



Standard Terms & Conditions of Sale v.12017

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1 Definitions

- 1.1 In these Terms and the Contract, save where the context requires otherwise, the following definitions shall apply:
- 1.1.1 "Business Day" means a day (other than Saturday, Sunday or public holiday) when banks in London are open for business.
 - 1.1.2 "Company" means M.B. Frames P.V.C.-u Limited, a company registered in England & Wales with company registration number 02690630;
 - 1.1.3 "Contract" means the agreement between the Purchaser and the Company, as further defined in Clause 2;
 - 1.1.4 "Goods" means the goods and/or services which are to be supplied by the Company to the Purchaser under the Contract;
 - 1.1.5 "Price" means the sums agreed to be paid by the Purchaser to the Company as set out in the Contract;
 - 1.1.6 "Purchaser" means the other party to the Contract;
 - 1.1.7 "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 subject to the Terms and the Company may confirm its acceptance of the offer in writing or by its conduct. These terms shall govern any supply arrangement between the Company and the Purchaser.
- 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 Company's quotation;
 - 2.2.4 The Purchaser's order;
 - 2.2.5 Any other documents which form part of the Contract.

3 The Goods

- 3.1 The Goods shall correspond in all material respects with the quantity, dimension and other specification(s) in 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 warrants that it will review the order acknowledgement and/or quotation for accuracy and completeness upon receipt. The Purchaser shall notify the Company immediately if there is any inaccuracy, error or incompleteness in the order acknowledgement / quotation.
- 3.3 Subject to clause 3.4 if:
- (a) the Purchaser gives notice within two weeks of discovery (and provided that such discovery is within the relevant time period set out in 3.10) that some or all of the Goods are defective;
 - (b) the Company is given a reasonable opportunity to examine such Goods; and
 - (c) the Purchaser (if asked to do so by the Company) returns such defective Goods to the Company's premises; the Company shall at its own option repair or replace the defective Goods, or refund the price of the defective Goods.



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- 3.4 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 3.1 in any of the following events:
- (a) the Purchaser makes any further use of such Goods after giving notice in accordance with clause 3.3;
 - (b) the defect arises because the Purchaser failed to follow the Company's oral or written instructions regarding the storage, commissioning, installation, use and maintenance of the goods, and/or follow good trade practice regarding the same;
 - (c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Purchaser;
 - (d) the Purchaser alters or repairs such Goods without the written consent of the Company;
 - (e) the defect arises as a result of fair wear and tear wilful damage, negligence or abnormal storage or working conditions; or
 - (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 3.5 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.
- 3.6 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.
- 3.7 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.
- 3.8 The Company does not warrant that the Goods or any installation will be free from condensation or reduce or eliminate condensation and the same are not a defect.
- 3.9 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.
- 3.10 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.
- 3.11 The guarantee periods are as follows:
- 3.11.1 For PVC-profile products: 10 years from the Delivery Date.
 - 3.11.2 For all other products see separate warranty document
- 3.12 Save as aforesaid, the Company shall have no liability to the Purchaser for the Goods' failure to comply with the description set out in 3.1.
- 3.13 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 (and any successor legislation) are, to the fullest extent permitted by law, excluded from the Contract.

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4 Delivery

- 4.1 The Company shall either deliver the Goods on the Delivery Date to the Delivery Address and the Purchaser shall accept delivery or the Customer shall collect the Goods from the Company's premises or such other location as may be advised by the Company prior to delivery ("the Delivery Address") within 7 Business Days of the Company notifying the Purchaser that the Goods are ready. The Company's order acknowledgment may specify whether the goods are subject to delivery or collection.
- 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 further delivery attempts.
- 4.7 If the Purchaser fails to take delivery of the Goods within 7 Business Days of the Company notifying the Purchaser that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event:
- (a) delivery of the Goods shall be deemed to have been completed at 9:00am on the third Business Day after the day on which the Company notified the Purchaser that the Goods were ready; and
 - (b) the Company shall store the Goods until delivery or collection takes place, and charge the Customer for all related costs and expenses (including redelivery and insurance).
- 4.8 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.
- 4.9 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.
- 4.10 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 in respect of the Goods and any other goods that the Company has supplied to the Purchaser.
- 4.11 Until title to the Goods has passed to the Purchaser, the Purchaser shall store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Company's property and shall mark the Goods accordingly.
- 4.12 If the Purchaser resells the Goods before gaining title in them it does so as principal and not as the Company's agent, and any payment received in exchange is held on behalf of the Company.

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.



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- 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 shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may, at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Purchaser. The Purchaser may not withhold or reduce payment for minor defects in the Goods.
- 5.8 If any sums are not paid by the Purchaser 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 holds no 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 or damage (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 the Contract shall 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 is not permitted to be excluded by law.
- 6.6 Save as aforesaid,
- (a) 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 lesser); and
 - (b) the Company shall under no circumstances be liable to the Purchaser or its customers, 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 the Contract and the Purchaser indemnifies the Company in respect of the same if the Company is held liable.

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7 Suspension and Termination

- 7.1 If the Purchaser is in default of payment under this or any other Contract between the parties, or the Company reasonably believes that the Purchaser is, or is about to be, subject to any action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up, having a receiver appointed to any of its assets or ceasing to carry on business, 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 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 20 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 Miscellaneous

- 8.1 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). 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 the Contract.
- 8.2 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.
- 8.3 In these Terms headings are for convenience only and shall not affect the interpretation thereof.
- 8.4 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.
- 8.5 Any notice or other communication given to a party under or in connection with the Contract shall be in writing which may include e-mail to addresses in established use between the parties but shall otherwise be sent by post to the party's principal place of business or such other address as that party may have specified to the other in correspondence. Deemed date of receipt shall be 9am on the second Business Day after posting for mail, and 9am on the next Business Day after transmission if sent by e-mail. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 8.6 (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 8.7 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 3.11, to the end of the relevant guarantee period; (b) otherwise, to the date six years after the Delivery Date (or termination of the Contract if earlier).
- 8.8 The law of the Contract is the law of England and the courts of England and Wales shall have exclusive jurisdiction.