

MB Frames PVCu Ltd
Standard Terms and Conditions of Sale v. 1 2015

1 Definitions

1.1 In these Terms and the Contract, save where the context requires otherwise, the following definitions shall apply:

- 1.1.1 "Company" means M.B. Frames P.V.C.-u Limited, a company registered in England & Wales with company registration number 02690630;
- 1.1.2 "Contract" means the agreement between the Purchaser and the Company, as further defined in Clause 2;
- 1.1.3 "Goods" means the goods and/or services which are to be supplied by the Company to the Purchaser under the Contract;
- 1.1.4 "Price" means the sums agreed to be paid by the Purchaser to the Company as set out in the Contract;
- 1.1.5 "Purchaser" means the other party to the Contract;
- 1.1.6 "Terms" means these terms and conditions.

2 The Contract

2.1 The Purchaser may place an order for Goods with the Company. Any such order is an offer and the Company may confirm its acceptance of the offer in writing or by its conduct.

2.2 The documents which form the Contract shall be read together and as a whole. In the event of any conflict between any of the documents which form the Contract, the order of priority of the documents is as follows:

- 2.2.1 These Terms;
- 2.2.2 The order acknowledgement sent by the Company to the Purchaser;
- 2.2.3 The Purchaser's order;
- 2.2.4 The Company's quotation;
- 2.2.5 Any other documents which form part of the Contract.

3 The Goods

3.1 The Company shall supply Goods which correspond in quantity, dimension and other specification(s) with the description set out in the order acknowledgement sent by the Company to the Purchaser (whether or not signed by the Purchaser). If no order acknowledgement exists then the Goods shall be as described within the quotation sent by the Company to the Purchaser.

3.2 The Purchaser acknowledges that it has reviewed the order acknowledgement and/or quotation for accuracy and completeness. The Purchaser shall notify the Company immediately if there is any inaccuracy, error or incompleteness in the order acknowledgement / quotation.

3.3 The Company may have provided the Purchaser with a sample or promotional material or allowed the

Purchaser access to its showroom. The Purchaser acknowledges that any samples, promotional materials and showroom displays are for general illustration only and that the Goods supplied by the Company may be modified by reason of (a) production techniques and/or reasonable variation in the manufacturing process or (b) the Company's policy of continuous improvement to its products. Accordingly, the Company does not warrant that the Goods will correspond precisely with any such sample or showroom display.

3.4 The Purchaser shall provide all information reasonably requested by the Company in relation to the Purchaser's order. The Purchaser acknowledges that any delay in providing such information may affect the Delivery Date.

3.5 The Company is not required to check any dimensions supplied by the Purchaser unless the parties have agreed otherwise. If it is agreed that the Company shall check such dimensions, then the Purchaser shall grant the Company access to the premises where the Goods are intended to be installed at any reasonable time in order to take measurements. The Company shall have no liability in respect of any such measurement or checking exercise save to the extent that the Company has failed to use reasonable skill and care.

3.6 All glass products may contain minor imperfections and variations which are a feature of the manufacturing process, and are not a defect in the glass.

3.7 The Company does not warrant that the Goods or any installation will be free from condensation or reduce or eliminate condensation.

3.8 Unless expressly agreed in writing the Company does not warrant that the Goods will be fit for any particular purpose other than those purposes for which the Goods would commonly be supplied.

3.9 The Purchaser shall on delivery or as soon as it is reasonably able thereafter inspect the Goods and shall notify the Company within five working days if the Goods are defective or do not otherwise correspond to the Contract, whether in quantity description or quality. The Purchaser is otherwise deemed to have accepted the Goods.

3.10 The Company shall repair or replace any Goods which it is notified are defective or faulty at the Delivery Date. The Company shall further repair or replace any Goods which develop a defect within the relevant guarantee period. The guarantee periods are as follows:

3.10.1 For PVC-profile products: 10 years from the Delivery Date.

3.10.2 For double glazed sealed units: 10 years from the Delivery Date.

3.10.3 Hardware (handles, locks and other ancillary items): 1 year from the Delivery Date.

The Purchaser shall notify the Company of any defects arising and shall afford the Company reasonable opportunity and access to carry out the repair or replacement.

3.11 Save as aforesaid, the Company excludes to the fullest extent allowable by law all other conditions, warranties and terms implied by statute or common law.

