by the method(s) specified by the Company (or if none, ex works or, for export sales, FOB U.K. port or airport). The Customer's or its carrier's receipt shall be conclusive evidence of delivery.
 - (iii) The Company is not liable for any delay in the delivery of the Goods nor is it liable if it is inhibited from delivering Goods, materials or Services or executing work for any causes beyond its control, such causes may include (without limitation) an act of god, *force majeure*, war or hostilities, legislation, government order or direction, and strike, lock-out, labour disturbance, civil commotion, fire, accident, breakdown of machinery, or any lack or shortage of labour or materials, or reduction, or delay or default of Company's suppliers and/or subcontractors, and in any such case the Company is to be released from any obligation to complete the Contract with the Customer by a particular time. This right exists without prejudice to the Company's right to recover payment for Goods already delivered or work already done. Time of delivery is not of the essence to the Contract.
 - (iv) Unless otherwise expressly agreed by the Company in writing, all deliveries made or work done at the Customer's request on English public holidays and outside the Company's normal working hours will be subject to extra charges. Notification of such charges may be obtained by the Customer at its request from the Managing Director.
 - (v) If agreed between the parties, the Goods may be collected by the Customer. Collection of the Goods must take place within seven days from the agreed collection date or the dates notified by the Company as available for collection or the date of this Contract whichever is later. Thereafter the Customer will incur storage charges at the rate currently applied by the Company. Details of such storage charges may be obtained by the Customer at its request from the Managing Director.
 - (vi) Upon collection of the Goods, the Customer shall be solely responsible for the size, weight and positioning of any load on its vehicle and shall fully indemnify the Company for any claims or action arising there from.
 - (vii) Where the Company agrees to deliver the Goods delivery shall be to the nearest hard metalled road surface. The Customer shall be entirely responsible for the prompt unloading of the Goods and the provision of suitable labour and equipment.
 - (viii) The Customer shall take delivery or accept the Goods within the time limit provided in these Conditions. If the Customer fails to accept the Goods or to give the Company adequate delivery instructions the Company will store the Goods until actual delivery to the Customer or until the Goods are disposed of. The Customer shall be liable for the costs of such storage and insurance of the Goods. Alternatively the Company may sell the Goods at the best price readily obtainable and the Customer shall be liable to pay the costs of the sale. If the Goods are sold for less than the price payable by the Customer, the Customer shall be liable to pay the Company the difference in price.
 - (ix) Where Goods are supplied under any internationally recognised trading term as specified in Incoterms 2000, the provision by the Company of the usual transport document(s) or other evidence of delivery consistent with the relevant trading term will be conclusive evidence of delivery by the Company.
 - (x) If the Company or its carrier is unable for any reason to place the Goods on board ship upon their arrival at the port of delivery, a warehouse receipt for the Goods shall be treated as sufficient delivery.
 - (xi) The Customer undertakes to obtain and comply with any necessary export/import licences, permits and consents for the supply and delivery of the Goods. The Customer shall ensure that all Goods sold to the Customer shall comply with all legal and customary requirements prevailing in all jurisdictions into which those Goods may be shipped or resold.
 - (xii) Notwithstanding delivery, title in the property of the Goods shall not pass unless it is in accordance with clause 12.
- ### 9 Inspection, testing and quality
- (i) The Supplier warrants that on delivery, and for a period of 25 years from the date of delivery (the **warranty period**), the Goods shall:
 - conform in all material respects with their description;
 - be free from material defects in design, material and workmanship; and
 - be fit for any purpose held out by the Company.
 - (ii) Subject to clause 9(iii), if:
 - the Customer gives notice in writing to the Company during the warranty period within a reasonable period of time of discovery of some or all of the Goods do not comply with the warranty set out in clause 9(i);
 - the Company is given a reasonable opportunity of examining such Goods; and
 - the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
 - (iii) The Company shall not be liable for Goods' failure to comply with the warranty set out in clause 9(i) in any of the following events:
 - the Customer makes any further use of such Goods after giving notice in accordance with clause 9(ii); or
 - the defect arises because the Customer failed to follow the Company's oral or written instructions as to storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
 - the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer; or
 - the Customer alters or repairs such Goods without the written consent of the Company; or
 - the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or
 - the Goods differ from their description as a result of changes made to ensure they comply with any applicable statutory or regulatory requirements.
 - (iv) Except as provided in this clause 9, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 9(i).
 - (v) Except as stated in this clause 9, and to the fullest extent permitted by law, all conditions, warranties and representations, whether express or implied, statutory or otherwise in relation to the Goods (other than such as relate to title to the Goods) are excluded from the Contract.
 - (vi) These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
 - (vii) Whilst the Goods comply with all applicable standards and other regulatory requirements in the United Kingdom, the Company is not responsible for ensuring that they comply with any such requirements elsewhere.

