Cheshire Conservatories & Windows Ltd

Standard Terms and Conditions.

The Customer's attention is particularly drawn to the provisions of clause 8 **(Limitation of liability).**

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Commencement Date: has the meaning given in clause 2.2**.**

Conditions: these terms and conditions as amended from time to time in accordance with clause

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause **Error! Reference source not found.**.

Force Majeure Event: has the meaning given to it in clause 11.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and [neighbouring and] related rights, [moral rights,] trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or

extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of the Supplier's quotation.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Satisfactory Completion as used in this agreement means that the supplier has complied with all the terms, conditions and performance requirements of the agreement

Supplier: Cheshire Conservatories & Windows Limited registered in England and Wales with company number 4482876.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (*(EU) 2016/679*); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (*2002/58/EC*) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended.

1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes fax, mobile phone text and email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.4 Any quotation given by the Supplier shall constitute an offer, and is only valid for a period of 30 Calendar Days from its date of issue.

2.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in written acceptance of the order. We will make every effort to complete the work on time (or if no date has been agreed, within a reasonable time from the date of your order) but we cannot be held responsible for the delays due to weather or other circumstances beyond our control. In this case we will complete the work as soon as reasonably possible.

3.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. If the amendment were to affect the original contract price then the Customer would have the right to cancel the contract for a period of one week but would have to pay for the work that had been completed up to the point of cancellation.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Goods and Service Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to provide the Services;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Customer's premises for the supply of the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(g) comply with all applicable laws, including health and safety laws;

(h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;

(i) comply with any additional obligations as set out in the Goods and Service Specification

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 The Supplier reserves the right to:

(a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(i) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(ii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

5.2 In respect of Services, the Supplier shall invoice the Customer on satisfactory completion of the Services or at each stage of the project as indicated on the written accepted order.

5.3 The Customer shall pay each invoice submitted by the Supplier:

(a) within 2 days of the date that the invoice was sent by email or hard copy handed to or posted to the Customer

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.4 All amounts payable by the Customer under the Contract are inclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9 (Cancellation), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%.

5.6 All amounts due under the Contract shall be paid in full on completion of agreed work or at the agreed staged intervals as laid out in the contract. The Purchaser shall not be entitled by reason of any alleged minor defect to withhold more than a proportionate amount of the sum due.

6. Data protection

6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 6, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

6.2 Without prejudice to the generality of clause 6.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(b) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

(c) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

(d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(e) notify the Customer without undue delay on becoming aware of a personal data breach;

(f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on cancellation of the Order unless required by Applicable Law to store the personal data; and

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

7. Confidentiality

7.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 7.2.

7.2 Each party may disclose the other party's confidential information*:*

(a) 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 *clause 7*; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

8. Limitation of liability:

8.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1 million per claim.

8.2 The restrictions on liability apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

8.4 Nothing in the Contract limits any liability which cannot legally be limited, including [but not limited to] liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by the Consumer Rights Act 2015

8.5 Subject to clause 8.4, the Supplier's total liability to the Customer shall not exceed £1 million.

9. Cancellation

9.1 The Customer has the right to a 7 day ‘cooling off’ period from the time that they accept the quotation in writing

10. Consequences of cancellation

10.1 On cancellation of the Accepted Order:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Company reserves the right to charge a reasonable administration fee in the event of any cancellation to account for administration time taken thus far in respect of the cancelled order.

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

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

11. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

12. General

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

12.2 **Entire agreement**.

(a) Nothing in this clause shall limit or exclude any liability for fraud.

12.3 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

12.4 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.