4 Delivery

- 4.1 The Company shall deliver the Goods on the Delivery Date to the Delivery Address and the Purchaser shall accept delivery.
- 4.2 The Delivery Date shall be: (a) the date agreed between the Purchaser and the Company; or (b) otherwise, the date notified by the Company to the Purchaser for the delivery of the Goods.
- 4.3 The Company may amend the Delivery Date provided that it shall give the Purchaser at least one working day's notice.
- 4.4 The Delivery Address shall be the address specified in the Contract. If no such address is specified then the Purchaser may notify the Company of the Delivery Address provided that (a) the address shall be in England or Wales and (b) if the address is outside a 25 mile radius of the Purchaser's usual delivery address or trading address, the Company may charge for the delivery at a rate of £25 per hour for the delivery driver's time.
- 4.5 Time of delivery is not of the essence of the Contract.
- 4.6 If the Company attempts to deliver the Goods on the Delivery Date and the Purchaser fails to accept delivery, the Company shall be entitled to charge the Purchaser a reasonable sum to reimburse its storage costs and the costs of making a second delivery.
- 4.7 Notwithstanding that the Company may assist with unloading, the Purchaser shall be responsible for unloading at the Delivery Address and shall provide any necessary labour and/or equipment required.
- 4.8 If the Purchaser is collecting the Goods, then the Purchaser shall do so promptly and in any event within five working days of the date it is notified by the Company that the Goods are ready for collection. The Company reserves the right to charge a reasonable amount for the storage of Goods which are not collected in good time in accordance with this Clause.
- 4.9 Risk in the Goods shall pass to the Purchaser immediately on delivery or collection. Title in the Goods shall not pass to the Purchaser until such time as the Company has received payment of the Price in full in cleared funds.

5 Payment

- 5.1 The Price shall be paid in the instalments and at the times set out in the Contract; or otherwise as set out in this Clause 5.
- 5.2 The Company may at its discretion require advance payment of all or part of the Price prior to supplying the Goods. The Purchaser acknowledges that the Company is not required to begin ordering or manufacturing the Goods until such time as the advance payment is received and that any delay in payment may lead to a delay in delivery of the Goods.
- 5.3 The Company shall submit an invoice for the Price (less any advance payment received) following delivery of the Goods. The invoice becomes due on the date it is issued and unless agreed otherwise the final date for payment of the invoice shall be 30 calendar days following the due date.
- 5.4 If the Goods are delivered in instalments then the Company may submit an invoice following each and

every delivery for a pro rata proportion of the Price reflecting the Goods delivered in the relevant instalment.

- 5.5 The Price is exclusive of VAT. Payment may be made by BACS payment, cash, credit/debit card (not American Express) or by cheque made payable to MB Frames PVC-u Limited.
- 5.6 If the Purchaser requires any change to the specification of the Goods or materially alters the Delivery Date or Delivery Address and the Company agrees to accept such change, then the Price shall be adjusted to reflect the change. The Company will endeavour to agree the amount of any adjustment with the Purchaser; or, if no agreement is reached, then the Company shall make a fair and reasonable adjustment to the Price.
- 5.7 The Purchaser may not withhold or reduce payment for minor defects in the Goods.
- 5.8 If any sums are not paid by the final date for payment, then simple interest shall accrue at the per annum rate of 8% above Bank of England Base Rate current at the date the payment became overdue.

6 Limitations on Liability

- 6.1 The Company will use its reasonable endeavours to deliver the Goods by the Delivery Date but the Purchaser acknowledges and agrees that the Company cannot accept any liability for loss, damage or expense incurred by the Purchaser by reason of any delay to the Delivery Date.
- 6.2 The Company shall have no liability to the Purchaser for indirect or pure economic loss, including but not limited to loss of production, loss of profits, loss of business or any consequential losses or damages arising under or in connection with the delivery or non-delivery of the Goods.
- 6.3 For the avoidance of doubt, the Company is not liable for any loss, damage or injury (whether to the Goods themselves or otherwise) caused by the following, which are not "defects" in either the Goods or any installation:
 - 6.3.1 Fair wear and tear;
 - 6.3.2 Acts of the Purchaser or a third party, including alteration, storage or installation, accident, misuse, or any criminal act;
 - 6.3.3 Failure to comply with the Company's maintenance instructions;
 - 6.3.4 Fire damage;
 - 6.3.5 Subsidence due to ground movement;
 - 6.3.6 Storm damage.
- 6.4 The Company may advise the Purchaser that the Purchaser's specification exceeds the Company's maximum recommended specifications for a given product. If the Purchaser does not accept that advice and places an order in excess of those maximum recommended specifications, then the Company shall not be liable for any loss, damage or injury which occurs as a result.
- 6.5 Nothing in this Clause shall be taken to exclude or restrict any liability which the Company may have for

death or personal injury resulting from its own negligence, fraud, fraudulent misrepresentation, or any other liability which may not be excluded by law.