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(viii) All intellectual property rights, including unregistered design rights, copyright, registered designs and patents in the United Kingdom, and other similar rights elsewhere, in Goods that are proprietary to the Company and their drawings, designs and specifications, belong to the Company absolutely, and the Customer shall take such steps as the Company may reasonably request to establish, prosecute and defend those rights.

10 Performance

- (i) Unless otherwise agreed in writing by the Company, the Customer must, free of charge:
- provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Company;
 - obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - erect, maintain, dismantle and move all scaffolding and plant required for the Company's works and generally prepare the Customer's premises for the supply of the Services;
 - provide any water supply, lighting, and electric power required for the Company's works and generally co-operate with the Company in all matters relating to the Services; and
 - unload goods, equipment and material immediately on arrival at the prescribed destination and provide secure and dry storage, and all reasonable facilities for execution thereof.
- (ii) All joinery supplies should be kept by the Customer in a dry place, well stored, and if supplied un-coated should be primed or stained immediately on receipt. Any subsequent cut surface must be primed or stained before fixing in position. Further decoration must be completed as soon as possible by the Customer using a reputable system in accordance with the manufacturer's recommendations. The Company accepts no responsibility for effects incurred to the Goods if the Goods are supplied un-coated and if the Goods remain un-coated when exposed to weathering elements. If the Customer purchases the Goods un-coated, then no guarantees or warranties are made by the company in respect of the expected life of the Goods.
- (iii) The Company shall carry out its work on a continuous basis during normal working hours and the Company's price is fixed accordingly. If special visits have to be made to the site or work has to be carried out in an uneconomical manner, if time is lost or additional expenditure incurred due to the Company's operative being denied access to or waiting on site or having to return to the site to commence or continue work, then the Company reserves the right (without limitation) to make an extra charge to cover such cost(s). The Company's prices are subject to public transport being attainable to within reasonable distance of the site of the work and suitable lodgings being available at current substance allowance rates. The Company reserves the right to make an extra charge should these conditions not be fulfilled. Notification of such charges may be obtained by the Customer at his request from the Managing Director.
- (iv) The Company shall only install the Goods into fully prepared openings that have the correct tolerances allowed and solid structural sides all round to enable a level, firm and secure fixing of the Goods, including (without limitation): steel, solid brick, concrete and structural timber beams or lintels. If, however, the Company cannot install the Goods due to incorrect opening sizes, no tolerances allowed, openings not being of a structural sound quality to enable level, firm and secure fixing, disruption by other trades or obstruction, then the Company reserves the right to incur additional costs to the Customer for re-attending site to complete the works.
- (v) Where samples are submitted these are drawn from bulk and are representative of the whole and no guarantee can be given that every item will be the same in all material respects as the sample.
- (vi) The Goods or materials supplied are on the basis that they conform to the written descriptions contained on the order or conformation where supplied. No warranty can be given that the Goods or materials supplied conform to the sketch plans or drawings provided to the Company by the Customer or to illustrations or descriptions in catalogue or trade literature.
- (vii) In the event that the Company provides estimates of quantities or measurements on the basis of drawings and/or bills of quantities and/or specifications submitted by the Customer, the Company shall exercise reasonable care in providing such but the Company accepts no liability for inaccuracies in the estimates or calculations.
- (viii) Any Goods manufactured to the design or specification of the Customer or its experts or details taken of plans supplied by the Customer are produced without warranty of any kind except their compliance with the design or specification. The Customer will unconditionally fully and effectively indemnify the Company in respect of any claim, cost or expenses, losses or demands resulting there from including the infringement of patent, copyright, design, trade mark or any industrial or intellectual property rights resulting from the Company's use of the said design or specifications.
- (ix) When estimates are provided by the Company on the basis of plans and specifications supplied by the Customer, then the Customer shall recheck the specification and quantities quoted and shall be deemed to have accepted the specifications and quantity specified when placing the order unless written notice of any variations are given to the Company.
- (x) Design and advisory services (including the preparation of drawings, specifications, contract particulars and the like) shall be provided by the Company with reasonable skill and care but no other representations or undertakings are made or are to be implied in connection with any such services nor shall the Company be under any liability whatsoever in respect of these services if erection is carried out before any necessary approval, commissions and consents of third parties are obtained.
- (xi) If the Company arranges processing of Goods and materials on behalf of the Customer by a third party such processing will be carried out under the standard terms and conditions of the third party and entirely and at the Customer's own risk. No undertakings or warranties either expressed or implied are given in respect of any processed goods. The Customer shall be entitled to copies of third party standard terms and conditions as appropriate on written request to the Managing Director. The Company's liability in respect of loss or damage to processed goods shall be limited to the costs and expenses of such processing operation and shall not be determined by the inherent value of the goods or materials thereby processed.
- (xii) The Customer is deemed to be fully conversant with the nature and performance of the goods and materials supplied to it including any harmful, hazardous or dangerous effects resulting from their usage or misuse and shall not be reliant in any way upon the advice, skill or judgement of the Company or its servants, agents or employees who are not authorised to make any representations concerning the goods whatsoever other than those confirmed in writing by the Managing Director.
- (xiii) To the extent that any third party goods or services supplied to the Company validly excludes, restricts or limits its liability to the Company in respect of goods or materials supplied or any loss or damage arising in connection therewith then the liability of the Company to the Customer in respect of such goods and materials shall be correspondingly excluded, restricted or limited. The Customer shall be entitled to receive details of any such exclusion, restriction or limitation upon request to the Company.
- (xiv) If the materials are supplied to the Customer of a specified grade no warranty is given that the grade will be suitable for the purposes required by the Customer.