- 6.6 Save as aforesaid, the Company's liability under or in connection with the Contract (whether arising by breach of the Contract, in tort (including negligence), by breach of statutory duty or by any other default) shall be limited to an aggregate sum equivalent to the Price or £25,000 (whichever is the greater).

7 Suspension and Termination

- 7.1 If the Purchaser is in default of payment under this or any other Contract between the parties, then the Company may at its discretion suspend the manufacture and delivery of any or all Goods under this and/or any other Contract between the parties, until such time as the Purchaser has rectified the payment default. The Company shall notify the Purchaser as soon as it is reasonably able of the suspension.
- 7.2 In the event that a party has a winding up petition or bankruptcy petition presented against it or passes a resolution for voluntary winding up without making a statutory declaration of solvency under section 89 of the Insolvency Act 1986 or has a receiver, administrative receiver or administrator appointed to any part of its business or enters into an arrangement or composition with its creditors; then the other party may by notice in writing terminate the Contract with immediate effect.
- 7.3 If the Purchaser breaches this Contract and fails to rectify that breach within 30 calendar days of a notice from the Company identifying the breach and requiring its rectification, then the Company may by a further notice terminate the Contract.
- 7.4 If (a) the Company without good reason fails to deliver the Goods by the Delivery Date and (b) the Purchaser notifies the Company of the failure and (c) within 60 calendar days of that notice, the Company has still not made delivery of the Goods; then the Purchaser may by a further notice terminate this Contract. Where delivery of the Goods is in instalments the termination shall only apply to those instalments which have not been delivered at the date of the termination.
- 7.5 Termination shall not affect the accrued rights and remedies of either Party.

8 Additional Terms for Supply & Install

- 8.1 The provisions of this Clause 8 shall only apply where the Company has agreed under the Contract to install the Goods as an additional service to the Purchaser.
- 8.2 The Company shall carry out the installation of the Goods at the premises agreed between the parties in a good and workmanlike manner and within a reasonable time.
- 8.3 The Purchaser shall grant the Company safe and unobstructed access to the premises at the times required by the Company in order to carry out the installation.
- 8.4 The Company will take reasonable steps to protect the premises and the Purchaser's property at the premises from damage during the installation, including that the Company will make good any damage to immediate surfaces and surrounds. However, the Company is not liable for any unavoidable damage incurred by reason

of the installation, nor is the Company responsible for any pre-existing defects (including any structural defects) in the premises.

- 8.5 The Company will maintain public and employer's liability insurances during the installation. The Purchaser will procure insurance of the premises where the installation is to be carried out.
- 8.6 If within 12 months of the date of the installation, any defects appear in the Goods or the installation, then the Purchaser shall notify the Company of the defects and the Company shall within a reasonable time of receiving the notice attend the premises to inspect the Goods and the installation. If the Goods and/or the installation are defective then the Company will repair or replace the Goods and/or the installation without charge to the Purchaser.
- 8.7 For the avoidance of doubt, the Company is not responsible for any work carried out by the Purchaser itself or by any builder or other party at the premises.

9 Miscellaneous

- 9.1 The Purchaser may not assign any right or benefit under this Contract, without the prior written consent of the Company (which may be withheld for any reason).
- 9.2 It is not intended that any party other than the Purchaser and the Company have any rights under this Contract, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 9.3 In these Terms headings are for convenience only and shall not affect the interpretation thereof.
- 9.4 If any competent tribunal or court decides that any one or more of the provisions of these Terms are unenforceable then that provision shall be deemed severed and deleted from the Terms and the remaining provisions shall remain in full force and effect and shall remain binding on the parties.
- 9.5 The period of the Company's liability under this Contract is: (a) in relation to the Company's liability to repair or replace Goods under the guarantee contained in Clause 3.10, to the end of the relevant guarantee period; (b) otherwise, to the date six years after the Delivery Date or completion of the relevant installation (or termination of the Contract if earlier).
- 9.6 The law of the Contract is the law of England and the courts of England and Wales shall have exclusive jurisdiction.