11 Responsibility

The Company's workmen are instructed to exercise due care and skill in doing their work and the Company will not accept responsibility for damage to the fabric or the contents of the buildings or the work of other trades, howsoever caused. The Customer shall have no

claim in respect of any damage or loss to the personal property of the Customer or any other persons, except in respect of death or personal injury, caused by theft, fire, explosion, flooding or any other materials whether caused by accident or negligence arising from any other apparatus or materials required for the purpose of the Company's work. All safety, health, welfare facilities and arrangements where applicable are required to comply with the Building (Safety, Health and Welfare) Regulations 1948 and any other like regulations for the time being in force are to be provided by the Customer free of cost to the Company.

12 Passing of property and risk

- (i) The risk in the Goods shall pass to the Customer on completion of delivery.
- (ii) Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- the Goods; and
 - any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.
- (iii) Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as the Company's bailee;
 - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Company immediately if it becomes subject to any of the events listed in clause 7; and
 - give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may use the Goods in the ordinary course of its business.
- (iv) If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

13 LIMITATION OF LIABILITY

- (i) Nothing in these Conditions shall limit or exclude the Company's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - fraud or fraudulent misrepresentation; or
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - defective products under the Consumer Protection Act 1987; or
 - any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- (ii) SUBJECT TO CLAUSE 13(i):
- THE COMPANY SHALL UNDER NO CIRCUMSTANCES WHATEVER BE LIABLE TO THE CUSTOMER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, FOR ANY LOSS OF PROFIT, OR ANY INDIRECT OR CONSEQUENTIAL LOSS ARISING UNDER OR IN CONNECTION WITH THIS CONTRACT; AND
 - THE COMPANY'S TOTAL LIABILITY TO THE CUSTOMER IN RESPECT OF ALL OTHER LOSSES ARISING UNDER OR IN CONNECTION WITH THIS CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED THE PRICE OF THE GOODS STATED IN THE ORDER (EXCLUDING VAT).
- (iii) THE CUSTOMER SHALL INDEMNIFY THE COMPANY AGAINST ANY LIABILITY INCURRED BY THE COMPANY IN RELATION TO ANY THIRD PARTY CLAIMS ARISING FROM THE USE MADE OF OR DEALINGS BY THE CUSTOMER IN THE GOODS (IRRESPECTIVE OF WHETHER THEY INVOLVE THE NEGLIGENCE OF THE COMPANY, ITS AGENTS OR EMPLOYEES), UNLESS SOLELY ARISING FROM THE COMPANY'S WILFUL DEFAULT OR DEFECTS IN MATERIAL OR WORKMANSHIP OF THE GOODS.

14 Assignment

- (i) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract without the prior written consent of the Company.
- (ii) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract.

15 Waiver

A waiver of any right or remedy under this Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16 Variation

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Managing Director.

17 Enforceability

- (i) Should any provisions of these Conditions be held by a competent authority to be invalid or unenforceable in whole or in part then the validity of the remaining provisions shall not thereby be affected.
- (ii) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- (iii) A person who is not a party to the Contract has no rights under or in connection with it.
- (iv) The provisions of clauses 12, 13, 17 and 18 shall survive termination of this Contract.

18 Jurisdiction

- (i) This Contract is governed by English Law and the Customer agrees for the Company's exclusive benefit that the English courts shall have sole jurisdiction to hear all claims or disputes connected with the Goods or the Contract. The Company may nevertheless bring claims in any other courts of competent jurisdiction.
- (ii) Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.